Panel Decision for dispute CAC-ADREU-005002

Case number	CAC-ADREU-005002
Time of filing	2008-04-08 09:14:37
Domain names	benq.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	BenQ Europe BV, Paul Zwagerman

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

The Panel is not aware of any other legal proceedings pending with regard to the domain name in dispute.

FACTUAL BACKGROUND

1. According to Complainant's allegations, which have not been opposed by Respondent:
- BenQ Europe BV is a company registered in Holland, in other words, a company incorporated under Dutch law;
- BenQ Europe BV is the principal European subsidiary of BenQ Corporation, with registered offices in Taiwan;
- The Complainant, BenQ Europe BV, has for its part, several subsidiaries in various European countries;
- BenQ Corporation, either directly or indirectly, holds the total share capital of all of these national or regional subsidiaries, namely, that of the Complainant, thereby comprising a multinational economic group.

2. Documentary evidence was provided demonstrating that the parent company of this group of companies, BenQ Corporation, has, for several years, been the proprietor of multiple registrations of the trademark "BenQ" in a number of countries, namely:

a) "Benelux" trademark registration nrs. 1004840, deposited on 05/02/2002, and 1035520, deposited on 01/07/2003;
b) French trademarks nrs. 013137952, deposited on 19/12/2001, and 033236241, deposited on 11/07/2003;
c) German trademarks nrs. 30172446, requested on 27/12/2001 and registered on 14/03/2002, and 30334268, requested on 08/07/2003 and registered on 31/03/2005;
d) Spanish trademarks nrs. 2452677, requested on 01/02/2002 and granted on 05/07/2002, and 2550662, requested on 15/07/2003 and granted on 16/02/2004.

All of the above-mentioned trademarks are registered for the various goods and services under the scope of classes 9, 35, 37 and 42 of the International Classification (Nice Agreement concerning the International Classification of Goods and Services for the Purposes of Registration of Marks).

3. The domain name "benq.eu" was, in the meanwhile, registered in the name of Ms. Zheng Qingying on 08/08/2006. Ms. Zheng Qingying indicated an address in the city of London, England in her registration request.

4. However, the Registrar used by the owner of the domain name at issue herein has its principal place of business in Shenzhen, China, as does the Authorized Representative designated by Ms. Zheng Qingying.

5. As the Panel itself was able to verify, the domain name "benq.eu" is not currently being used by its owner with respect to any goods and services, nor does the respective web page announce that any preparations or intentions are being made in this regard.

6. The Respondent has not demonstrated what comprises her economic activity, if any.

7. Even so, the Respondent has requested and has, thus far, been granted the registration of several .eu TLDs, which are substantially the same as, or confusingly similar to, well known trademarks, owned by third parties, without their consent, as is clearly demonstrated in the following cases, among others: nr. 04859 (“Labiosthetique”), nr. 03588 (“Xirona, Levothyrox”) and nr. 02325 (“Glendimplex”).

A. COMPLAINANT

The Complainant alleges in its initial Complaint and in its answer to Respondent’s reply fundamentally that:

8. The Complainant is the European subsidiary of BenQ Corporation, with registered offices in Taiwan, and owner of the “BenQ” trademark in various countries, namely, the European trademark registrations referred to above in paragraph 2.

9. The “BenQ” Group, to which the Complainant belongs and for which it functions as the European Headquarters, is a well known and reputable multinational, held 100% by the parent company BenQ Corporation.

10. The Respondent, Ms. Zheng Qingying, is not a European company, but merely a front for the Chinese company Buycool Ltd. She has no place of business in Europe and the address provided is merely a Post Office Box.

11. The Respondent does not own nor is she the licensee of any “BenQ” trademark.

12. The Respondent has never, to this date, used the domain name “benq.eu”.

13. The Respondent has registered more than 10,000 domain names with EURid, with the sole purpose of extorting payment from individuals or companies with legitimate rights to such domain names.

14. For which reason the Respondent has had several court actions filed against her by EURid itself, on the grounds of domain name trafficking.

15. The Respondent requested the registration of the domain name in question in these proceedings in bad faith, as indeed she has done with respect to another trademark owned by the Complainant (“Joybook”), with the intent to extort money from the Complainant.

16. The Respondent filed her reply one day after the deadline stipulated for this purpose, whereby it should not be taken into consideration.

