Panel Decision for dispute CAC-ADREU-005468

Case number	CAC-ADREU-005468
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Domain names	zott-sale.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Zott GmbH & Co. KG

Respondent

Organization / Name	Victor Somov

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

none

FACTUAL BACKGROUND

The Complainant is a registered company named “Zott GmbH & Co. KG” and based in Mertingen, Germany. The Complainant is a dairy producer and uses the domain zott.de for commercial purposes and is owner of several Trademarks containing “ZOTT” and is using them.

The Respondent registered the domain name “zott-sale.eu” under the address of the Complainant and offered jobs and commercial assistance therefore in Russian. The Respondents domain is linked to the Complainants domain.

On 23 July 2009, the Complainant initiated ADR proceedings. The Complainant, represented by Wilmer Cutler Pickering Hale and Dorr LLP law office, Reinhard Lange, submitted a complaint against the Respondent claiming that the Respondent registered the “zott-sale” domain name without rights or legitimate interest and in bad faith and that, therefore the registration should be declared abusive within the meaning of Article 21 of EC Regulation No. 874/2004 (hereinafter “Public Policy Rules”).

The ADR Court did not receive any Respondent’s communication confirming its consent with the termination of the ADR proceedings within the deadline and the Respondent was finally notified to submit its Response. The Respondent did not provide any communication in this regard.

According to the ADR Rules, Paragraph B3 f) the Respondent and Complainant were informed by the case administrator of the default. Even so the following five days after receiving this notification the respondent did not react (challenge the notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules).

A. COMPLAINANT

According to Complainant, Respondent is using the confusingly similar Domain Name intentionally to attract Internet users for commercial gain.

The Complainant is a limited liability company (Kommanditgesellschaft) registered in the German companies´ registry of the civil court Augsburg under No. HRA 1376 since 1952 and is the user of the domain zott.de for company purposes.

The Complainant is the owner of the Community Trademark “ZOTT”, EM 000135475
the International Registrations “Zott logo”, IR 904 765 and IR 449 655

and the International Registration “ZOTT”, IR 876 174.

The Respondent registered the disputed domain name without rights and legitimate interest in the name and established a website with a not authorized link to the Complainants website and with using the Complainants Trademarks without authorization and with confusing similar layout, elaborated according to Paragraph B.1. (b) (10) of the ADR-Rules

The present complaint is based on the fact that the domain name “ZOTT-SALE” is partly identical to the name “ZOTT” which is protected under German law. Even if the full name “ZOTT GMBH & Co.” would have to be considered, the domain name would still be confusingly similar to the trademarks and company name. The use of identical or similar terms cause a substantial danger of confusion between the enterprises in question.

Legitimate interests just to the name "Zott” cannot be concluded from the Respondent. It is also apparent that the Respondent has used the domain name in connection with the offering services which confuses especially job seekers from Russia and Russian job seekers in Germany as well.

The Complainant insists that the Respondent registered the domain name without rights and legitimate interest and in bad faith and that, therefore, such registration is speculative and abusive within the meaning of Article 21 of the Public Policy Rules. Intention of creating likelyhood of confusion of the Respondent is obvious.

The Respondent, Mr. Somov, gave a physical address which is identical with the plant of the Complainant and false because there is no Victor Somov working or had worked there.

B. RESPONDENT

The Respondent failed to provide its Response within the required deadline and did not respond in any way.

DISCUSSION AND FINDINGS

1. According to Article 22 (11) of the Regulation (EC) No 874/2004 an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of the aforementioned or the decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002.

In the present case, the Complaint has been brought against the Registrant. Therefore, the question is whether the use of the domain is speculative or abusive within the meaning of Article 21 the Regulation (EC) No 874/2004. According to this disposition and Paragraph B 11 (d) (1) of the ADR.eu Alternative Dispute Resolution Rules (the “ADR Rules”) the Complainant bears the burden of proving the following:

(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.

