Panel Decision for dispute CAC-ADREU-004968

Case number	CAC-ADREU-004968
Time of filing	2008-03-21 09:40:46
Domain names	cajarioja.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	CAJA DE AHORROS DE LA RIOJA, Manuel María de Miguel Alonso de Medina

Respondent

Organization / Name	KERSTIN SCHMID

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

I am not aware of any other legal proceedings, pending or decided, which relate to the disputed domain name.

FACTUAL BACKGROUND

The Respondent has registered the domain name cajarioja.eu.

The Complainant is a Spanish bank offering various financial services especially in the Spanish autonomous region La Rioja. The Complainant operates under the name Caja Rioja and states that it is well known in the region La Rioja and throughout Spain under this name. The Complainant has registered and has been using domain names cajarioja.es and cajarioja.com. The Complainant is the holder of two Spanish national trademarks "CAJARIOJA" No. M2567007 and M1282362, covering among others financial services in class 36.

The Complainant asserts that the Respondent has no right or legitimate interest in the disputed domain name and that the Respondent has registered and used the disputed domain name in bad faith.

The Respondent has failed to file the Response to the Complaint.

A. COMPLAINANT

The Complainant is a Spanish bank offering various financial services especially in the Spanish autonomous region La Rioja. The Complainant operates under the name Caja Rioja and states that it is well known in the region La Rioja and throughout Spain under this name. The Complainant has registered and has been using domain names cajarioja.es and cajarioja.com.

The Complainant maintains that the disputed domain name is identical to two Spanish national trademarks "CAJARIOJA" No. M2567007 and M1282362, covering among others financial services in class 36, which both belong to the Complainant.

The Complainant asserts that the Respondent has no right or legitimate interest in the disputed domain name. Furthermore, the Complainant claims that the Respondent has registered and used the disputed domain name in bad faith. Namely, the disputed domain name was used for an illegal practice of "phishing" by which the Complainant's customers were invited via email to the internet site under the disputed domain name with the intent to fraudulently acquire from them their usernames and passwords and then unauthorized wire transfers from their accounts were made by using their usernames and passwords.

The Complainant seeks the transfer of the disputed domain name to the Complainant.

B. RESPONDENT

The Respondent has failed to file the Response to the Complaint, despite timely reminders and official notification of default.

DISCUSSION AND FINDINGS

Article 21(1) of Regulation 874/2004 states:
"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where the name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:
(a) has been registered by its holder without rights or legitimate interest in the name; or
(b) has been registered or is being used in bad faith."

In the absence of the Response, I have examined the evidence submitted by the Complainant and checked the Complainant's internet site www.cajarioja.com and www.cajarioja.es. Based on the evidence I have concluded that the Complainant is a bank offering financial services in Spain under the trademark CAJARIOJA. The Complainant is the holder of at least two Spanish trademarks "CAJARIOJA": No. 1282362, application date 4 November 1988, covering insurance and financial services in class 36; and No. 2567007, application date 13 November 2003, covering among others services of savings banks, financial and monetary affairs. The Complainant submitted printouts of the trademarks to prove their existence.

In my view, the Complainant submitted sufficient evidence that the disputed domain name is virtually identical with the trademarks which belong to the Complainant and were applied for registration and registered before the registration of the disputed domain name. Furthermore, the disputed domain name is identical, except for the extensions, with the domain names cajarioja.com and cajarioja.es, registered and used by the Complainant.

From the submitted evidence I can see no indication that the Respondent has any right or legitimate interest in the disputed domain name. The Respondent has failed to file the Response in which the right or legitimate interest could be asserted and proved, so according to Article 10(a) of the ADR Rules, I accept the Complainant's claim that the Respondent has no right or legitimate interest in the disputed domain name.

It also appears to me that the disputed domain name has been registered and used in bad faith. The Complainant claimed that the disputed domain name has been used for an illegal practice of "phishing" by which the Complainant's customers were invited via email to the internet site under the disputed domain name with the intent to fraudulently acquire from them their usernames and passwords and then unauthorized wire transfers from their accounts were made by using their usernames and passwords. To prove this, the Complainant submitted a police record of March 7, 2008 showing that the disputed domain name indeed was used for "phishing" and that some unauthorized wire transfers were made from the bank accounts of the Complainant's clients. Given that the Respondent has failed to submit any response to the Complaint, I am additionally convinced of this fact and that the condition set forth in Article 21(1)(b) is met. In particular I am satisfied that bad faith is demonstrated according to Article 21(3) (d), because it appears that the disputed domain name was registered and used for the sole purpose of attracting Complainant's clients, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant's name which is also protected by the registered trademarks.

The Complainant has asked that the disputed domain be transferred to the Complainant. The Complainant is a bank organized under the laws of Spain and having its principal place in Spain, therefore the Complainant satisfies the general eligibility requirements of Article 4(2) of Regulation 733/2002.

For these reasons I have decided that all conditions are met for the transfer of the disputed domain name to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name CAJARIOJA be transferred to the Complainant.

PANELISTS

Name	Gregor Macek

DATE OF PANEL DECISION 2008-07-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a bank offering financial services in Spain under the trademark CAJARIOJA. The Complainant is the holder of at

least two Spanish trademarks "CAJARIOJA": No. 1282362, application date 4 November 1988, covering insurance and financial services in class 36; and No. 2567007, application date 13 November 2003, covering among others services of savings banks, financial and monetary affairs.

The Complainant submitted sufficient evidence that the disputed domain name is virtually identical with the trademarks which belong to the Complainant and were applied for registration and registered before the registration of the disputed domain name. Furthermore, the disputed domain name is identical, except for the extensions, with the domain names cajarioja.com and cajarioja.es, registered and used by the Complainant.

From the submitted evidence I can see no indication that the Respondent has any right or legitimate interest in the disputed domain name. The Respondent has failed to file the Response in which the right or legitimate interest could be asserted and proved, so according to Article 10(a) of the ADR Rules, I accept the Complainant's claim that the Respondent has no right or legitimate interest in the disputed domain name.

It also appears to me that the disputed domain name has been registered and used in bad faith. The Complainant claimed that the disputed domain name has been used for an illegal practice of "phishing" by which the Complainant's customers were invited via email to the internet site under the disputed domain name with the intent to fraudulently acquire from them their usernames and passwords and then unauthorized wire transfers from their accounts were made by using their usernames and passwords. To prove this, the Complainant submitted a police record of March 7, 2008 showing that the disputed domain name indeed was used for "phishing" and that some unauthorized wire transfers were made from the bank accounts of the Complainant's clients. Given that the Respondent has failed to submit any response to the Complaint, I am additionally convinced of this fact and that the condition set forth in Article 21(1)(b) is met. In particular I am satisfied that bad faith is demonstrated according to Article 21(3) (d), because it appears that the disputed domain name was registered and used for the sole purpose of attracting Complainant's clients, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant's name which is also protected by the registered trademarks.

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For these reasons I have decided that the disputed domain name be transferred to the Complainant.