Panel Decision for dispute CAC-ADREU-005301

Case number	**CAC-ADREU-005301**
Time of filing	**2009-01-22 09:10:08**
Domain names	**hsajet.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**HS Automatic, mrs. martina karim salajkova**

Respondent

Organization / Name	**zenghui fuhechan, 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

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complaint was filed on 22 January 2009.
A request for Eurid verification was made on 19 January 2009.
On 28 January 2009, Eurid verified that the domain name in dispute was registered by the Respondent on 18 July 2006.
On 10 February 2009 an amended Complaint was filed, following a notification of defective complaint.
On 12 February 2009, the Respondent was notified that ADR Proceeding has been commenced against the Respondent pursuant to the Regulations (EC) No. 733/2002 and No. 874/2004 (the Regulations). The Respondent was further notified inter alia that the Complaint had been received by email on 19 January 2009 and in hard copy on 12 February 2009 and the time of filing was recorded as 22 January 2009; the commencement date was 12 February 2009 and the Respondent was obliged to submit a response within 30 working days of delivery of the Notification.
On 2 April 2009 a Notification of Respondent Default was served by the Czech Arbitration Court on the Parties and the Czech Arbitration Court proceeded to appoint the present panel.
On 27 April 2009 the Parties were notified of the appointment of this Panel and that the projected decision date is 27 May 2009.
On 29 April 2009 the Complainant filed a non-standard communication by means of the online platform providing evidence of the Complainant's application for international registration governed exclusively by the Madrid Protocol (Rule 9 of the Common Regulations) for registration in Class 9 in respect of goods the following goods: "Industrial printers for printing marks and codes for products and packaging/ packing during and after the manufacturing." The application was dated and designated the Czech Republic, France, United Kingdom and United States of America. The application was based on the Complainant's Danish trademark registration number VR 2008 04645.
On 13 May 2009, the Panel issued a Procedural Order by means of the online platform pursuant to Rule B8 of the .eu Alternative Dispute Resolution Rules (the "ADR Rules"), in which the Panel requested the Complainant to submit further evidence of the Complainant's claimed right in the name HSAJET which is recognized or established by the national law of a Member State and/or Community law as required by Rule B11 (d)(1)(i) of the ADR Rules and indicated that the evidence should in particular show the existence of the Complainant's claimed right prior to the date of registration of the domain name in dispute. The Panel allowed the Complainant 5 days within which to make its submissions and allowed the Respondent further 5 days to make further submissions strictly in response.
On 18 May 2009 the Complainant made a timely submission in accordance with the Procedural Order. The Respondent made no submission.
The domain name HSAJET.EU was registered by the Respondent on 18 July 2006.
There is very little background information available about the Complainant except what is set out in the Complaint.
In the absence of any Response or submissions from the Respondent, there is no information except the details provided when

registering the domain name in dispute.
There is no evidence of any active use of the domain name in dispute by the Respondent.

A. COMPLAINANT

The Complainant submits that it is a Danish company and therefore a European company. The Complainant opened for business in October 1993.
The Complainant registered HSA JET ApS and HSA LABEL ApS as its second company name and has submitted a copy of CVR´s Register in Denmark in support of this assertion.

On 2 December 2008 the Complainant applied to the Danish Patent and Trademark Office to register the HSAJET trademark. Confirmation of application has been furnished as an annex to the Complaint.

The Complainant submits that it is one of the world's largest developers and manufacturers of a wide portfolio of high-resolution inkjet printers and mailing equipment. Sales and service are handled by network of dealers, distributors and production companies using the HSAjet brand, that spans the globe.

The Complainant submits that the HSAjet logo is always printed on all brochures, flyers, sales materials in general and on the surfaces of the Complainant's products. The Complainant has furnished a document described as "the Products and Logo Overview" as an annex to the complaint. The Complainant submits that HSAjet is its "product line", "brand" and is "the image of the company to the rest of the world".

The Complainant submits that HSAjet mark means a great deal for the company branding and a word of mouth.

The Complainant has furnished documentary evidence that it is the owner of these domain names < hsajet.dk> ,< hsajet.com>, <hsajet.cz>, <hsajet.fr> . The documents furnished indicate that the Complainant registered the domain name <hsajet.dk> on 23 May 2005 and it registered the domain name <hsajet.com> on 13 August 2005. The documents furnished do not state the date of registration of the either <hsajet.cz>, <hsajet.fr>, but purport to confirm the registrations.
The Complainant submits that in February 2006 it applied to register the domain name in dispute but "[t]he application was declined few months later due to exceeded deadline for administrative purposes." The domain name was subsequently registered by the Respondent on 18 July 2006.