2. Default

According to the ADR Rules, Paragraph B3 f) the Respondent and Complainant were informed by the case administrator of the default. Even so the following five days after receiving this notification the respondent did not react (challenge the notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules).

Therefore the Panel shall decide according to Paragraph B10 (a) of the ADR Rules if the default comply as grounds or is a reason to accept the claims of the other party.

The Panel decides in this case yes, it is a reason to accept the claim of the other party.

3. Alleged Registration of Domain Name without Rights and Legitimate Interest

With respect to the alleged registration of the Domain Name without rights or legitimate interest, the Panel holds as follows:

A. Rights

The Respondent did not prove any formal or other positive right to a ZOTT denomination. The registration itself is no right and creates none without perceptible use or preparing measures.

B. Legitimate Interest

According to Article 21, paragraph 2 of the Public Policy Rules a legitimate interest may be demonstrated where (a) prior to any notice of the ADR proceedings, the Respondent has used the domain name, or a name corresponding to the domain name, in connection with the offering of goods or services, or has made demonstrable preparation to do so; (b) the Respondent, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law; (c) the Respondent is making a legitimate and non-commercial, or fair, use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

The Panel is aware even if the Respondent had or has a relation to the Complainant as as worker or else the services offered by the Respondent are highly abusive and illegal, because trying to gain money for non-existing jobs is a criminal act.

The Panel agree with ADR Case No. 4318 (E-AIRFRANCE), where ADR panel held that the fame of the mark AIR FRANCE was strong evidence that the holder registered the domain name with the complainant's trademark in mind.

Here the Respondent also registered the disputed domain name having the - not famous but well-known – trademark in mind.

Therefore, the Panel holds that the Respondent registered the zott-sale domain name without rights or legitimate interest. within the meaning of Article 21, paragraph 1, letter a) of the Public Policy Rules.

4. Respondent‘s bad faith

This case has similarities with 04052 TARKETT-COMMERCIAL or other cases with decisions based on likleyhood of confusion as 04925 NYU.

Evidence regarding Respondent‘s bad faith is very strong too.

First, Respondent is using the confusingly similar Domain Name intentionally to attract Internet users for commercial gain (sponsored links on its web site).

Second, Respondent is using the confusingly similar physical Address of the Complainant.

Third, Respondent is using the confusing similar layout of the web content with the Logo of the Complainant and linked his domain with the domain of the Complainant.

Fourth, Respondent offers non existing vacant jobs at Zott GmbH & Co. KG in Russian language.

Fifth, Complainant tried unsuccessfully to contact Respondent and the Russian host. The Respondent's failure to respond to the allegations in the Complainant's earlier cease and desist letter constitute bad faith, and Respondent's failure to provide correct contact information also is evidence of bad faith.

5. Conclusion

The Complainant attached to its Complaint relevant documentation supporting and proving its arguments.

Given the foregoing, the Panel holds that indications and evidence exist that the disputed domain name was registered without rights or

legitimate interest in the name and in bad faith.

Because the Complainant is an entity eligible to be the holder of .eu domain name in accordance with the Par. 4(2) b) of Regulation 733/2002, the Panel orders that the domain name zott-sale.eu be transferred to the Complainant in Germany.

DECISION

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

the domain name ZOTT-SALE be transferred to the Complainant

PANELISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2009-11-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Zott GmbH & Co KG, is a dairy producer since 1952 and the holder of several trade marks ZOTT. The Respondent, Mr. Somov, registered the disputed domain name under the Complainants address and created a confusing similar website in the layout and unlawfully using the compainants trademarks. Respondent addressed the page to Russian job seekers at the Complainant's company. The Respondent didn't react Complainant's contentions. The trade mark ZOTT for the ZOTT gmbH & Co KG is a well kown mark, therefore, the Panel concluded that Respondent was likely to be aware of corresponding prior rights of the Complainant. The Panel found many evidence of bad faith and ordered the disputed domain name to be transferred to the Complainant.