Panel Decision for dispute CAC-ADREU-005218

Case number	CAC-ADREU-005218
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Domain names	joalpe.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	H.D. Duijts Holding B.V., Hendrikus Dorotheus Duijts

Respondent

Organization / Name	Zheng Qingying

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

1. According to the Complainant, the domain name joalpe.eu is registered but the status is currently "on hold" since a court procedure has been initiated by EURid the Registry against the domain name holder before the Court of First Instance of Brussels for eligibility reasons. The domain name holder challenged the "on hold" status of the domain name before the Court of First Instance in Brussels by initiating a summary procedure but the judge ordered that the domain names should stay on hold. The said judgment was appealed by the domain name holder. The Court of Appeals of Brussels will decide in this case.

2. The Panel is not aware of any further details of these proceedings nor of any other legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

3. On 12 August 2005, the Complainant filed an application for a Benelux trade mark for "JOALPE INTERNATIONAL". This trade mark was granted on 7 February 2006.

4. On 7 June 2006, the Respondent registered the Disputed domain name "JOALPE".

5. On 30 September 2008, the Complainant submitted this Complaint.

6. On 16 October 2008, the Complaint formally commenced.

7. On 21 October 2008, the Respondent submitted the Response electronically. The Respondent failed to provide the hard copy of the Response and three duplicates to the Center as required by Paragraph B3(b) of the Rules and Paragraph B1(c) of the Supplemental Rules.

8. On 16 January 2009, the Panel was appointed.

A. COMPLAINANT

9. The Complainant contends as follows:

a. Complainant is a private company with limited liability established in the Netherlands. Complainant therefore satisfies the general eligibility criteria for registration of the Domain Name set out in Paragraph 4 (2) (b) of Regulation (EC) No. 733/2002. Complainant refers to the firts annexed document for an extract of the commercial register of the Dutch Chamber of Commerce.

b. Complainant requests that the Panel orders in accordance with ADR Rules, Paragraph B1(b)(11) that the domain name joalpe.eu will be transferred to Complainant.

c. The domain name joalpe.eu is registered but the status is currently "on hold" since a court procedure has been initiated by EURid the Registry against the domain name holder before the Court of First Instance of Brussels for eligibility reasons.

d. The domain name holder challenged the "on hold" status of the domain name before the Court of First Instance in Brussels by initiating a summary procedure but the judge ordered that the domain names should stay on hold. The said judgment was appealed by the domain name holder. The Court of Appeals of Brussels will decide in this case.

e. Complainant owns the following trade mark: Benelux trade mark number 791704 for the wordmark: Joalpe International. Date of depot 12/08/2005. Complainant refers to the second annexed document for the registration form concerning this trade mark. This trade mark is granted in complience with the Benelux Treaty concerning Intellectual Property. The rights of ownership of Complainant regarding the trade mark "Joalpe International" are therefore protected by the Benelux Treaty concerning Intellectual Property.

f. The disputed domain is identical to the trade mark of the complainant. This because of the fact that the trade mark of Complainant is consisting the word: Joalpe. If the panel finds that the domain joalpe.eu is not identical to the trade mark of complainant than it is at least confusingly similar.

g. Complainant is operating under the trade mark Joalpe international within multiple countrys of the European Union. It is therefore that she wants to become owner of the domain joalpe.eu.

h. The Respondent is neither an undertaking, an organization nor a natural person that is generally known under the domain name. Therefore Respondent has no legitimate intrest in the domain name.

i. There is also evidence that the domain name has been registered in bad faith.

j. The domain name was only registered for the purpose of selling it. The Respondent, Zheng Qingying, is not a European company, but merely a front for the Chinese company Buycool Ltd. She has no place of business in Europe and the address is merely a Post Office Box.

k. The trade mark of complainant is very unique. Besides that, the Respondent has no connections with Complainant and has no consent, permission or license te use the registered trade mark of Complainant. It is very unlikely that the Respondent has registered the domain name for any other reason than selling it. Thrue the sedo parking site of Only-one Ltd the Respondent has tried to sell the domain name to Complainant.

l. The registration of Respondent suits his pattern of bad faith registrations which has allreay been determined by the Czech Arbitration Court. Complainant refers to Case number 04955; section discussion and findings.

m. In accordance to the ADR Rules Paragraph A1, the mutual jurisdiction is the jurisdiction of the location of the Respondents address.