B. RESPONDENT

17. The Respondent claims, fundamentally, that she has a legitimate right to be the owner of the disputed domain name, since she has residence in Europe (UK), as she intends to prove by means of a decision rendered by a German Court, which was subsequently submitted.

18. The Respondent alleges that the Complainant has not shown that it is the owner of the “BenQ” trademarks which it invokes in its favor.

19. Furthermore, she denies acting in bad faith or as a front for third parties, namely, for the company, Buycool, Ltd, with which she claims not to have any relationship.

20. She further adds that the Complainant has not shown evidence of the negative fact that the Respondent has not based her request for the registration of the disputed domain name on any rights or legitimate interest.

21. Respondent denies, therefore, being a domain name hijacker or having ever registered domain names which are the same or similar to other trademarks belonging to the Complainant, namely, the trademark “Joybook”.

22. The Respondent has never offered the domain name “benq.eu” for sale.

23. The Complainant has chosen an incorrect Mutual Jurisdiction (the Registrar) in its Complaint, even after it corrected its Complaint, following notice by Provider to correct the Complaint with regard to other aspects.

DISCUSSION AND FINDINGS

24. Starting with prior questions or issues of a formal nature raised by the parties:

a) The Complainant alleges that the Respondent's reply should be disregarded, since it was submitted one day after the deadline foreseen in the ADR Rules for this purpose. Given that it is within the Panel's discretionary powers to accept or reject the reply presented under such conditions (Paragraph B 10 (a) ADR Rules), the Panel considers that the reply should be taken into consideration, as it would be manifestly disproportionate and unfair to reject it in view of such an insignificant breach, which has not in any way delayed the proceedings.

b) The Respondent alleges that the Complainant has chosen an incorrect Mutual Jurisdiction, by designating the Registrar's jurisdiction, which corresponds to the jurisdiction of a non Community country (China), inadmissible pursuant to Paragraph A1, sub-paragraph (a) of the ADR Rules.
However, that same Paragraph A1 of the ADR Rules establishes under such circumstances, a subsidiary rule, which thus resolves this problem: where the principal office of the Registrar is inadmissible, the Mutual Jurisdiction, shall correspond, pursuant to sub-paragraph (b) of the same rule, to the Respondent's address, as shown for the registration of the domain name.
This objection by the Respondent does not, therefore, invalidate the Complaint as presented by Complainant.

c) Complainant alleges that the Respondent (a natural person) is not resident in a Community country, a condition required under article 4, paragraph 2 (b) (iii) of Regulation (EC) 733/2002, in order to own an .eu TLD.
Respondent replied, submitting a decision by the Landgericht München I, of 17 April 2008, according to which the Respondent was served notice in such proceedings, without any difficulty, at the address indicated in the disputed domain name request. Furthermore, said Court decision states that there was insufficient evidence that the Respondent did not reside in London (England).
In addition, despite the emphatic and repeated affirmations by Complainant, no conclusive evidence was produced in these arbitration proceedings either, that Respondent (who has warranted that all information provided is complete and accurate) does not reside in London (England), as indicated in the domain name registration request, possibly in addition to other residences she may have in other non community countries.

d) Respondent alleges that Complainant is not the owner of the "BenQ" trademarks which it invokes in its favour.
It is true, as the Complainant itself affirms, that the trademarks are formally registered in the name of BenQ Corporation, with registered offices in Taiwan. However, the Complainant is but the European subsidiary, with principal offices in Holland, of BenQ Corporation, that owns all of its share capital.
Hence, it can be readily accepted that the Complainant has a license, at least implicitly so, to use the trademarks registered in the name of its parent company in Europe. Such a license is evident, in the first instance, by the mere fact that the trademark "BenQ" is an integral part of the Complainant's company name.
This license would logically include granting powers to defend the "BenQ" trademarks within the European Community area, thereby granting the Complainant the legitimacy to file the Complaint in these proceedings.

