Panel Decision for dispute CAC-ADREU-005149

Case number	CAC-ADREU-005149
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Domain names	partslife.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	PARTSLIFE GmbH

Respondent

Organization / Name	Mandarin & Pacific Services Ltd., Gerald Mwanyika

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

There are no other legal proceedings of which the panel is aware that are pending or decided and that are related to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is PARTSLIFE GmbH, a company registered and based in the Federal Republic of Germany. The commcerical register that is responsable for the complainant is the local court of Offenbach am Main, the respective number of the German commercial register is HRB 33598, its VAT REG NO is DE 184333975.

2. The Complainant is, and has been for several years, the proprietor of numerous trademark registrations for the word "PARTSLIFE", including, among others, registrations in Germany and International trademarks.

3. Further, the Complainant holds at least two domain names containing the word "PARTSLIFE".

4. The Respondent has not responded to the Compaint.

A. COMPLAINANT

The Complainant contends as follows:

The complainant is the owner of several trademarks that consist of the word "Partslife". In addition the complainant is the owner of at least two domains composed of "Partslife" which he uses for its commercial business.

I. Concerning the trademarks

The following trademarks are registered in favour of the complainant:

1. German trademarks

- German figurative TM "Partslife", ref. no. 291 01 30, date of application 12/09/1994

- German figurative TM "Partslife", ref. no. 395 08 989.1, date of application 01/03/1995

- German figurative TM "Partslife", ref. no. 301 30 542.0, date of application 16/05/2001

2. International trademarks

- IR 654 015 figurative TM "Partslife", application date 24/08/1995, registered countries: AT, BX, CH, CZ, ES, FR, HR, HU, IT, LI, LV, PL, PT, RU, SI, SK, YU, EE, LT

- IR 777 367 figurative TM "Partslife", application date 16/11/2001, registered countries: AT, BX, CH, CZ, ES, FR, HR, HU, IT, LI, PL, PT, SI, SK, DK, FI, GB, NO, SE

3. Community trademark

In addition the complainant applied for a Community trademark (CTM), ref. no. 004865176, date of application 22/03/2006. Although this CTM application is opposed, the chances to achieve its registration are high as the TM on which the opposition is based is clearly different. The opposition mark is " Parts of Life" in combination with a totally different graphical element and a different colour.

4. In general concerning the trademarks

All trademarks - except of the CTM - are effective.

Current extracts from the respective trademark registers for all the above mentioned trademark registrations are attached as pdf files.

II. Concerning the domains

The domains partslife.com and partslife.de are registered in favour of the complainant. In addition these domains are used by the complainant for its business.

III. Company name right

Furthermore the company name of the complainant is "Partslife GmbH". According to par. 5 of the German trademark act a name right similar to the trademark right results from the mere use of this name in Germany. The company name "Partslife" has alreday been used throughout many years by the complainant.

IV. Intermediary result

The name "Partslife" is well protected for the complainant in Germany and all over Europe.

V. Identity according to B 1 (10) (i) A.

There is identity bewteen the name rights of the complainant "Partsilfe" and the contested domain partslife.eu.

VI. Acting in bad faith according to B 1 (10) (i) C.

In addition the respondent acted in bad faith.

At first he has never used the domain. Proofs are attached as pdf files.

Furthermore, the respondent offered to sell the domain. More details concerning the respondent' s purchase offer:

The complainant first tried to obtain the domain partslife.eu by help of sending a warning letter to the respondent. However, the domain holder did not respond to the warning letter.

But, shortly after having sent the warning letter to the respondent the complainant's agency - that is dealing with its domains - received an offer to buy the disputed domain partslife.eu from the respondent.

VII. Conclusion

Due to this entirety of facts it is obvious that the respondent acted in bad faith and only with the purpose to sell the domain but not to use it. The domain is currently not used and has not been used during the last two years. In addition he has no legitimate interest to have this domain.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

1. To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Regulation have been complied with. That paragraph reads as follows:

" 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 recognised or established by national and/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."

2. Paragraph B.10(a) of the ADR rules provides that:

In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

3. However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

4. The panel therefore deals with each of the three constituent parts of Article 21(1) of the Regulation in turn:

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

5. The Complainant has asserted that it is the proprietor of (and has provided details of) numerous registered trademarks in the name PARTSLIFE.

These assertions are not contradicted by the Respondent.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

6. The Complainant has provided a description of the use of the relevant name and the domain name by the respondent; and expressly asserted that in the circumstances described the respondent has no legitimate interest in the name. Therefore, the Complainat has - prima facie - proven that the Respondent has no rights or legitimate interests in the domain name in issue.

These assertions are not contradicted by the Respondent.

In the absence of any submission on the issue from the Respondent, the Complainant has therefore satisfied the requirements of Article 21(1)(a). Because Complainant needs to show either

- a lack of rights or legitimate interest on the part of the Respondent

OR

- bad faith registration or use and given the finding on rights and legitimate interests set out above it is not necessary in this case to go on to consider the Complainant's assertions in relation to bad faith registration or use.

DECISION

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

the domain name PARTSLIFE be transferred to the Complainant

PANELISTS

Name	**Friedrich Kurz**

DATE OF PANEL DECISION 2008-10-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings against the Respondent under Article 22(1)(a) of Commission Regulation (EC) No.874/2004 alleging that the Respondent's registration of the Domain Name (i.e. <partslife.eu>) was speculative or abusive, Art. 21(1) a) and b) of Commission Regulation (EC) No. 874/2004.

The Complainant maintained that it was the proprietor of, inter alia, various European trade mark rights incorporating or comprising the word PARTSLIFE.

Complainant asserted that the Respondent did not use the domain name in issue and furthermore offered the domain name for sale to the Complainant.

The Respondent failed to file a Response.

The Panel held:

(1) The Complainant had managed to prove - prima facie - to the Panel that the requirements of Article 21 of the Regulation were satisfied in this case.

(2) That the Complainant has managed to make out a prima facie case that the Respondent had no legitimate rights or interests in the Domain Name.

(3) Given the Panel's finding on the question of rights and legitimate interests, it was not necessary to address the Complainant's allegation of bad faith registration. The Complainant had satisfied the requirements of Article 21 of the Regulation.

(5) The Complainant, being a German registered company, also satisfied the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002.

Accordingly, the Panel ordered the transfer of the Domain Name to the Complainant.