The Complainant submits that the Respondent "does not have anything common" with the Complainant's product line at all and furthermore the Respondent is based outside the EU!

The Complainant submits that there are many blogs on the internet speculating about the true motives of the Respondent. It seems that the Respondent is registered under 3 other company names viz. 3L Consulting Ltd., Buycool Ltd., Waago Software Tech. Co. Ltd., each of which is situated at the same address and with the same phone number!
The Complainant submits that the good name of its product line HSAjet and the whole brand name is being ruined by an unfair action of the Respondent.
In a non-standard communication filed on 29 April 2009 the Complainant furnished a copy of its application to the World Intellectual Property Organisation for international registration governed exclusively by the Madrid Protocol of the HSAjet trademark.
In its further submission on 18 May 2009, pursuant to the Procedural Order, the Complainant submitted that it opened for business in October 1993 and registered HSA JET and HSA LABEL as our second company name on 4 May 2006.

The Complainant claims to be one of the world's largest developers and manufacturers of a wide portfolio high-resolution inkjet printers and mailing equipment. All of the Complainant's dealers, distributors and production companies use the HSAjet brand name. Sales and service are handled by network that spans the globe.

The HSAjet logo has been used by the Complainant since 2001 on all brochures, flyers, sales materials in general and the Complainant's products are produced with the HSAjet logo on their surface.

The domain nameshsajet.dk and hsajet.com were registered prior to the registration of the domain name in dispute on 23 May 2002 and 13 August 2005 respectively.

B. RESPONDENT

No Response was filed.

Paragraph B11(d) (1) of the.eu Alternative Dispute Resolution Rules (the "ADR Rules") imposes on this Panel an obligation to issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated that

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State 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.

Paragraph B11(b) of the ADR Rules limits the remedies available pursuant to an ADR Proceeding where the Respondent is the Domain Name Holder in respect of whose domain name the Complaint was initiated to the revocation of the disputed domain name or, if the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, the transfer of the disputed domain name(s) to the Complainant.

Identical or Confusingly Similar

The Complainant has provided prima facie evidence that it has registered both HSA JET ApS and HSA LABEL ApS as its company names and has submitted a copy of CVR´s Register in Denmark in support of this assertion. Furthermore, the Complainant is the owner of the Internet domain names <hsajet.dk> ,< hsajet.com>, <hsajet.cz>, <hsajet.fr> . The documents furnished indicate that the Complainant registered the domain name <hsajet.dk> on 23 May 2005 and it registered the domain name <hsajet.com> on 13 August2005. The documents furnished do not state the date of registration of the either <hsajet.cz>, <hsajet.fr>, but purport to confirm the registrations.
The Complainant has disclosed that it made an unsuccessful application to register the domain name <hsajet.eu> in February 2006 but that application was refused due to an administrative defect in the following months prior to the registration of the domain name by the Respondent on 18 July 2006.
The Complainant did not have any registered trademark prior to the date of this Complaint, and while there is little in the way of evidence of the Complainant's use of the HSAjet mark, either before or after the date on which the domain name was registered. Furthermore the Complainant has not provided any evidence of the extent to which it has used its domain names <hsajet.dk>, <hsajet.com>, <hsajet.cz>, <hsajet.fr>.
Nonetheless the Complainant claims to have used its HSAjet logo since 2001 and has furnished evidence that registered HSA JET ApS and HSA LABEL ApS as its second company name since May 2006.
In the circumstances this Panel holds that the domain name is confusingly similar to the Complainant's company name and is identical to the trademark HSAjet in which the Complainant has established rights as an unregistered mark.
This Panel therefore holds that the domain name in dispute is identical to the right in its mark and brand name which is recognized or established by the national law of a Member State and/or Community law. The fact that "HSAJET" is a brand name, under which Claimant manufactures and distributes its products and the fact that it is not yet a registered trademark (the application with the Danish trademark and patent office is pending) should not be a reason to strike this petition down for the lack of recognized rights on the side of Complainant.

Rights or Legitimate Interest
The Complainant has made out a prima facie case that Respondent has no rights in the domain name. In such circumstances the burden of proof shifts to the Respondent and in the present case the Respondent had not filed any Response or made any submissions. In the circumstances the Complainant has succeeded in the second element of the test in paragraph B11 of the ADR Rules.