25. Having thus decided the prior questions, it is now necessary to turn to the main issue at stake in these proceedings.

a) The trademarks invoked by the Complainant ("BenQ") are practically identical and therefore, easily confused with the .eu TLD registered by the Respondent ("benq.eu"). The only difference between them being in small details of no significance (the use of capital letters at the beginning –"B" – and end – "Q" – of the expression BenQ, in the Complainant's trademarks).

b) The trademarks invoked by the Complainant are much earlier than the domain name "benq.eu" registered by the Respondent.

c) The trademarks invoked by the Complainant belong to a well-known multinational corporate group of great repute, and the trademarks in question enjoy widespread awareness and significant recognition in a number of countries, where they have established a market.

d) Under such circumstances, it is the Panel's opinion that registration of the expression "BENQ", as a domain name, by an unauthorized third party, requires justification based on established rights or other legitimate interests on the part of the registrant. If there is no such justification, the domain name must be considered speculative or abusive, pursuant to article 21, paragraph 1 (a) of Regulation (EC) 874/2004.

e) In this specific case, the Respondent does not even indicate her economic activity, or if indeed she has any economic activity, other than that demonstrated in the other proceedings mentioned above, of systematically registering .eu TLDs which coincide with protected trademarks owned by third parties in various countries, without their consent.
More importantly, the Respondent does not invoke any prior rights or other legitimate interests which could justify the requested

registration in her favor of the domain name “benq.eu”.
The Respondent has never used the domain name “benq.eu”, in connection with any goods or services offered, or demonstrated any intent to do so in the future.

f) Given the Respondent’s total silence as to the grounds which could justify her actions in this specific case, the Panel believes that, in accordance with the most basic rules of good faith and due process, it cannot be required of the Complainant to produce full evidence of negative facts demonstrating the lack of prior rights or legitimate interests of the Respondent, that justify the registration of the disputed domain name. On the contrary, within the context of this case, where the Respondent challenges the prior exclusive rights of the Complainant’s trademarks, it is the Respondent who should demonstrate the existence of its prior rights or legitimate interests, justifying the ownership of the domain name which otherwise makes unauthorized use of the Complainant’s trademark.

g) In any case, the procedural conduct of the Respondent, together with the facts that have been alleged and indicatively demonstrated by the Complainant, must be taken as prima facie evidence of the Respondent’s lack of rights or legitimate interests to the domain name “benq.eu”. Under such circumstances, prima facie evidence must be ruled as sufficient grounds for the decision (see, for example case nr. 04859, “Labiosthetique”).

h) Therefore, one may conclude that given that the Respondent has neither alleged nor demonstrated owning any rights or legitimate interests which could justify the registration of a domain name which uses the prior trademark “BenQ” of the Complainant, and given that the latter has provided prima facie evidence that such rights and interests, in this case, do not exist, registration of the domain name “benq.eu” by the Respondent is conduct which falls under the provisions of article 21, paragraph 1 (a) of Commission Regulation (EC) 874/2004.

i) In view of the total absence of any rights or legitimate interests of the Respondent to use the Complainant’s prior trademark as a .eu TLD, it is not necessary to ascertain if the domain name in question was or was not registered in bad faith by the Respondent (see, for ex. above cited case nr. 04859), for us to be able to reach a decision.

j) The Complainant possesses the requisite legitimacy to be the owner of an .eu TLD, in accordance with article 4, paragraph 2 (b) of Regulation (EC) 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 BENQ be transferred to the Complainant

PANELISTS

Name	Manuel Felipe Oehen Mendes

DATE OF PANEL DECISION 2008-09-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the European subsidiary of a multinational with registered offices in Taiwan, owner of the well-known trademark “BenQ”. This trademark is registered in several European countries in favour of this economic group, which comprises the Complainant.
The Respondent, a natural person, allegedly residing in London (England), requested and obtained a registration in her name of the domain name “benq.eu”.
The domain name “benq.eu” is practically identical, and therefore, can be confused with, the “BenQ” trademarks owned by the Complainant, which enjoy priority.
As the most basic rules of good faith in proceedings would demand, the Respondent did not reveal what comprises her economic activity, if any, nor allege or demonstrate ownership of any rights or legitimate interests which could justify her conduct in registering a domain name, which is practically identical to the trademarks owned by the Complainant.
The procedural conduct of the Respondent, in conjunction with the facts indicatively demonstrated by the Complainant in these proceedings, have led the Panel to consider that the Complainant has produced prima facie, but sufficient evidence of the non existence of any rights or legitimate interests of the Respondent to register the domain name “benq.eu” in her name.
Therefore, in accordance with the provisions of article 21, paragraph 1 (a) of Regulation (EC) 874/2004, and taking into account that the requirements established in article 4, paragraph 2 (b) of Regulation (EC) 733/2002 are met, the Panel has decided to order the transfer of the registration of the domain name “benq.eu” to the Complainant, without needing to determine if the registration of this domain name

by the Respondent was or was not made in bad faith.