Panel Decision for dispute CAC-ADREU-005419

Case number	CAC-ADREU-005419
Time of filing	2009-05-15 11:03:12
Domain names	alphonseleduc.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Alphonse Leduc Editions Musicales SARL, Leduc

Respondent

Organization / Name	Thompson Edition, Inc.

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 the existence of other proceedings concerning the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Alphonse Leduc Editions Musicales SARL, is a French company operating in the business of publication of music and established in Paris, France, since 1841, and incorporated on July 13th 1921.

The Complainant was registered under the name “Alphonse Leduc Editions Musicales SRLA” with the registration number Paris B 572 056 695, since April 9th 1957.

Likewise the Complainant created a website to support its publishing activities, operating from “alphonseleduc.com”, since March 27th 1998.

The Respondent, Thompson Edition Inc., it seems registered the disputed domain name, “alphonsoleduc.eu”, although we ignore the date since on its single writ they only state that the Complainant has incurred several important factual errors on its claim, and that they would be able to demonstrate that the complaint is not legitimate, with no specification whatsoever about any of those supposed errors or reasons lack of legitimate rights.

A. COMPLAINANT

The Complainant on its brief upholds that:

A. The domain name is identical or at least confusingly similar to the Trade name and Company name registered in which the Complainant has rights as:

a.i. It claims that the name “Alphonse Leduc Editions Musicales” has been used to name its company since 1841.
a.ii. It underlines the fact that “Alphonse Leduc Editions Musicales” is the Complainants´ company name since its incorporation, on July 13th 1921.

a.iii. “Alphonse Leduc Editions Musicales” is the name of the Complainant’s company which has been registered since April 9th 1957.

a.iv. It holds a domain name consisting in the wording “alphonseleduc.com”, registered by the Complainant on March 27th 1998, which besides is the access to the Complainants´ website.

a.v. The disputed domain name is identical to the Complainants´ prior domain name and the company name Alphonse Leduc, over which it holds exclusive rights.

B.The Respondent has no right or legitimate interest in relation with the disputed domain name, since:

b.i. It does not have any relation with the Complainants´ business, and no license or authorization has been granted to Respondent to make any use, neither to apply for registration of the disputed domain name by Alphonse Leduc Edition Musicales SARL.

b.ii. It is not currently and has never been known under the wording Alphonse Leduc Edition Musicales.

b.iii. It has registered the domain “alphonseleduc.eu” in order to take advantage of the Complainant’s well-known trademark to confuse and divert internet users to commercial websites through a “pay per click” domain parking solution.

C. The Complainant accuses the Respondent that the registration and use of the disputed domain name are made in bad faith because:

c.i. The Complainant asserts that it has had the name Alphonse Leduc in use for more than 90 years as a minimum to name the company which belongs the Complainant or its predecessors.

c.ii. The Complainant has proved and certified the use of the wording “alphonseleduc” to operate a website on line since 1998, under the domain name “alphonseleduc.com”.

c.iii. At the time the Respondent registered the disputed domain name, it was aware of the existence of the Complainant and its business activity even on the internet.

c.iv. A mere investigation on Google.com shows that the Respondent uses the “alphonseleduc.eu” domain name as an access to a division of its own website, because if anybody “types” Alphonse Leduc on Google it will be immediately attracted by the next commercial link “Your retail source for all Leduc titles with a 10% web discount”, and when the user visits the alphonseleduc.eu web site, he will be greeted by the message “Welcome to Alphonse Leduc catalogue”.

c.v. The Complainant asserts that the Respondent is an American Corporation that has not registered any office, central administration or principal place of business in the European Community, when the .eu domain names are reserved to this kind of companies

c.vi. As to the use, the domain name is pointing to a parking page which may generate financial gain for the Respondent.

B. RESPONDENT

The Respondent became aware about the Complaint on 21 May 2009 and it is so stated on the data of access to the Complaint on the on-line platform.

The above means that the deadline for the Respondent’s reply was scheduled for the 2nd of July 2009.

Since no writ of reply has been filed, on July 14th 2009, the Respondent was declared in default and advised accordingly, in agreement with the EU Dispute Resolution Rules (the ADR Rules) and the Supplemental Rules of the Czech Arbitration Court (the ADR Supplemental Rules).

Notwithstanding the above and precisely on the 14th of July 2009, the Respondent formalized the corresponding “Challenge of Notification of Respondent Default”, basically requesting the cancellation of the notification of default, arguing problems with the e-mail address of contact and with the current direct contract information.

Likewise the Respondent points out that the complain includes several important factual errors and requests to be given the opportunity to prove that the complaint is not legitimate.

