Panel Decision for dispute CAC-ADREU-004990

Case number	CAC-ADREU-004990
Time of filing	2008-09-03 11:30:21
Domain names	staer.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	STAER INTERNATIONAL S.A, NICOLAE STEFAN

Respondent

Organization / Name	PAGINI FAVORITE SRL LTD, Uta Simona Paula

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

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner of trademarks consisting or comprising “STAER”, including the following trademarks:

- Romanian trademark STAER registered on 23.09.2005 No. 68433
- Romanian trademark STAER registered on 23.09.2005 No. 71274
- International trademark STAER registered on 24.03.2006 No. 9000886 covering 52 countries

The Complainant is furthermore the registrant of the domain names <staer.ro> registered on May 5, 2003 and <staer.com> registered on March 31, 2003.

A. COMPLAINANT

The Complainant states that the disputed domain name is identical to the prior Complainant’s trademarks and confusingly similar to its trade name.

The Complainant contends that the STAER trademark is well-known among the consumers due to the constant high quality of its products and services and that the STAER trademark has been used since 1992.

The Complainant alleges that the disputed domain name is identical to the main part of the STAER INTERNATIONAL tradename of the Complainant.

The Complainant underlines that the addition of a generic top-level-domain suffix is irrelevant in an examination of identity between a domain name and a trademark.

With reference to the rights or legitimate interest, the Complainant asserts that the Respondent is not the owner of any STAER trademark and that the Complainant has neither granted the Respondent any license nor has the Complainant otherwise permitted the Respondent to use the trademark STAER or any other of the Complainant’s rights in that name or even to apply for any domain name incorporating the said trademark.

The Complainant emphasizes that the Respondent has not in the past made use of, or demonstrable preparations to making use of the disputed domain name or a name corresponding to the disputed domain name in connection with the offering of goods and services.

The Complainant points out that the disputed domain name is not currently related to any web site in connection with the offering of goods and services and that the Respondent has not been commonly known by the domain name, nor as having any connection with the STAER INTERNATIONAL.

The Complainant also asserts that the registration has been made in bad faith according to art 21 (3) (b) (ii) meaning that the domain name staer.eu has been registered in order to prevent the owner of the STAER trademark from reflecting this name in a corresponding domain name since the domain name has not been used in a relevant way for more than 2 years from the date of registration.

The Complainant further contends that bad faith registration is furthermore demonstrated by the fact that the Respondent must have known that there are prior right over the name STAER.

The Complainant states that the lack of legitimate interest and the registration of the domain name in bad faith can also be easily demonstrated by the fact that the domain name was registered the first day after the ending of the Sunrise Period. Such date of registration furthermore demonstrates, according to the Complainant, that the Respondent did not have any rights recognized by the national or Community laws over the STAER name that would have allowed the Respondent to register the domain name in the Sunrise Period.

The Complainant emphasizes that this demonstrates the bad faith since it becomes obvious that the staer.eu domain name was registered to be sold, rented, or transferred in the Respondent's benefit.

B. RESPONDENT

The Respondent states that the Complainant being a Romanian company, the Complainant was not eligible in 2006 to reserve an .eu domain.

The Respondent infers from the above that the Respondent could not prevent from reflecting his name in a corresponding domain name.

The Respondent alleges that there are no circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to complainant.

The Respondent underlines that unlike staer.hu, the domain name is not pointing to a parking page which is a typical cybersquatter behaviour that causes damages to the trademark owners by posting competition advertising.

The Respondent emphasizes that the disputed domain name does not have an exclusive right in the European area and that according to eurodns.com there are several websites with no connection with staer trademark (staer.it and staer.de) that could claim also a legitimate interest.

The Respondent further states that the word "staer" is a kind of bird and that the holder of a domain name that represents a generic term must not prove necessarily certain rights or legitimate interest.

DISCUSSION AND FINDINGS

According to Article 21(1) of the Regulation the Complainant must show that the disputed domain 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 (1) and that the disputed domain name has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith (2).

1 - The Complainant has provided evidence of ownership of a number of trademark registration for STAER and of the trade name STAER.

The Panel finds that the Domain Name is therefore identical to the trademarks and trade name owned by the Complainant.

In comparing the Complainant's marks to the Domain Name with reference to <staer.eu> it should be taken into account that the suffixes, including the .eu top level domains, may be excluded from consideration as being merely a functional component of a domain name.

In view of the above, the Panel finds that the Complainant has proven that the Domain Name is identical to the trademarks and trade name in which the Complainant has rights in accordance with Article 21(1) of the Regulation.

2 - The Complainant must show that the Respondent has no rights or legitimate interests in respect of the Domain Name or that the Domain Name has been registered or is being used in bad faith.

The Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with Article 21.2 of the Regulation and Article B.11.e of the ADR Rules any of the following:

(a) prior to any notice of an alternative dispute resolution (ADR) procedure, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;
(c) Respondent 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 on which a right is recognized or established by national and/or Community law.

It is well-established that the burden of proof lies on the Complainant. However, satisfying the burden of proving a lack of the Respondent's rights or legitimate interests in respect of the Domain Name according to Article 21(1) of the Regulation is potentially quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one.

Accordingly, it is sufficient that the Complainant shows prima facie case in order to shift the burden of proof on the Respondent. If a respondent fails to demonstrate rights and legitimate interests in the Domain Name, a complainant is deemed to have satisfied paragraph Article 21(1) of the Regulation.

The Panel observes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Furthermore, there is no indication before the Panel that the Respondent is commonly known by the Domain Name, has made preparations to use the Domain Name in connection with the offering of goods or services, or that it intends to make a legitimate, non-commercial or fair use of the Domain Name.

The Panel finds that the Respondent's indication that "there are several websites with no connection with staer trademark that could claim also a legitimate interest" and that the Complainant does not have an exclusive right on the sign STAER is somewhat irrelevant for the present procedure and overall does not provide the Panel with an evidence of the Respondent's right or legitimate interest.

Furthermore, the Panel notes that the disputed domain name has never been used since its registration in 2006 and the Respondent did not provide any evidence to the contrary. This constitutes evidence of registration in bad faith pursuant to Article 21.3 (b) (ii) of the Regulation and Paragraph B 11 (f) (2) (ii) of the ADR Rules.

DECISION

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

PANELISTS

Name	**Dr. Luca Barbero**

DATE OF PANEL DECISION 2009-01-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has provided evidence of ownership of a number of trademark registration for STAER and of the trade name STAER which is identical to the disputed domain name.

The Panel finds that the Complainant has established a prima facie lack of rights or legitimate interest of the Respondent in the disputed domain name and that the Respondent has not provided the Panel with convincing evidence of rights or legitimatlegitimate interest in the disputed domain name.

The Panel also finds that the disputed domain name has been registered in bad faith since it has not been used in a relevant way for over two years from its registration.