Panel Decision for dispute CAC-ADREU-005009

Case number	**CAC-ADREU-005009**
Time of filing	**2008-04-14 11:21:34**
Domain names	**gesolar.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**General Electric Company, (GE)**

Respondent

Organization / Name	**SNNS Ltd, SNNS Ltd**

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 Complainant has indicated that it has initiated proceedings before WIPO concerning Green Energy's registration of GESOLAR.COM, GESOLAR.ORG, GESOLAR.NET, GESOLAR.INFO, GESOLAR.MOBI, GESOLARDUBAI.COM, GESOLARNIGERIA.COM, GESOLARNIGERIA.NET, GESOLARPAKISTAN.COM, GESOLARPAKISTAN.NET, GESOLARSYSTEM.COM, DUBAIGESOLAR.COM and GOGESOLAR.COM.

The Complainant has also indicated that is has initiated opposition proceedings against Green Energy's trade mark application for GESOLAR in the United Arab Emirates.

FACTUAL BACKGROUND

The Respondent is a UK company which appears not to use the 'GESOLAR' domain itself but rather licenses it to a company called Green Energy.

The Complainant states that Green Energy has offices in the UAE, the UK and New Zealand. However, the domain currently points to a website which indicates that Green Energy has offices only in the UAE and New Zealand. It therefore appears that Green Energy has no domicile in the European Community. The Respondent has failed to file a response but it nevertheless appears that the only use the Respondent is making of the domain is a commercial usage under the licence it provides to Green Energy.

The Complainant has a number of actions and dispute processes underway against Green Energy, of which this is just one.

The Complainant is a world-famous company, which uses the mark 'GE' as the central component of its portfolio of brands. It asserts that the use of the 'GESOLAR' domain is similar to marks owned by the Complainant and that use of the domain will create confusion and lead to an association with the Complainant and its goods and services. The Complainant maintains that the Respondent has no legitimate rights in the domain and/or that the domain was registered and is being used in bad faith.

The Complainant asks that the domain be revoked.

A. COMPLAINANT

The Complainant asserts that it is one of the world's best known companies and that the mark 'GE' is so well known that the use of the domain 'GESOLAR' would lead to an association and/or confusion with the Complainant and its goods and services. The Complainant maintains that the use of the GESOLAR domain would take unfair advantage of the famous 'GE' mark and would be detrimental to the Complainant and its business; the 'GE' component of the domain being the key element and the 'SOLAR' part being a descriptor which attaches to the key 'GE' element.

The Complainant states that the Respondent is a UK-based company which does not itself use the 'GESOLAR' domain but rather provides a form of license to a company called Green Energy. The Complainant maintains that Green Energy is a company based in the United Arab Emirates and that the business of the Respondent is to enable entities domiciled outside Europe to acquire use of .eu domains. The Complainant states that Green Energy is using the 'GESOLAR' domain in order to sell services and goods similar to those provided by the Complainant and that Green Energy is doing so deliberately in order to derive benefit from association with the Complainant, in particular increased internet traffic resulting from the use of domain which is associated with a famous mark.

The Complainant states that it has initiated a number of actions and dispute procedures against Green Energy, including actions before WIPO, and has submitted considerable evindence in support of its claims against Green Energy in particular. The Complainant states that Greenn Energy has failed to respond to any communications which the Complainant has attempted and that Green Energy has continued with a program of activities designed to acquire and use a variety of domains including 'GE' as the first two letters.

The Complainant asks that the domain be revoked on the basis that:

The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of EU Member States and Community law and
(i) The domain name has been registered by the Respondent without rights or legitimate interest in the name; and
(iii) The domain name has been registered and is being used in bad faith.

B. RESPONDENT

The Respondent has failed to file a Response, despite reminders and requests. It is not therefore possible to set out any claims on the part of the Respondent.

DISCUSSION AND FINDINGS

The Complainant has submitted a large volume of evidence which demonstrates that it is a world famous corporation and that the 'GE' component is central to its brand and is of itself a famous mark. It has provided evidence which shows that the 'GE' mark is registered in many forms throughout the countries of the European Community and is has also submitted evidence which shows that it is operating and well known in the fields of power and energy production and related technology.

The Complainant asserts that the 'GESOLAR' domain would be viewed as essentially two components, one being GE and the other being 'SOLAR'. On balance, I consider this to be correct and I believe the 'SOLAR' element would most likely be viewed as having a settled meaning and so separate from the 'GE' element. This is an arguable point but on balance I am inclined to accept the arguments put forward by the Complainant. The Complainant has not submitted any evidence that shows it owns any registrations for the mark 'GESOLAR' or any close variants of that mark, so it has not made out an argument for any identical rights. However, I believe the Complainant has demonstrated the famous nature of the GE mark and sufficient usage and involvement in energy and solar issues that the use of the domain 'GESOLAR' would be likely to be associated with the Complainant and lead to confusion; particularly in view of the likelihood that the domain would be seen as two separate elements.

