Panel Decision for dispute CAC-ADREU-005293

Case number	CAC-ADREU-005293
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Domain names	sampolife.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Sampo Oyj

Respondent

Organization / Name	Pillerbi OY / Robert Liivik

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 related to the disputed Domain Name.

FACTUAL BACKGROUND

On 29 July 2008, Pillerbi Oy (hereinafter, the "Respondent") registered the domain name sampolife.eu (hereinafter, the "Domain Name").

On 20 November 2008, the company Sampo Oyj (hereinafter, the "Complainant") filed its complaint before the Czech Arbitration Court, requesting the transfer of the Domain Name to the Complainant (hereinafter, the "Complaint"). On 8 December 2008 the EURid verified that the Respondent is the registrant of the contested Domain Name.

The Respondent was duly notified of the ADR proceeding, but failed to file a response to the Complaint. Therefore, the Center issued a notification of Respondent default.

A. COMPLAINANT

The following arguments were sustained by the Complainant in the Complaint:

- that it is eligible to register .eu domain names as these can generally be registered by undertakings and organisations established within the European Community (Regulation (EC) No 733/2002 of the European Parliament and of the Countil on the implementation of the .eu Top Level Domain, Article 4(2);
- that it is the owner of Community Trade Mark registration No 5557061 SAMPO LIFE (device) as well as Estonian trademark registration 45162 SAMPO LIFE ESTONIA (device), which are identical or highly similar to the Domain Name;
- that the Respondent lacks any right or legitimate interest in the contested Domain Name; stating that because of non-use, the Respondent’s passive possession prevents the Complainant from registering the same;
- that the contested Domain Name was registered in bad faith, stating that the Respondent has offered to sell the Domain Name to the Complainant.

B. RESPONDENT

The Respondent did not file any reply.

DISCUSSION AND FINDINGS

According to the requirements of Article 21 (1) of the Commission Regulation (EC) No. 874/2004, to succeed in a Complaint, the Complainant must show that the Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or

established by national or Community law and where it either
a) has been registered by its holder without rights or a legitimate interest in the Domain Name; or
b) has been registered or is being used in bad faith.

Confusing similarity

In the Complaint, it has been sufficiently proven that the Complainant is the proprietor of the Community Trade Mark registration No 5557061 SAMPO LIFE as well as Estonian trademark registration 45162 SAMPO LIFE ESTONIA. These trademarks constitute rights to the name within the meaning of Article 10 of the Commission Regulation (EC) 874/2004.

The word elements SAMPO and LIFE form the most distinctive and dominating parts of the combined (word/image) Community trademark as well as of the Estonian combined mark. The Panel is of the opinion that the disputed Domain Name is identical with the dominating elements included in the trademarks. The Panel further finds that the disputed Domain Name as a whole is at least confusingly similar with the mentioned trademark registrations. Therefore the first requirement established by both the Regulation as well as Article B.11.d of the ADR Rules, has been duly satisfied.

Rights or legitimate interest to the Domain Name

The Complainant has established that prior to any notice of an ADR procedure the holder of the Domain Name has neither used the Domain Name in connection with the offering of goods or services, nor made any demonstrable preparation to do so. As the Domain Name is for sale, the Respondent is apparently not using the Domain Name at all.

Based on the filed evidence, the Complainant has also shown that the Respondent is not commonly known as “sampolife” or as some other similar name; in fact the Respondent’s company name is utterly different from the contested Domain Name.
In the light of the above, it can be concluded that the Respondent is not making legitimate and non-commercial or fair use of the Domain Name.

The Respondent had the possibility to prove its rights and legitimate interest in the Domain Name by filing a response. In case the Respondent has rights and legitimate interests, the Panel assumes that it would have advised the Panel of these. However, by failing to submit a response to the Complaint, the Respondent failed to prove its rights or legitimate interest in the Domain Name. Under Article B.10.a of the ADR Rules, the Panel may consider the failure by the Respondent as grounds to accept the claims of the Complainant.

Hence, the Panel concludes that the Domain Name has been registered by the Respondent without rights or legitimate interest in the name. The second requirement established by the Regulation and Article B.11.d of the ADR Rules has therefore been duly satisfied.

Bad faith

The above conclusion that the Respondent does not have rights or legitimate interests in the Domain Name is enough to satisfy the requirements of Article 21 of the Regulation. However, in order to make a complete assessment, the Panel further examines whether the domain name was registered or is being used in bad faith.
In this context it must be stressed that in most cases, it is impossible for a Complainant to demonstrate with an absolute certainty the existence of bad faith of a Respondent. This is why Panels usually require the Complainant to make a reasonable demonstration rather than to bring absolute evidence.

Article 21 of the Regulation and Article B.11.f of the ADR Rules establish a list of circumstances which may be evidence of the registration or use of a domain name in bad faith.

