Panel Decision for dispute CAC-ADREU-005374

Case number	CAC-ADREU-005374
Time of filing	2009-03-09 08:29:38
Domain names	carive.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Intesa Sanpaolo S.p.A.

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

The Panel is not aware of any other legal proceedings.

FACTUAL BACKGROUND

1. On October 3, 2006, the Respondent registered the domain name carive.eu,
(hereinafter " the domain name") which invokes the dominant word, CARIVE, in the trademark CARIVE SHOP NEGOZIO FINANZIARIO of which a subsidiary of the Complainant, Cassa di Risparmio di Venezia, is the registered proprietor and identical to an acronym by which Cassa di Risparmio di Venezia is commonly known and over which it has exclusive rights and also identical to several domain names registered by the Complainant.

2. On March 5, 2009, the Complainant filed its Complaint in the Czech Arbitration Court, requesting the transfer of the domain name to the Complainant.

3. On March 18, 2009 the EURid verified that the Respondent is the registrant of the domain name.

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

A. COMPLAINANT

The following submissions were made by the Complainant in the Complaint:

This Complaint is brought by Intesa Sanpaolo S.p.A., an Italian company, in its own right and to protect the rights of its subsidiary, Cassa di Risparmio di Venezia S.p.A. The Complainant is the leading and prominent Italian banking group. It is now among the top banking groups in the euro zone and the undisputed leader in Italy in all business areas as well as having extensive international operations.

Its subsidiary, Cassa di Risparmio di Venezia, is one of the oldest banking house in Italy and operates in more than forty cities as a modern inter-regional bank, as well as operating online.

The term CARIVE is the abbreviated form of Cassa di Risparmio di Venezia's business name and is made up from several letters in that name, viz., CAssa di RIsparmio di VEnezia. In fact, Article 1 of the statute creating the company states that CARIVE is the abbreviation of Cassa di Risparmio di Venezia's business name.

Moreover, Cassa di Risparmio di Venezia has registered the following trademark for its acronym CARIVE : Italian trademark registration

n. 1023012 “CARIVE SHOP NEGOZIO FINANZIARIO”, filed on July 25, 2002, and granted on October 10, 2006, for services of class 36 (Insurance; financial affairs; monetary affairs; real estate affairs) (“ the CARIVE trademark”).

The Complainant, Intesa Sanpaolo, has also registered the following domain names incorporating the acronym “CARIVE”:

(a) “carive.it” (registered on June 25, 1997);

(b) “carive.eu” (registered on December 26, 2002);

(c) “carive.com” (registered on November 19, 2003):and

(d) “carive.biz” (registered on October 4, 2004)

(hereafter referred to as “the Carive domain names”).

All the above domain names, except carive.biz, were registered before the disputed domain name was registered on October 3, 2006.

On October 3, 2006, the Respondent registered the domain name “carive.eu”, which exactly reproduces the acronym through which Cassa di Risparmio di Venezia is commonly known and over which it has exclusive rights. Moreover, the Respondent’s domain name is identical to the above mentioned domain names for “carive” registered by the Complainant.

Based on these facts, the Complainant submits the following legal grounds:

A. The domain name is identical to the trademark in which the Complainant rights.

In support of that contention, the Complainant says that on October 3, 2006, the Respondent registered the domain name carive.eu, which is identical to the CARIVE trademark, the acronym by which Cassa di Risparmio di Venezia is commonly known and over which it has exclusive rights and the Carive domain names registered in the name of the Complainant.

B. The Respondent has no rights or legitimate interests in respect of the domain name.

The Respondent has no rights or interests in the disputed domain name as it does not correspond to a trademark registered in the name Zheng Qingying. The disputed domain name does not correspond to the name of the Respondent and, to the best of the knowledge of the Complainant, Zheng Qingying is not commonly known as “carive.eu” or “carive”.

C. The domain name was registered and is being used in bad faith.
The Complainant submits that this inference should be drawn because the disputed domain name is not currently used and it has never been used since it was registered more than two years ago. Moreover, there is no evidence of any preparations for a legitimate commercial or non-commercial use of the disputed domain name. Accordingly the inference should be drawn that the domain name has been registered in bad faith.

Moreover, it is submitted by the Complainant that the domain name was formerly connected to a web page containing the statements “This domain name is for sale” and “Sale price: Euro 500, plus handling/escrow fee 10% of sale price”. These facts show that the Respondent offered the domain name for sale for a sum considerably exceeding the cost of registration. This does not represent a use of the domain name in connection with a bona fide offering of goods and services and suggests instead that the Respondent’s reason in registering and using the domain name was and always has been to benefit from the reputation of the name CARIVE and illegitimately trade on its fame for commercial gain and profit, in violation of Article 21(2) (c) of Commission Regulation No. 874/2004.

Finally, the Complainants point out that the Respondent has already been a Respondent in several ADR .eu Cases in which respective panelists have ordered the transfer of disputed domain names and in which the Respondent failed to produce evidence of a right or legitimate interests. Thus, it is submitted, the Respondent’s frequent speculation in domain names should be considered as further evidence of bad faith.

Accordingly, it is submitted that all the requirements established by the Regulation and Article B.11 of the ADR Rules are satisfied in the present case.

B. RESPONDENT

The Respondent did not file a Response to the Complainant's contentions.

DISCUSSION AND FINDINGS

Pursuant to 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.

The panel will deal with each of these requirements in turn.

Identical or confusingly similar

The Panel finds from the evidence submitted with the Complaint that the Complainant's subsidiary, Cassa di Risparmio di Venezia, is the proprietor of the CARIVE trademark, details of which have already been given. That trademark constitutes rights to the name within the meaning of Article 10 of the Commission Regulation (EC) 874/2004 that are also held by the Complainant as the parent company of Cassa di Risparmio di Venezia .

