Panel Decision for dispute CAC-ADREU-005384

Case number	**CAC-ADREU-005384**
Time of filing	**2009-03-24 09:26:26**
Domain names	**eprimo.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**eprimo GmbH**

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 unaware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant in this ADR Proceeding is Eprimo GmbH, a legal entity, registered in Germany. The Complainant is distributing electricity and gas since 2005 on the German energy market. It is the main distributor of RWE, a leading European energy supplier, in the field of low price distribution.

The Respondent is Zheng Qingying, with address in 204 Woolrich Road, London, UK.

The disputed domain name (eprimo.eu) was registered by the Respondent on 1 August 2006.

The Complaint was filed on 18 March 2009. The Czech Arbitration Court acknowledged receipt of the Complaint and issued a Request for EURid Verification for that disputed domain name on the same date. On 8 April 2009, EURid replied in a Non-standard communication confirming that the disputed domain name eprimo.eu was registered with the Registrar - Wagoo Software Tech. Co., Ltd., that the current Registrant of the domain name was the Respondent, that the domain name would remain locked during the pending ADR Proceeding and that the specific language of the registration agreement as used by the Registrant for the disputed domain name was English. It also provided the full details from the WHOIS database for the registrant and its technical contacts.

On 9 April 2009 the Czech Arbitration Court provided a Notification of Deficiencies in Complaint to the Complainant regarding the spelling of the name of the domain name holder which was not correct in the complaint and the identification of the correct Registrar. On the same date the Complainant filed the amended complaint. The formal date of the commencement of the ADR Proceeding was therefore 10 April 2009. On 01 June 2009 a Non-standard communication was sent to the Respondent reminding that the term for submitting the Response was to expire on 11 June 2009. The Respondent did not file any response.

Following an invitation to serve on the Panel in this dispute, the Panel accepted the mandate and submitted the Declaration of Impartiality and Independence in due time. The Czech Arbitration Court duly notified the parties of the identity of the Panel appointed on 29 June 2009, in accordance with paragraph B4(e) of the .eu Alternative Dispute Resolution Rules ('ADR Rules') and the date by which a decision on the matter was due, which was specified as 29 July 2009.

In the absence of a challenge to the Panel's appointment by either Party according to Paragraph B5(c) of the ADR Rules, the Czech Arbitration Court transmitted the case file to the Panel on 2 July 2009.

A. COMPLAINANT

The Complainant claims that it is a holder of numerous German and Community Trademarks each existing of or containing the component “eprimo” such as:

-eprimo (CTM 004595161)
-EPRIMO (CTM 004595179, CTM 006266449, German Trademark 30473155)
-eprimo – der energiediscounter (German Trademark 30719867, CTM 006266886)
-eprimo – meine Energie (German Trademark 30511015; German Trademark 30511016; German Trademark 30511017; German Trademark 30511018; German Trademark 30511019).

Excerpts of the registration of German trademark “EPRIMO” (German trademark 30473155) and the Community Trademark “EPRIMO” (Community trademark 004595179) are provided as Annexes 2 and 3 to the Complaint.

The Complainant considers that due to the numerous cctld and gtld domain names incorporating the term “eprimo” that it owns, it has an established presence on the Internet. The Complainant owns, inter alia, the following domain names:

- eprimo.biz
- eprimo.com
- eprimo.de
- eprimo.info
- eprimo.mobi
- eprimo.net
- eprimo.org
- eprimo.at
- eprimo.ch
- eprimo.cz
- eprimo.be
- eprimo.dk
- eprimo.fi
- eprimo.fr
- eprimo.hu
- eprimo.it
- eprimo.li
- eprimo.lt
- eprimo.lv
- eprimo.es
- eprimo.pt
- eprimo.ro
- eperimo.ru
- eprimo.se
- eprimo.si
- eprimo.sk
- eprimo.us

All visitors of the aforementioned domains are redirected to the site www.eprimo.de. A copy of the website www.eprimo.de is provided as Annex 4 to the compliant.

Furthermore, the Complainant states that its company name is “eprimo GmbH” and it has already been used throughout many years by the Complainant - ad hoc- statement of RWE Investor Relations, dated 20 March, 2007 is presented as Annex 5 to the complaint.

The Complainant considers that the registration of the disputed domain name is detrimental to its rights in that:

- the Respondent has no right or legitimate interest in the domain name;
- the Respondent uses the domain name in bad faith as the Respondent put the disputed domain for sale on www.onlyone.com.hk. The latter offers a platform for selling and buying domain names. The disputed domain name has been offered to the Complainant. The responsible representative of Compea GmbH & Co. KG tried to buy the domain name on the Complainant’s orders. Nevertheless the disputed domain name has never been transferred to the Complainant or his representative. A copy of the payment confirmation by Only One Ltd. addressed to Complainant’s representative is provided as Annex 8 to the complaint. Screen Captures of www.onlyone.com.hk

are provided as Annex 9.

