Panel Decision for dispute CAC-ADREU-004970

Case number	**CAC-ADREU-004970**
Time of filing	**2008-03-12 09:02:36**
Domain names	**heitronic.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**H.Vollmer GmbH, Günther Vollmer**

Respondent

Organization / Name	**Zheng Qingying**

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

No legal proceedings have been issued or terminated in connection with the disputed domain name.

FACTUAL BACKGROUND

The Complainant in this proceeding is H.Vollmer GmbH, Günther Vollmer, based in Königsbach-Stein, Germany.

The Respondent in this proceeding is Zheng Qingying based in London, Great Britain.

The disputed domain name is “heitronic”.

The Complainant is the owner of the German trademark „heitronic“, No. DE 2100462 (Class No. 11) date of registration -14th June, 1996.

The Complainant is the owner of a Community trademark „heitronic“, No. 003503166 (Class No. 9 and Class No. 11) date of registration - 25th January, 2006 holding seniority in Germany (since 14th June, 1996), Benelux (since 22nd March, 2001), France (since 22nd March, 2001) and Austria (since 22nd March, 2001) (hereinafter both German and Community trademarks – the trademarks).

The Respondent is the current registrant of the domain name „heitronic“ holding the domain heitronic.eu, date of registration - 4th July, 2006.

The Complainant filed the complaint against the Respondent under the alternative dispute resolution rules of the Arbitration center for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (hereinafter - ADR rules), claiming that the domain heitronic.eu should be transferred to the Complainant.

A. COMPLAINANT

The Complainant argues that the domain name is identical to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law. The domain name at issue is heitronic.eu.
The Complainant is the owner of the German trademark „heitronic“, No. DE 2100462 (Class No. 11 - Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes), date of registration -14th June, 1996.

The Complainant is the owner of a Community trademark „heitronic“, No. 003503166 (Class No. 9 – Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending

machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing aparatus and Class No. 11 - Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes) date of registration - 25th January, 2006 holding seniority in Germany (since 14th June, 1996), Benelux (since 22nd March, 2001), France (since 22nd March, 2001) and Austria (since 22nd March, 2001) (hereinafter both German and Community trademarks – the trademarks).

The legal protection is ensured to the trademarks consisting of a word “heitronic”.

The Complainant requests the transfer of the domain name.

B. RESPONDENT

The Respondent is the current registrant of the domain name „heitronic“ holding the domain heitronic.eu, date of registration - 4th July, 2006.

The Respondent failed to comply with the deadline indicated in the Notification of Commencement of ADR Proceeding for the submission of his response and with the further deadline indicated in the Notification of Respondent's default. Therefore, he has not produced any arguments or provided any evidence of any actual or contemplated right, legitimate interest or good faith use.

DISCUSSION AND FINDINGS

Article 22 of the EC Regulation 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration (hereinafter - EC Regulation 874/2004) states that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21. Article 21(1) of the EC Regulation 874/2004, as well as Paragraph B11(d)(1) of ADR rules provide that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where:

(a) it has been registered by its holder without rights or legitimate interests in the name; or

(b) it has been registered or is being used in bad faith.

The Complainant is the owner of both the Community trademark and German trademark „heitronic“. Thus the Panel finds that the disputed domain name is identical to the Complainant’s registered trademark as they both consist of the same word „heitronic“.

The complainant holds two domain names containing the word „heitronic“ – heitronic.de and heitronic.com. The Panel is not provided with the information about the date of registration of the mentioned domains, thus it can not be considered as evidence taking into consideration the eligibility of the registration of the disputed domain name by the Respondent.

With reference to the first element in Article 21(1) of the EC Regulation 874/2004, providing the demand of rights or legitimate interests in the domain name, the Panel finds that the Complainant has proved its rights on the name „heitronic“ within the meaning of Article 10 (1) of the Regulation.

Article 10 (1) provides that holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts. "Prior rights" shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.
On the contrary, the Complainant provided that the Respondent has no rights or legitimate interest in the disputed domain name basing on the grounds when legitimate interest may be demonstrated lied down in Article 21(2) of the EC Regulation 874/2004.

With reference to the right or legitimate interest, Article 21 (2) of the Regulation 874/2004 states that a legitimate interest may be demonstrated where:

(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) it has been commonly known by the domain name;

(c) it is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national and/or community law."

Regarding the second element that the domain name is registered or is being used in bad faith, the Complainant referred to the ground lied down in Article 21(3) of the EC Regulation 874/2004 providing that bad faith has been demonstrated as the Respondent has registered the domain name on the purpose to sell it. The Complainant provided the Panel with the evidence that the Respondent proposed to sell the domain name on the website (an advertisement on the website www.escrow.onlyone.com.hk/?domain=heitronic.eu&ref=heitronic.eu).

The Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith, as the Respondent failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent is in default and thus has not proved any right or legitimate interest and has registered the domain name in bad faith.

In this case the Complainant requests that the contested domain name would not only be revoked but also transferred to it. In such a case the Complainant must meet the general eligibility criteria to be a registrant of a domain name set out in Article 4(2)(b) of Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain. To satisfy those general eligibility criteria the Complainant must be one of the following:

1. an undertaking having its registered office, central administration or principal place of business within the European Community;

2. an organisation established within the European Community without prejudice to the application of national law; or

3. a natural person resident within the European Community.

The Complainant, being a company registered under German law, satisfies the eligibility requirement for .eu domain name registrations pursuant to Article 4(2)(b)(ii) of Regulation (EC) No. 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name HEITRONIC be transferred to the Complainant

PANELISTS

Name	Gediminas Pranevicius

DATE OF PANEL DECISION 2008-07-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In conclusion, the Panel therefore finds the infringement of the Article 21(1) of the EC Regulation 874/2004, as well as of Paragraph B11(d)(1) of ADR rules by the Respondent thus being ineligible to register the disputed domain name.
As the Complainant has satisfied the eligibility requirement for .eu domain name registrations pursuant to Article 4(2)(b)(ii) of Regulation (EC) No. 733/2002, the Panel decides that the disputed domain name should be transferred to the Complainant.