The Panel finds that the disputed domain name is confusingly similar to the CARIVE trademark, for the dominant feature of the trademark is the word CARIVE, the other words in the trademark do not detract from that dominance and the domain name is spelt and pronounced the same as the word CARIVE in the trademark. Accordingly the first requirement of Article 21 (1) of the Commission Regulation (EC) No. 874/2004 has been satisfied.

In the light if that finding it is not strictly necessary to go further, but for reasons of completeness, the Panel also finds that the disputed domain name is identical to the term CARIVE which is the abbreviated form of the subsidiary Cassa di Risparmio di Venezia's business name as provided for in Article 1 of the statute creating the company, which rights are also held by the Complainant as the parent company of Cassa di Risparmio di Venezia. The Panel also holds that the disputed domain name is identical to all of the Carive domain names, which are registered in the name of the Complainant.

Rights or legitimate interests to the domain name

The Complainant has shown that the disputed domain name does not correspond to a trademark registered in the name Zheng Qingying or the name of the Respondent and that, to the best of the knowledge of the Complainant, Zheng Qingying is not commonly known as "carive.eu" or "carive". The Panel accepts these submissions and the matters alleged are more probably true than not. Accordingly, the Panel concludes that the Respondent does not have rights or legitimate interests in the domain name which satisfy the requirements of Article 21 of the Regulation and agrees with the submission of the Complainant that this conclusion is consistent with the decisions it has cited, namely Case N. 05293 Sampo Oyj v. Pillerbi OY / Robert Liivik and Case N. 4990 STAER INTERNATIONAL S.A, NICOLAE STEFAN v. PAGINI FAVORITE SRL LTD, Uta Simona Paula.In this regard it should be noted that the Respondent did not submit a Response and that Article B.10.a of the ADR Rules provides that the Panel may consider that omission as a ground for accepting the contentions of the Complainant, which it does.

Bad faith

Although it is not strictly necessary to do so, in view of the previous findings, for reasons of completeness the Panel will consider this issue.

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

Article B.11.f of the Rules provides that:

"(f) … the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration or use of a domain name in bad faith:
(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise

transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or
(2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:
(i) the Respondent has engaged in a pattern of such conduct; or
(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or
(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or Community law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;
(3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, 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
(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered."

The Panel finds that the facts of this case bring it squarely within several of the provisions of Rule B.11.f and within the general meaning of bad faith, for they show that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant and also to prevent the Complainant from reflecting the name in a corresponding domain name , without any intention of using it for a legitimate commercial or non-commercial purpose. Moreover, the fact that the Respondent has been the unsuccessful Respondent in so many proceedings similar to the present proceeding, as has been shown by the submissions made by the Complainant and the decisions it has referred to, again demonstrates that the domain name has been registered and has been used in bad faith.

DECISION

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

PANELISTS

Name	**Neil Anthony Brown**

DATE OF PANEL DECISION 2009-06-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. On October 3, 2006, the Respondent registered the domain name carive.eu,
(hereinafter " the domain name") which invokes the dominant word, CARIVE, in a trademark CARIVE SHOP NEGOZIO FINANZIARIO of which a subsidiary of the Complainant, Cassa di Risparmio di Venezia, is the registered proprietor and identical to an acronym by which Cassa di Risparmio di Venezia is commonly known and over which it has exclusive rights and also identical to several domain names registered by the Complainant.

2. On March 5, 2009 the Complainant filed its Complaint in the Czech Arbitration Court, requesting the transfer of the domain name to the Complainant.

3. On March 18, 2009 the EURid verified that the Respondent is the registrant of the domain name.

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

5. The Complaint alleged that:

(i) the Domain Name is identical to the trademark owned by the Complainant, the acronym and the domain names;

(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.

6. The subsidiary, Cassa di Risparmio di Venezia, had registered the following trademark for its acronym CARIVE : Italian trademark registration n. 1023012 “CARIVE SHOP NEGOZIO FINANZIARIO”, filed on July 25, 2002, and granted on October 10, 2006, for services of class 36 (Insurance; financial affairs; monetary affairs; real estate affairs) (“ the CARIVE trademark”).

7. The term CARIVE is the abbreviated form of Cassa di Risparmio di Venezia’s business name and is made up from several letters in that name , viz., CAssa di RIsparmio di VEnezia. In fact, Article 1 of the statute creating the company states that CARIVE is the abbreviation of the Complainant’s business name.

8. The Complainant, Intesa Sanpaolo, has also registered several domain names incorporating the acronym “CARIVE”:

9. The Panel found that the disputed domain name is confusingly similar to the said trademark and identical to the acronym and domain names, in all of which the Complainant has rights.

9. The Complainant has shown that the disputed domain name does not correspond to a trademark registered in the name Zheng Qingying or the name of the Respondent and that, to the best of the knowledge of the Complainant, Zheng Qingying is not commonly known as “carive.eu” or “carive” and the Panel concludes that the Respondent does not have rights or legitimate interests in the domain name which satisfies the requirements of Article 21 of the Regulation.

10. Given the fact that the Respondent has registered the Domain Name without any rights or legitimate interest, it was not essential for the Panel to analyse whether the Domain Name had been registered or is being used in bad faith. But for reasons of completeness , the Panel assessed this issue and concluded that there are circumstances, including the fact that the domain name has been for sale, showing that the Respondent registered and has used the domain name in bad faith.

11. For the above reasons and as requested by the Complainant, the Domain Name carive.eu shall be transferred to the Complainant.