Bad faith may, according to the ADR Rules, be found to be present by the existence of the following circumstances:

-the Domain Name was registered or acquired primarily for the purpose of selling, renting or transferring the Domain Name to the holder of a name in respect of which a right is recognized or established by nationa and/or Community law; or
- the Domain Name has been registered in order to prevent the holder of such a name from reflecting this name in a corresponding domain name, provided that

* the Respondent has engaged in a pattern of such conduct; or
* the Domain Name has not been used in a relevant way for at least two years from the date of registration; or
* there are circumstances where the Respondent has declared its intention to use the Domain Name in a relevant way but failed to do so

within six months of the day on which the ADR Proceeding was initiated;

- the Domain Name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
- the Domain Name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line loation by creating a likelihood of confusion with a name on which a right is recognised or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or
- the Domain Name is a personal name for which no demonstrable link exists between the Respondent and the registered domain name.

The Complainant has stated that the Respondent has replied to a made claim of transfer by offering to transfer the Domain Name for a sum of 550 EUR and is also referring to an e-mail, which document has not been filed with the Complaint.

The Panel has conducted its own investigation on the circumstances of the case as requested in the Complaint. The Panel has found that the Respondent has only one registered domain name with EURid, namely the disputed Domain Name. Therefore it can be concluded, that there is no evidence of a pattern as mentioned in the ADR Rules.

As the mentioned list of circumstances in Article B.11.f of the ADR Rules is non-exhaustive, there are further factors that the Panel may take into consideration.

The Complainant obtained registration of the mentioned trademarks prior to the date on which the Respondent registered the disputed Domain Name. In this case, it is very likely that the Respondent was aware of the Complainant's company name and trademark registrations, as it is a company well-known and present in both Finland and in Estonia. In addition, the name SAMPO or SAMPOLIFE are not in any way affiliated with the Respondent.

As the Complainant points out, it is and should also be the general custom to examine whether there are earlier rights before proceeding with the registration of a domain name. The Panel finds it unlikely that the Respondent would have registered this particular domain name by a pure coincidence. The fact that the Domain Name has been for sale on various internet-pages, also indicates bad faith.

As a consequence, the Panel concludes that the Domain Name has been registered in bad faith. All the requirements established by the Regulation and Article B.11.d of the ADR Rules have therefore been duly satisfied.

DECISION

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

the domain name SAMPOLIFE be transferred to the Complainant.

PANELISTS

Name	**Laura Camilla Roselius**

DATE OF PANEL DECISION 2009-02-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. On 29 July 2008, Pillerbi Oy (hereinafter, the "Respondent") registered the domain name sampolife.eu (hereinafter, the "Domain Name").
2. Sampo Oyj (hereinafter, the "Complainant") filed a complaint before the Czech Arbitration Court against the Respondent requesting the transfer of the Domain Name.
Pursuant to the Complaint:

(i) the Domain Name is identical or confusingly similar to the mentioned trademarks owned by the Complainant;
(ii) the Respondent has no legitimate interest in the Domain Name; and
(iii) the registration and use of the Domain Name has been made in bad faith.

3. The Respondent failed to file a response to the Complaint.

4. The Complainant is the legitimate holder of the valid Community Trade Mark 5557061 SAMPO LIFE and Estonian trademark

registration 45162 SAMPO LIFE ESTONIA.

5. The Panel found that the disputed Domain name as a whole is at least confusingly similar to the mentioned trademarks in which the Complainant has rights.

6. The Complainant has demonstrated that the Respondent does not have a legitimate interest in the Domain Name as the Respondent has has neither used the Domain Name in connection with the offering of goods or services, nor made any demonstrable preparation to do so. As the Domain Name has been for sale, the Respondent has apparently not been using the Domain Name at all. The Complainant has further shown that the Respondent is not commonly known as “sampolife” or by some other similar name.

7. Given the fact that the Respondent has registered the Domain Name without any rights or legitimate interest, it was not strictly necessary for the Panel to analyse whether the Domain Name had been registered or is being used in bad faith. In order to give a complete assessment, the Panel assessed this particular issue and concluded that even if the Complainant has only partly demonstrated the existence of bad faith, there are circumstances appearing from the case that may be considered evidence of registration of the Domain Name in bad faith.

8. The Panel has found that the Respondent has only one registered domain name with EURid, namely the disputed Domain Name. Therefore it can be concluded, that there is no evidence of a pattern as mentioned in the ADR Rules.

9. It is very likely that the Respondent was aware of the Complainant’s company name and trademark registrations, as it is a company well-known and present in both Finland and in Estonia. The Panel finds it highly unlikely that the Respondent would have registered this particular domain name by a pure coincidence.
In addition, the names SAMPO or SAMPOLIFE are not in any way affiliated with the Respondent. The fact that the Domain Name has been for sale on various internet-pages, also indicates bad faith.

10. In the light of the above and as requested by the Complainant, the Domain Name sampolife.eu shall be transferred to the Complainant.