The Complainant asks for transfer of the domain name to itself.

B. RESPONDENT

The Respondent has not exercised its option to submit a formal Response to the Complaint.

DISCUSSION AND FINDINGS

This Complaint is brought under the auspices of Regulation 874/2004 and the ADR Rules. Article 22(1)(a) of Regulation 874/2004 allows any party to initiate an ADR procedure where the registration is speculative or abusive within the meaning of Article 21 of Regulation 874/2004.

Article 21(1) of Regulation 874/2004 stipulates that a registered domain name may be subject to revocation where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1) of Regulation 874/2004, 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.

Article 21(2) of Regulation 874/2004 provides examples whereby the Respondent's legitimate interest may be demonstrated (echoed in Paragraph B11(e) of the ADR Rules), while Article 21(3) of Regulation 874/2004 provides examples whereby bad faith may be demonstrated (similarly echoed in Paragraph B11(f) of the ADR Rules).

Article 10(1) of Regulation 874/2004 stipulates that:
"'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."

Article 22(11) of Regulation 874/2004 states that 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 of Regulation 874/2004. Furthermore, the domain name is to be transferred to the complainant if the complainant applies for it and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation 733/2002.

Paragraph B11(d)(1) of the ADR Rules provides as follows:
"The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves (1) 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."

Therefore, the Panel finds as follows:

1. Identity or confusing similarity

It is clear from the applicable provisions that the burden of proving that a .eu domain name registration is speculative or abusive lies with the Complainant. Accordingly, the first question for the Panel is whether the Complainant has proved that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law.

Complainant has provided evidence that it is owner of German trademark “EPRIMO” (German trademark 30473155) and the Community Trademark “EPRIMO” (Community trademark 004595179).

In order to comply with the requirements of Article 21 (1) of Regulation N 874/2004, it is not necessary to provide evidence of “prior right” but it is sufficient to prove a right “recognized or established by national and/or Community law”. The reference made by Article 21

(1) of Regulation N 874/2004 to Article 10 is an example and it does not tie the Complainant to prove a “prior right”.

However, the Panel finds that Complainant has provided sufficient evidence to prove a valid prior right regarding the disputed domain name registration, as follows:

1.1. The Complainant provided evidence of a German trademark’s registration filed on 27 December 2004 where the registration was duly published on 8 April 2005, while the disputed domain name eprimo.eu was registered by the Respondent on 1 August 2006.
1.2. Complainant’s company name is Eprimo GmbH and it was duly registered in 2000, as obvious from the extract from the Register of Companies of Offenbach District Court, presented as Annex 10 to the Complaint;
1.3. The Complainant is holder of a number of domains, which have been registered before 1 August 2006, namely eprimo.com (07 November 2003), eprimo.net (15 December 2005), eprimo.org (12 July 2005) and eprimo.info (9 August 2005).

Aside from the top-level domains .eu, .com. .net, .org, etc., the trademark and the other domain names of the Complainant are identical to the disputed “eprimo.eu” domain name. However, the top-level domain name is irrelevant when comparing trademarks and domain names.

The Panel considers that the disputed domain name may well cause association with the Complainant’s name or trademarks because of the identity of the words. The disputed domain name is thus, in the Panel's view, confusingly similar to the name, trademark and domains in which the Complainant holds registered rights and in this respect the first requirement of Article 21 (1) of Regulation 874/2004 is satisfied.

2. Respondent’s Rights or Legitimate Interest in the disputed domain name

The Panel then turns to the question of whether the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name.

Article 21(2) of Regulation 874/2004 and paragraph B11(e) of the ADR Rules provide non-exhaustive examples of how a Respondent might demonstrate a legitimate interest. These may be summarised as where (a) prior to notice of the dispute the Respondent has used (or made demonstrable preparations to use) the domain name in connection with the offering of goods and services; (b) the Respondent has been commonly known by the domain name; or (c) the Respondent is making a legitimate, non-commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under national or Community law.

There is no evidence on the record which indicates that Respondent might be able to satisfy any of these tests. The arguments of the Complainant should be substantiated by the Panel.

Firstly, the Respondent did not provide any evidence that is had own trademark rights nor license to use the Complainant’s trademarks.

Secondly, Respondent did not prove that it has ever used the domain name or a name corresponding to the domain name in connection with the offering of Respondent's goods or services nor had the Respondent made demonstrable preparations to do so. Therefore there is not evidence that the Respondent has any interest in using the domain name for its own purpose.

Thirdly, the Respondent did not present any proves that being a natural person it had ever been commonly known by the name “eprimo”.

