# Panel Decision for dispute CAC-ADREU-005040

| | |
|---|---|
| Case number | **CAC-ADREU-005040** |
| Time of filing | **2008-05-07 09:19:11** |
| Domain names | **spacewall.eu** |

## Case administrator

| | |
|---|---|
| Name | **Tereza Bartošková** |

## Complainant

| | |
|---|---|
| Organization / Name | **Spacewall GmbH, Geschäftsführer Peter Schödel** |

## Respondent

| | |
|---|---|
| Organization / Name | **Aphrodite Ventures, Ltd., Aphrodite Ventures, 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

No legal proceedings are known to the Panel in connection with the disputed domain name.

FACTUAL BACKGROUND

The Respondent has registered the domain name “spacewall.eu”, the disputed domain name was registered on April 7, 2006.

The Complainant is a German company entered into the German Trade Register and existed for 20 years. The Complainant designs and assembles products of the visual sales promotion for shopfitting, exhibition or trade fair construction, producing and trading with the whole range of products for shop representation on the national and international markets. The Complainant has registered and has been using the domain name “spacewall.de”. The Complainant is the owner of German national trademark registrations “Space Wall (fig.)” (Reg. No. 1133004, Classes 6, 19), “SPACEWALL (fig.)” (Reg. No. 2011852, Classes 6, 19, 20) and “SPACE WALL (fig.)” (Reg. No. 2055719, Classes 6, 19, 20), also the Complainant is the owner of International trademark registration “SPACEWALL (fig.)” (IR No. 593045, Classes 6, 19, 20) designated in the several countries of the European Union and outside, and the owner of the Community Trademark “SPACEWALL” (No. 004320107, Classes 6, 19, 20). The Complainant has acquired the Lithuanian trademark registration “SPACE WALL (fig.)” (Reg. No. 49856, Classes 6, 19, 20). All the mentioned trademarks have been filed and registered before the registration of the disputed domain name.

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 German company, which designs and assembles products of the visual sales promotion for shopfitting, exhibition or trade fair construction. The Complainant is registered with the German Trade Register.

The Complainant is the owner of German national trademark registrations “Space Wall (fig.)” (Reg. No. 1133004), “SPACEWALL (fig.)” (Reg. No. 2011852) and “SPACE WALL (fig.)” (Reg. No. 2055719). Additionally, on the basis of German trademark Reg. No. 2011852, the Complainant is the owner of International trademark registration “SPACEWALL (fig.)” (IR No. 593045) in Austria, Bulgaria, Belgium, Netherlands, Luxembourg, Switzerland, Spain, France, Hungary, Italy, Macedonia, Poland, Romania, Russian Federation, Slovenia, Slovak Republic, Serbia and Montenegro. Moreover, the Complainant is the owner of the Community Trademark “SPACEWALL” (CTM No. 004320107) and the Complainant has acquired the Lithuanian trademark registration “SPACE WALL (fig.)” (Reg. No. 49856). The evidences of such trademark registrations are annexed to the Complaint.

Complainant claims that it has a “better” and a “stronger” right to be the holder of the disputed domain name due to the national and international trademark registrations. For 20 years the Complainant has been producing and trading the whole range of products for shop representation on national and international markets, being active through the web page “www.spacewall.de”, which is available also in English, Russian and French languages.

In comparison, the Respondent is not able to prove any right or permission to be the holder of the disputed domain name. Neither the name of the Respondent’s company nor the products offered by the Respondent on the web page “www.spacewall.eu” have a relationship to the word “spacewall”. The Respondent obviously offers financial products, but while clicking on a certain offer, the Internet user is directed to another commercial web page without any relationship to the disputed domain name or the Respondent. The main purpose of the Respondent holding the disputed domain name is to attract clients to unspecified financial products or other commercial offers not offered by the Respondent. The Respondent can only be seen as a domain grabber.

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 (EC) No. 874/2004 (hereinafter “Regulation”) states:
“A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national an/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.”

Article B11(a) of ADR Rules states:
“A Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.”