Bad Faith Registration or Use
The onus rests on the Complainant to prove that the domain name has been registered or is being used in bad faith. It would appear that the domain name at issue does not resolve to any active website. While there has not been unanimity of approach, a number of previous panels have decided that bad faith registration and use may be inferred from such passive use of a domain name viz. ADR 2235 PALMERSCOCOABUTTER , 4 October 2004 and ADR 00983 SMARTMACHINE, 21 September 2006 to mention but two.
The Complainant has not furnished any specific evidence of bad faith registration or use of the domain name by the Respondent. However taken together, the Respondents choice of relatively unusual combination of letters "hsajet", the Complainant's use of the mark HSAjet, the Complainant's prior registration of the Internet domain names <hsajet.dk> on 23 May 2005 and <hsajet.com> on 13 August 2005, the Respondent's failure to respond to the Complaint, and the passive holding of the domain name by the Respondent allow this Panel to infer bad faith registration and use of the domain name at issue by the Respondent. In reaching this conclusion this Panel is conscious of the decisions of previous panels which took an inference of bad faith registration and use from passive holding. For

example ADR 2235 PALMERSCOCOABUTTER, 4 October 2004 where the Panel stated:
“10. The Complainant has also not provided any evidence that “the domain name has been registered or is being used in bad faith”. However, the domain name is not in use and the Respondent has not responded to the letter written by the Complainant. It would therefore have been impossible (or at least exceedingly difficult) for the Complainant to obtain any evidence that the Respondent registered or intends to use the domain name in bad faith. The Complainant has asserted that the Respondent registered the domain name in bad faith and, in the absence of a response from the Respondent, the panel again finds that the Respondent has accepted the Complainant’s assertion.

11. Given the Complainant’s rights to the use the name “Palmer’s Cocoa Butter” in Europe, there are only a limited number of ways in which the Respondent could use the domain name that would not be in bad faith. In this respect, Article 21.3(d) of Commission Regulation (EC) No 874/2004 and Paragraph B11(f)(4) of the ADR Rules are relevant, which include, as an example of bad faith, the use of a domain name to attract Internet users for commercial gain by creating a likelihood of confusion with a name on which a right is established. If the domain name was used for any commercial purpose (including the offering of the domain name for sale, or for sponsored links or affiliate sales) this would therefore be evidence of bad faith.”
The Complainant has therefore satisfied each of the three elements of the test in paragraph B11(d) (1) of the ADR Rules.

Finally as the Complainant is a body corporate registered and having its seat in Denmark, it comes within the scope of paragraph 4 (2) (b) of Regulation 733/2002 and having succeeded in proving its case it is entitled to have the domain name transferred to it.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name HSAJET be transferred to the Complainant.

PANELISTS

Name	**Alexandr Mares**

DATE OF PANEL DECISION 2009-05-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant submits is a Danish company that commenced trading in October 1993 and subsequently registered HSA JET ApS and HSA LABEL ApS as its second company name.
The Complainant claims to be one of the world’s largest developers and manufacturers of a wide portfolio of high-resolution inkjet printers and mailing equipment and is the owner of the domain names < hsajet.dk> ,< hsajet.com>, <hsajet.cz>, <hsajet.fr> . While its only trademark registration post dates the registration of the domain name in issue, the Complainant claims long use of HSAjet as a trademark and brand name.
The Panel held that the domain name at issue is confusingly similar to the Complainant’s company name and is identical to the trademark HSAjet in which the Complainant has established rights as an unregistered mark and consequently the domain name in dispute is identical to the Complanant’s right in its mark and brand name which is recognized or established by the national law of a Member State and/or Community law. The Complainant having made out a prima facie case that the Respondent has no rights in the domain name, the burden of proof shifts to the Respondent and therefore in the absence of a Response the Complainant also succeeded in the second element of the test in paragraph B11 of the ADR Rules.
Following the decisions of previous panels such as ADR 2235 PALMERSCOCOABUTTER , 4 October 2004 and ADR 00983 SMARTMACHINE, 21 September 2006 to mention but two, the Panel found that the Respondent was engaged in passive domain name holding and having considered the Respondents choice of relatively unusual combination of letters “hsajet”, the Complainant’s use of the mark HSAjet, the Complainant’s prior registration of the Internet domain names <hsajet.dk> on 23 May 2005 and <hsajet.com> on 13 August 2005, the Respondent’s failure to respond to the Complaint, and the passive holding of the domain name by the Respondent the Panel made a finding of bad faith registration and use of the domain name at issue by the Respondent.
Finally as the Panel found that the Complainant is a body corporate registered and having its seat in Denmark, it comes within the scope of paragraph 4 (2) (b) of Regulation 733/2002 and having succeeded in proving its case it is entitled to have the domain name transferred to it.