Panel Decision for dispute CAC-ADREU-005168

Case number	**CAC-ADREU-005168**
Time of filing	**2008-08-08 10:17:19**
Domain names	**fried.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**FRIED Kunststofftechnik GmbH, Gerhard Fried**

Respondent

Organization / Name	**Ovidio Limited, Ovidio Limited**

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 informed that an action was brought in Brussels by EURid against the registrar who registered all domain names held by the Respondent, including the disputed domain name as specified above. The parties to the present proceedings were not part of that court action. In connection with its action, the Registry placed the domain names registered by the registrar of the Respondent – including the disputed domain name – on hold. The Respondent's registrar then filed action against EURid seeking among other remedies that the "on hold" status be lifted. The Respondent joined that court action. A provisional decision issued by the Brussels Court of First Instance ordered EURid to unblock the domain names. To the knowledge of the Complainant and the Panel, the case remains undecided on the merits.

FACTUAL BACKGROUND

The Complainant owns a German figurative mark with priority as of 19 February 1991 which contains the word "FRIED" (Reg. No. 2013076 of the Deutsches Patent- und Markenamt – German Patent and Trade Mark Office). This and other evidence advanced by the Complainant enable the Panel to establish that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

The disputed domain name "fried.eu" was registered for the Respondent on September 26, 2006

On August 5, 2008, the Complainant filed this Complaint with the Czech Arbitration Court (CAC)

After the verification of formal requirements of the .eu Alternative Dispute Resolution Rules ("ADR Rules") and the CAC Supplemental ADR Rules, CAC formally notified the Respondent of the Complaint in accordance with the ADR-Rules, paragraph B2 and the proceedings commenced on August 11,
2008. In accordance with Article B 3(a) of the ADR-Rules, the due date for Response was 30 working days from the 11 August 2008.

No Response was filed but, within the deadline for Response a Non-standard communication was received by the CAC on September 1, 2008, indicating that the Respondent wished to settle the case in terms of Art. 4 (a) of the ADR Rules and this by virtue of a proposed agreement to be transmitted to the Complainant.

The Complainant returned an agreement signed by both parties by way of a Non-Standard Communication on September 5, 2008. In this agreement the Respondent agreed to the transfer of the domain name to the Complainant. Following an exchange of correspondence between the CAC and the parties, on the 1 October 2008 the CAC received the following Non-Standard Communication from the Complainant:

“Respondent's Representative, Mrs. Bergsten, wrote

With reference to the previous communications between the parties and the CAC, and to eliminate any doubt regarding the agreement between the parties, this is to confirm that Respondent accepts Complainant’s request for a formal panel decision in the dispute. HOWEVER, as agreed between the parties in writing (NSC of September 1st and 6th), the decision shall merely order the transfer of the domain without further findings of fact or conclusion relative to the asserted merits of the Complaint.

As requested by Respondent's Representative, we confirm, that both parties agree to that procedure”

On October 7, 2008, having received the Statement of Acceptance and Declaration of Impartiality, the CAC appointed Joseph Andre’ Cannataci as sole Panelist, in accordance with the ADR-Rules, Paragraph B4(b).

A. COMPLAINANT

The Complainant claims to be entitled to the domain name FRIED and seeks its transfer to him by virtue of his trade mark registrations and other evidence advanced. The Complainant says the Respondent does not own any rights in the name FRIED, which may have been registered in bad faith.

B. RESPONDENT

The Respondent consents to the transfer of the domain name to the Complainant

DISCUSSION AND FINDINGS

Having regard to the Respondent's explicit consent to transfer and to the explicit wish of both parties that the Panel simply order transfer of the domain name without entering into the other merits of the case, the Panel has considered only whether the Complainant is eligible to hold the domain name. The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs A 4 (a) as well as B11 (b) and (c) of the Rules, the Panel orders that the domain name FRIED be transferred to the Complainant

PANELISTS

Name	**Professor Joseph André Cannataci, LLD FBCS CITP**

DATE OF PANEL DECISION 2008-10-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, a resident of Germany, holds German trademark registration for FRIED since 1991 and had traded under that name for several years prior to as well as since said trademark registration. The domain name FRIED was registered by the Respondent on September 26 2006. The Respondent consents to its transfer to the Complainant, who is eligible to hold it. Accordingly transfer to the Complainant is directed.