DISCUSSION AND FINDINGS

In the first place and in agreement with the provisions of Article 10 of the ADR Rules, this member of the board considers that in fact the Respondent failed to answer in time to the Complainant’s claim.

The above should not be considered as a trivial omission, very much on the contrary, it must regarded as a determinant factor, specially

when the explanation given thereof by the Respondent may not be considered valid for the purposes of the present proceeding.

Furthermore, the brief writ of Challenge of Notification of Respondent's Default filed by such Respondent only denies the arguments made by the part of the Complainant, although without providing any document in support of its statements.

On the other side and going now into the merits of the present resolution, as gathered from the writ of the Complainant, it is clear that:

(i) The disputed domain name ("alphonseleduc.eu") is identical or confusingly similar to the Complainant's prior domain name ("alphonseleduc.com") and its corporate name "Alphonse Leduc Editions Musicales") over which it holds exclusive rights.

(ii) Apparently the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith by the part of Respondent.

Regarding the need to prove that the disputed domain name is identical or confusingly similar to another domain name and corporate name in which the Complainant has rights, the truth is that the Complainant has demonstrated that: (i) it is the holder of the French Society named "Alphonse Leduc Editions Musicales SARL", at least as from its incorporation on April 13th 1921, and in any event, as from its registration with the Registry of Businesses and Corporations of Paris, which was made on April 9th 1957, name that at the same time it seems to belong to the Leduc family since long before (1841); (ii) it is the holder and has been using the "alphonseleduc.com" domain since 1998.

Taking into account that the disputed domain name registered by the Respondent is "alphonseleduc.eu", the Panel understands that the Complainant has demonstrated that such name is not only confusingly similar to its domain name "alphonseleduc.com", but it is practically identical.

Moreover, this Panel has proceeded to search the expression "alphonseleduc" in several searchers of Internet and has found out that on every occasion the first result that appears on the screen invites us to visit the web page of the Respondent. Besides the reference indicated by the Complainant "your retail source for all Leduc titles with a 10% web discount" also appears, which is a clear indication and proves beyond any doubt that the disputed domain name has been registered and is being used in bad faith by the Respondent.

In addition to al the above, this Panel equally points out that the Respondent is an American Corporation that has not registered any office, central administration or principal place of business in the European Community, when the .eu domain names are reserved to this kind of companies.

Based on the above the Panel considers that the Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the domain name, and this circumstance has not at all been properly impaired by the Respondent.

Based on all the above the Panel considers that the Complaint must be accepted, and the disputed domain name transferred to the Complainant.

DECISION

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

the domain name ALPHONSELEDUC be transferred to the Complainant

PANELISTS

Name	**Enrique Batalla**

DATE OF PANEL DECISION 2009-08-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Alphonse Leduc Editions Musicales SARL, is a French company operating in the business of publication of music and established in Paris, France, since 1841, and incorporated on July 13th 1921. Likewise the Complainant was registered under the name "Alphonse Leduc Editions Musicales SRLA" with the registration number Paris B 572 056 695, since April 9th 1957 and it created a website to support its publishing activities, operating from "alphonseleduc.com", since March 27th 1998.

The Respondent, Thompson Edition Inc., it seems registered the disputed domain name, “alphonsoleduc.eu”, although we ignore the date since on its single writ they only state that the Complainant has incurred several important factual errors on its claim, and that they would be able to demonstrate that the complaint is not legitimate, with no specification whatsoever about any of those supposed errors or reasons lack of legitimate rights.

In the first place and in agreement with the provisions of Article 10 of the ADR Rules, this member of the board considers that in fact the Respondent failed to answer in time to the Complainant’s claim. This fact should not be considered as a trivial omission, very much on the contrary, it must regarded as a determinant factor, specially when the explanation given thereof by the Respondent may not be considered valid for the purposes of the present proceeding.

Furthermore, the brief writ of Challenge of Notification of Respondent’s Default filed by such Respondent only denies the arguments made by the part of the Complainant, although without providing any document in support of its statements.

Taking into account that the disputed domain name registered by the Respondent is “alphonseleduc.eu”, the Panel understands that the Complainant has demonstrated that such name is not only confusingly similar to its domain name “alphonseleduc.com”, but it is practically identical.

Besides this panel considerer that it has been proved that the disputed domain name has been registered and is being used in bad faith by the Respondent.

In addition to all the above, this Panel equally points out that the Respondent is an American Corporation that has not registered any office, central administration or principal place of business in the European Community, when the .eu domain names are reserved to this kind of companies.

Based on the above the Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the domain name, and this circumstance has not at all been properly impaired by the Respondent, so the Panel considers that the Complaint must be accepted, and the disputed domain name transferred to the Complainant.