Fourth, there is no evidence of non-commercial or fair use of the domain name by the Respondent without the intention to mislead consumers or to harm the reputation of the Complainant.

Considering that the Respondent has failed to submit a Response to the Complaint in due course, it has failed to rebut that demonstration, raising none of the issues referred to in paragraph B11(e) of the ADR Rules, and putting forward no other reasons substantial enough to convince the Panel of its rights or legitimate interest in the disputed domain name.

Thus the Panel cannot conceive of any potential explanation that might confer a right or legitimate interest upon the Respondent in the disputed domain name, whether in terms of the non-exhaustive examples in Article 21(2) of Regulation 874/2004 and paragraph B11(e) of the ADR Rules or otherwise. Consequently, the Panel finds that the Respondent registered the disputed domain name eprimo.eu without rights or legitimate interest.

3. Registered or used in bad faith

For the sake of completeness, the Panel will also deal with the issue of bad faith. This is expressed in Article 21(1)(b) of Regulation 874/2004 and paragraph B11(d)(iii) of the ADR Rules as a further alternative to a lack of rights or legitimate interest which may be proved by the Complainant. In this case the Panel has found that the Respondent has no rights or legitimate interest in the disputed domain name under paragraph B11(d)(1)(ii) of the ADR Rules, thus satisfying the conditions to issue a decision granting the remedy requested. However the Panel will go on to consider the question of registration or use of the disputed domain name in bad faith for the sake of completeness. Article 21(3)(a) to (e) of Regulation 874/2004 and the corresponding paragraph B11(f)(1) to (5) of the ADR Rules provide non-exhaustive examples which may be evidence of bad faith registration or use.

The Complainant states that the Respondent put the disputed domain for sale on www.onlyone.com.hk, which offers a platform for selling and buying domain names. The disputed domain name had been offered to the Complainant and the responsible representative of Compea GmbH & Co. KG had tried to buy the domain name on the Complainant's orders. Nevertheless the disputed domain name had never been transferred to the Complainant or his representative. The Claimant presents a copy of the payment confirmation by Only One Ltd. addressed to Complainant's representative, as well as Screen Captures of www.onlyone.com.hk.

According to the Panel the Complainant did not prove the facts outlined above since it is not obvious if Mr. Walter Philipkowski from the payment confirmation of Only One Ltd. has any relation to the Complainant or its representative. The Panel visited the website www.onlyone.com.hk but no evidence was found for any top level ".eu" domains offer for sale via this website.

However, the Panel checked the list with domains registered by the Complainant and it was verified that the company owned the following domain names eprimo.com, eprimo.info, eprimo.net and eprimo.org at the time of registration of the disputed domain name.

All visitors of the aforementioned domains are redirected to the site www.eprimo.de and this fact could have been easily established by the Respondent at the time of the registration.

From the evidence made available to the Panel and in the absence of any Response from the Respondent the Panel is further convinced that Respondent has registered the domain name in bad faith. Given the distinctive character of Complainant's "Eprimo' trademark, Complainant's significant business activities in the field of electricity and gas supply, and its use of a number of identical domain names, including the most popular gtld - .com, .net, .org, etc., it is practically impossible that Respondent coincidentally chose the domain name "eprimo.eu" without reference to Complainant's mark, company name and domains.

The Respondent has not rebutted the substantiated allegations put forward by the Complainant. The Panel finds that it is unlikely that the contested domain name has been registered without prior knowledge of Complainant and Complainants rights and further finds that the registration of the domain name was obviously made with the purpose of selling it to Complainant or to others. Further, the registration and current use of the domain name is likely to disrupt or otherwise harm the business interests of the Complainant.

Therefore, the Panel finds bad faith proven on the grounds that, on the balance of probabilities, in the terms of paragraph B11(f)(1) of the ADR Rules, the circumstances indicate that the domain name was registered primarily for the purpose of transferring it profitably to the trademark owner. The Panel finds bad faith further proven on the grounds that on the balance of probabilities, in the terms of paragraph B11(f)(2) of the ADR Rules, the Respondent has intended to prevent the trademark owner from reflecting its name in the domain name and has engaged in a pattern of such conduct.

