Panel Decision for dispute CAC-ADREU-005117

Case number	CAC-ADREU-005117
Time of filing	2008-06-30 13:44:01
Domain names	akbank.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	AKBANK TURK A.S.

Respondent

Organization / Name	Gizem Yapakci

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 proceeding regarding the disputed domain name.

FACTUAL BACKGROUND

The complainant “AKBANK TURK A.S.”, well-known briefly as “AKBANK”, is a top-tier Turkish bank that has subsidiaries and a branch office in Europe. The complainant has registered service mark AKBANK in Turkey and in several other countries as well as under Madrid Protocol. Respondent has registered domain name akbank.eu but has not started to use the domain name.

A. COMPLAINANT

The Complainant states that the domain names are akbank.eu is identical to the mark AKBANK in which Complainant has rights. The Complainant is also the legal owner of the domain names “akbank.com.tr” and “akbank.com” and is still using these domain names legally. Additionally “AKBANK” is also the tradename of the Complainant.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the domain name akbank.eu. The Respondent has made no claim that he is using the domain names in connection with a bona fide offering of goods and services. The complainant, AKBANK, has not licensed or other wise permitted the respondent use the mark “AKBANK” or to apply for or use any domain name incorporating that trade/service mark. The Respondent has no relationship with or permission from the Complainant for use of its marks. The Complainant has prior rights in that trade/service mark, which Precede respondent’s registration of the domain name. The Respondent does not use (commercially or non-commercially) the domain name and the Respondent is clearly aware of the Complainant’s extensive goodwill and reputation in it’s /service and trademark “AKBANK”. The respondent has acquired no trademark or service mark rights and he has no common knowledge (as an individual, business, or other organization) that he is known by the domain name.

The Complainant also claims that Respondent registered and used the domain name in bad faith. The domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration in excess of the domain name registrant’s out-of-pocket costs. The Respondent cannot have ignored the fact that AKBANK is a registered and protected trademark of the Complainant. The respondent registered the domain names in order to prevent the owner of the mark from reflecting the mark in corresponding domain names and from offering online services through said domain names. The Respondent’s bad faith is also shown by its use of the Domain Name or lack thereof. The Respondent has placed no content on the site at “www.akbank.eu” that relates to a business or has been created by the Respondent.

B. RESPONDENT

The Respondent has not filed a response to the complaint.

DISCUSSION AND FINDINGS

According to Article B11(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that Complainant proves in the ADR proceeding that:

(i) the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law and; either

(ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the domain name has been registered or is being used in bad faith.

Firstly the question whether the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law shall be analysed.

The Complainant has proven that it is the holder of trademark AKBANK having both national registrations in several countries and international registration under Madrid Protocol.

Therefore, the domain name akbank.eu is identical to a name in respect of which a right of Complainant is established, and the condition set forth under Article B11(d)(1)(i) of the ADR Rules is fulfilled.

Secondly it must be analysed whether the domain name has been registered by the Respondent without rights or legitimate interest in the name or whether the domain name has been registered or is being used in bad faith.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the domain name because the Respondent has made no claim that he is using the domain names in connection with a bona fide offering of goods and services and the domain name in question is not a mark by which the Respondent is commonly known. The Complainant has also argued that the Respondent has made no use of its domain name and there is no evidence whatsoever of any good faith use of or intention to use the domain name akbank.eu. The Complainant has thereby established a prima facie lack of rights or legitimate interest in the domain name by the Respondent.

The Respondent had a possibility to notify the Panel of its rights or legitimate interests in the name by filing a response to the complaint but the Respondent did not file any response in this ADR case.

Article B11(e) of the ADR Rules provide a non-exhaustive list of circumstances that shall demonstrate Respondent’s rights or legitimate interests to the domain name. None of these circumstances have been proven and the Panel has no other evidence proving the rights or legitimate interests of the Respondent. Considering also the Respondent’s failure to present a timely response the Panel finds that the Respondent has no rights or legitimate interest in the Domain Name.

As the Respondent has registered domain name akbank.eu without rights or legitimate interests in it, it is not necessary to investigate Respondent’s possible bad faith under Article B11(d)(1)(iii) of the ADR Rules.

The remedy sought by the Complainant is transfer of the domain name akbank.eu to the Complainant. As the Complainant has a registered branch within the Community, it satisfies the general eligibility criteria for registration of the Domain Name set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002. Therefore, Complainant is entitled to request the transfer of the Domain Name.

DECISION

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

the domain name AKBANK be transferred to the Complainant, to the Complainant's branch office registered in Malta.

PANELISTS

Name	**Viive Naslund**

DATE OF PANEL DECISION 2008-10-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the holder of the trademark AKBANK, which is identical with the domain name akbank.eu. The Respondent does not have any rights or legitimate interests in the said domain name and failed to submit a response. The domain name was transferred to the Complainant.