Although the Complainant has spent some time dealing with the rights or otherwise of Green Energy, who is merely the licensee of the domain, I do not consider that to be strictly necessary. The ADR Rules address the rights of the Respondent to the domain in question, not any licensee or other party. I therefore consider that this decision should focus primarily on the rights which the Respondent has shown. This is difficult owing to the fact that the Respondent has failed to submit a response. However, it seems reasonably clear that the Respondent offers a commercial service whereby it registers domains on behalf of clients and then provides those clients with a means by which to obtain the use of a .eu domain when they might not otherwise be able to achieve. The only practical reason I can see for this to be necessary is, as the Complainant asserts, if the company seeking ownership or use of the domain is not domiciled in the Community. Were Green Energy domiciled in the European Community, I can see no reason why it could not have achieved registration and use of the domain on its own account? Having looked at the website to which the domain points, it seems reasonably clear that Green Energy is based in the UAE and New Zealand but it shows no address within the Community.

In failing to submit a response, the Respondent has given me no opportunity to consider any claim it may have to legitimate use of the domain. On the other hand, the Complainant has submitted persuasive evidence that the Respondent has no legitimate rights in the domain. In addition, the Complainant has shown that the Respondent in all likelihood holds the domain purely to enable third parties to use the domain, such that the Respondent uses the domain purely for commercial gain and has no inherent right or interest in the domain.

I also consider the Respondent registered the domain in bad faith, in order to enable Green Energy to use the domain to attract traffic

and to trade off the reputation of the Complainant and/or to disrupt the activities of the Complainant. In this respect, I believe we have to bear in mind the very purpose which the .eu domain system was designed to serve - i.e. to enable and promote trade throughout the Community. By, it would appear, deliberately enabling companies outside the Community to use .eu domains I consider the Respondent sought to undermine the principles on which the entire .eu domain system is based. Although such usage is not specifically described as bad faith within the ADR Rules, I struggle to see how else one would describe it.

For the reasons set out above, I have not given a detailed description of the submissions relating to the use of the domain by Green Energy or the rights it may have in the domain. I have nevertheless considered these submissions carefully and my conclusions are much the same as those set out concerning the rights of the Respondent. The fact that no Response was submitted has given me no opportunity to consider the views of the Respondent or Green Energy in any detail.

DECISION

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

the domain name GESOLAR be revoked

PANELISTS

Name	**James Mitchell**

DATE OF PANEL DECISION 2008-08-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has submitted a large volume of evidence which demonstrates that it is a world famous corporation and that the 'GE' component is central to its brand and is of itself a famous mark. It has provided evidence which shows that the 'GE' mark is registered in many forms throughout the countries of the European Community and is has also submitted evidence which shows that it is operating and well known in the fields of power and energy production and related technology.

The Complainant asserts that the 'GESOLAR' domain would be viewed as essentially two components, one being GE and the other being 'SOLAR'. On balance, I consider this to be correct and I believe the 'SOLAR' element would most likely be viewed as having a settled meaning and so separate from the 'GE' element. This is an arguable point but on balance I am inclined to accept the arguments put forward by the Complainant. The Complainant has not submitted any evidence that shows it owns any registrations for the mark 'GESOLAR' or any close variants of that mark, so it has not made out an argument for any identical rights. However, I believe the Complainant has demonstrated the famous nature of the GE mark and sufficient usage and involvement in energy and solar issues that the use of the domain 'GESOLAR' would be likely to be associated with the Complainant and lead to confusion; particularly in view of the likelihood that the domain would be seen as two separate elements.

Although the Complainant has spent some time dealing with the rights or otherwise of Green Energy, who is merely the licensee of the domain, I do not consider that to be strictly necessary. The ADR Rules address the rights of the Respondent to the domain in question, not any licensee or other party. I therefore consider that this decision should focus primarily on the rights which the Respondent has shown. This is difficult owing to the fact that the Respondent has failed to submit a response. However, it seems reasonably clear that the Respondent offers a commercial service whereby it registers domains on behalf of clients and then provides those clients with a means by which to obtain the use of a .eu domain when they might not otherwise be able to achieve. The only practical reason I can see for this to be necessary is, as the Complainant asserts, if the company seeking ownership or use of the domain is not domiciled in the Community. Were Green Energy domiciled in the European Community, I can see no reason why it could not have achieved registration and use of the domain on its own account? Having looked at the website to which the domain points, it seems reasonably clear that Green Energy is based in the UAE and New Zealand but it shows no address within the Community.

In failing to submit a response, the Respondent has given me no opportunity to consider any claim it may have to legitimate use of the domain. On the other hand, the Complainant has submitted persuasive evidence that the Respondent has no legitimate rights in the domain. In addition, the Complainant has shown that the Respondent in all likelihood holds the domain purely to enable third parties to use the domain, such that the Respondent uses the domain purely for commercial gain and has no inherent right or interest in the domain.

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