In addition to the above, the Panel will merely mention that the Respondent was manifestly engaged in a pattern of registering domain names consisting of third parties' trademarks. In this respect, the Panel refers to the following ADR decisions issued against the Respondent:

1. CAC Case No. 5282, Central Union of Municipalities and Communities of Greece (Kedke) v. Zheng Quingying;
2. 2. CAC Case No. 2429, Ericpol Telecom sp. z o.o. v. Zheng Qingying – ERICPOOL;
3. CAC Case No. 2325, Glen Dimplex UK Limited v. Zheng Qingying – GLENDIMPLEX;
4. CAC Case No. 3588, Merck KGaA v. Zheng Qingying - XIRONA, LEVOTHYROX;
5. CAC Case No. 3444, Ursula Hahn v. Zheng Qingying – OCUNET;
6. CAC Case No. 3510, Big Dutchman AG v. Zheng Qingying – BIGDUTCHMAN;
7. CAC Case No. 2986, Security Center GmbH & Co. KG v. Zheng Qin – TERXON;
8. CAC Case No. 3368, BB C - SERVICES, s.r.o. v. Zheng Qingying – BBCENTRUM;
9. CAC Case No. 3885, FGSPORT S.r.l. v. Zheng Qingying – WORLDSBK;
10. CAC Case No. 3773, Merck Santé v. Zheng Qingying – MONOT;

11. CAC Case No. 3641, Fundació Esade v. Zheng Qingying – ESADE;
12. CAC Case No. 2651, LEGUIDE.COM SA v. Zheng Qingying – ANTAG;
13. CAC Case No. 4229, Ornellaia Società Agricola S.r.l. v. Zheng Qingying – ORNELLAIA;
14. CAC Case No. 4309, OSRAM GmbH v. Zheng Qingying – OSRAM-OS;
15. CAC Case No. 4187, DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH v. Zheng Qingying – DEGINVEST;
16. CAC Case No. 1185, Degussa GmbH v. Zheng Qingying – AQURA, CHEMSITE;
17. CAC Case No. 4253, EUROPART Holding GmbH, Mark Siebert v. Zheng Qingying – EUROPART;
18. CAC Case No. 4517 Reale Mutua Assicurazioni, Mr Filippo Manassero v. Zheng Qingying – REALEMUTUA;
19. CAC Case No. 4620, ELTRO Gesellschaft für Elektrotechnik mbH, ELTRO v. Zheng Qingying – ELTROPLUS;
20. CAC Case No. 4515, Camlock Systems Limited, Mr. Brian John Heasman v. Zheng Qingying – CAMLOCK;
21. CAC Case No. 4661, Bayer AG, Kristina Kersten v. Zheng Qingying – BAYERGARDEN;
22. CAC Case No. 4656, GLS Gemeinschaftsbank eG, Uwe Nehrkorn v. Zheng Qingying – GLS-BANK, GLS-GEMEINSCHAFTSBANK, GLSTREUHAND;
23. CAC Case No. 4880, Labco SAS, Lucie Boedts v. Zheng Qingying – LABCO;
24. CAC Case No. 4859, Laboratoire Biosthétique Kosmetik GmbH & Co. KG, Laboratoire Biosthétique Kosmetik GmbH & Co. KG v. Zheng Qingying – LABIOSTHETIQUE;
25. CAC Case No. 4955, Colliers International Property Consultants Inc and Colliers CRE Plc v. Zheng Qingying – COLLIERSCRE;
26. CAC Case No. 4970, H.Vollmer GmbH, Günther Vollmer v. Zheng Qingying – HEITRONIC;
27. CAC Case No. 5002, BenQ Europe BV, Paul Zwagerman v. Zheng Qingying – BENQ;
28. CAC Case No. 5094, DDR Museum Berlin GmbH, Robert Rückel v. Zheng Qingying – DDR-MUSEUM;
29. CAC Case No. 5218, H.D. Duijts Holding B.V., Hendrikus Dorotheus Duijts v. Zheng Qingying – JOALPE.

Requesting the transfer of the domain name in question the Complainant satisfies the general eligibility criteria for registration set out in para. 4 (2) (b) of Regulation (EC) No 733/ 2002.

The Complainant is an undertaking having its principal place of business in Neu-Isenburg, Germany, as shown in Annex 10 of the Complaint, it is owner of trademark registrations over the disputed sign, therefore it is entitled to claim transfer of the domain name “eprimo.eu”.

In view of the above the Panel considers that the requirements for the requested transfer of the domain name to the Complainant are 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 EPRIMO be transferred to the Complainant

PANELISTS

Name	George Dimitrov

DATE OF PANEL DECISION 2009-07-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is Eprimo GmbH, German company, distributing electricity and gas since 2005 on the German energy market with the duly registered distinctive name and trademarks. It seeks the transfer of the domain name eprimo.eu, registered by the Respondent, to itself. The Respondent failed to provide any Response to the Complaint and to prove that it was entitled to register the disputed domain name at the time of registration, namely 1 August 2006.

The Panel found that the disputed domain name was identical to the Complainant's registered trademarks and trade name. The Panel finds that the Complainant has the right and legitimate interest in the disputed domain name and that the Respondent does not fulfill the conditions set out by Article 21.1(a) of Regulation 874/2004 due to the fact that, inter alia, there was no relation between the Respondent and the disputed domain name eprimo.eu that was registered by him and he had not made use of the said domain name. The Panel also finds that the Respondent has registered the disputed domain name in bad faith.