B. RESPONDENT

10. The Respondent contends as follows:

a. Please be informed that the domain shall be transferred to H.D.Duijts Holding B.V. regarding the arrangement of ONLY ONE Ltd. I request the panel to approve the transfer to be approved.

DISCUSSION AND FINDINGS

11. The Panel has read the Respondent's administratively-deficient Response and exercises its discretion not to consider it further. It is not clear to the Panel whether the Response is intended to describe a Settlement for the purposes of Paragraph A4 of the Rules, but the Complainant has in any event not confirmed any such Settlement.

SPECULATIVE OR ABUSIVE REGISTRATION

12. Article 21(1) of Commission Regulation 874/2004 reads as follows:

1. 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.

13. The relevant part of Article 10(1) of Commission Regulation 874/2004 reads as follows:

"Prior rights" shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.

IDENTICAL OR CONFUSINGLY SIMILAR

14. The Complainant has a Benelux trade mark for "JOALPE INTERNATIONAL". The Complainant has not claimed any rights in "JOALPE" alone, although this would have made the Panel's decision easier.

15. The Complainant contends that the Disputed domain name "JOALPE" is identical to the trade mark "JOALPE INTERNATIONAL" . The Panel disagrees. Although the name "JOALPE" appears to be the dominant term in the trade mark, the trade mark registration is not for "JOALPE" alone and, as indicated, the Complainant has not claimed any rights in "JOALPE" alone.

16. The Complainant also contends that the Disputed domain name "JOALPE" is confusingly similar to the trade mark "JOALPE INTERNATIONAL". It is not immediately obvious to the Panel that this is the case and the Complainant has provided no more than a bare assertion of confusing similarity. Nevertheless, on the statements and documents submitted, the Panel finds that the Disputed domain name is indeed confusingly similar to the trade mark. If the Respondent had provided evidence that this was not the case then the Panel might have decided this case differently. However, the Respondent did not file an administratively-compliant Response (and even the deficient Response did not contest this point).

RIGHTS OR LEGITIMATE INTEREST

17. The Respondent has not contested the Complainant's assertions that he has no rights or legitimate interest in the Disputed domain name. The Panel therefore finds that the Respondent has no such rights or legitimate interest.

BAD FAITH

18. The Respondent has not contested the Complainant's assertions that the Disputed domain name was registered in bad faith. The Panel therefore finds that the Respondent registered the Disputed domain name in bad faith.

CONCLUSION ON SPECULATIVE OR ABUSIVE REGISTRATION

19. The Panel finds that the registration of the Disputed domain name by the Respondent was a speculative or abusive as defined in Article 21 of Commission Regulation 874/2004.

REMEDY

20. The first paragraph of Article 22(11) of Commission Regulation 874/2004 reads as follows:

11. In the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

21. Article 4(2)(b) of Regulation 733/2002 reads as follows:

2. The Registry shall:
...
(b) register domain names in the.eu TLD through any accredited.eu Registrar requested by any:
(i) undertaking having its registered office, central administration or principal place of business within the Community, or
(ii) organisation established within the Community without prejudice to the application of national law, or
(iii) natural person resident within the Community;

22. The Complainant has established that it satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation 733/2002.

23. Therefore, the Complainant has established that the Disputed domain name should be transferred to it.

DECISION

24. For all the foregoing reasons, in accordance with Paragraph B12(b) of the Rules, the Panel orders that the domain name JOALPE be transferred to the Complainant.

PANELISTS

Name	**Christopher Stothers**

DATE OF PANEL DECISION 2009-02-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant submitted a Complaint seeking the transfer of the Disputed domain name "joalpe.eu" on the basis of its Benelux trade mark registration for "JOALPE INTERNATIONAL". The Respondent failed to file an administratively-compliant Response.

The Panel found that the Disputed domain name is confusingly similar to the trade mark, that the Respondent had no rights or legitimate interest in the Disputed domain name and that the Respondent had registered the Dispute domain name in bad faith. Finally, the Panel found that the Complainant satisfied the general eligibility criteria.

Therefore, the Panel ordered that the domain name JOALPE be transferred to the Complainant.