The Panel has checked the existence of the trademark rights on which the Complainant has based its Complaint and confirms the existence of these rights, which were validly effective also on the date of registration of the disputed domain name.

1. Identical or Confusingly Similar

The disputed domain name contains in its entirety the verbal element of the Complainant’s trademarks either in their designed or wordmark versions, especially while considering the Complainant’s Community Trademark “SPACEWALL” No. 004320107. The inclusion of the ccTLD denomination “.eu” shall be disregarded for the purposes of these proceedings. Therefore, the disputed domain name is identical to the Complainant’s trademarks.

The identity or confusing similarity requirement in the Regulation, Article 21(1), is therefore fulfilled.

2. Rights or Legitimate Interest

The Complainant alleges that the Respondent has no right or legitimate interest in the disputed domain name. The Respondent has not rebutted this allegation and, based on the record of this case, it is unlikely that any such right or interest may exist. The Respondent has failed to file the Response in which the right or legitimate interest could be asserted and proved.

The requirement of the Regulation, Article 21(1)(a), is also considered fulfilled.

3. Registered or Used in Bad Faith

Article 21(3) of the Regulation (corresponding Article B11(f) of ADR Rules) sets out, by way of example, a number of circumstances which may be taken as indicative of bad faith.

It is clear that the Respondent has set up the web page “www.spacewall.eu” to re-direct Internet users to other commercial websites, which have no connection with the word “spacewall” and with the Respondent. It is therefore evident to the Panel that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the different websites by creating a likelihood of confusion with

the Complainant's name and/or with the Complainant's marks, as is also evidenced by the sponsored links on its web page. Therefore, the Panel finds that the disputed domain name was registered or is being used in bad faith.

Considering all the facts, the Panel therefore finds that the requirement of the Regulation, Article 21(1)(b), is also fulfilled in this case.

The Complainant has claimed under the Remedies Sought to be the holder of the disputed domain name, as such, the Panel concludes that the Complainant has asked the transfer of the disputed domain to the Complainant. The Complainant is the company entered into the German Trade Register and having its principal place of business in Germany, therefore, the Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No. 733/2002.

For these reasons the Panel finds 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 SPACEWALL be transferred to the Complainant

## PANELISTS

| Name | **Riina Pärn** |
|---|---|

DATE OF PANEL DECISION 2008-09-11

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a German company designing and assembling products of the visual sales promotion for shopfitting, exhibition or trade fair construction. The Complainant is the owner of different trademark registrations covering the verbal element "SPACE WALL" or "SPACEWALL", among others the owner of the Community Trademark "SPACEWALL" No. 004320107, all of which having been applied and registered before the registration of the disputed domain name.

The disputed domain name contains in its entirety the verbal element of the Complainant's trademarks either in their designed or wordmark versions. The inclusion of the ccTLD denomination ".eu" is disregarded for the purposes of these proceedings. Therefore, the disputed domain name is identical to the Complainant's trademarks.

The Complainant has alleged that the Respondent has no right or legitimate interest in the disputed domain name. The Respondent has not rebutted this allegation and, based on the record of this case, it is unlikely that any such right or interest would exist. The Respondent has failed to file the Response in which the right or legitimate interest could be asserted and proved. Therefore, the Panel has considered the requirement that the Respondent has no right or legitimate interest in the disputed domain name fulfilled.

It is clear that the Respondent has set up the web page "www.spacewall.eu" to re-direct Internet users to other commercial websites, which have no connection with the word "spacewall" and with the Respondent. It is therefore evident to the Panel that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the different websites by creating a likelihood of confusion with the Complainant's name and/or with the Complainant's marks, as is also evidenced by the sponsored links on its web page. Therefore, the Panel has found that the disputed domain name was registered or is being used in bad faith.

The Complainant has asked the transfer of the disputed domain to the Complainant. The Complainant is the company entered into the German Trade Register and having its principal place of business in Germany, therefore, the Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No. 733/2002.

For these reasons the Panel has concluded that, in accordance with Articles 21(1) and 22(11) of Regulation (EC) No. 874/2004, all conditions for revocation of the disputed domain name are met and the disputed domain name shall be transferred to the Complainant.