Panel Decision for dispute CAC-ADREU-005491

Case number	CAC-ADREU-005491
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Domain names	trentingrana.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Trentingrana Concast Sca Consorzio dei Caseifici Sociali e dei Produttori Latte

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 related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a Consortium with its legal seat in Spini di Gardolo 124, 38014 Trento (ITALY). The Complainant is entitled to regulate and control the production and commercialization of Trentingrana cheese, which is a part of the Grana Padano Protected Designation of Origin, registered and protected according to EC regulation n. 510/2006. The Complainant uses the domain name “trentingrana.it” which is connected to the official web site of the Complainant, and is also the owner of the trademark for the name “TRENTINGRANA” (Italian trademark registration n. 800975 “TRENTINGRANA & device”, in classes 29 and 30, priority March 26, 1997.

The Respondent registered the domain name “trentingrana.eu” on September 19, 2006. The domain name is not currently used and it has never been used since it was registered.

On 25 August, 2009, the Complainant initiated an ADR proceeding. The Complainant, represented by Studio Legale Perani, Paolo Perani, submitted a Complaint against the Respondent claiming that the Respondent registered the “trentingrana.eu” 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.

The ADR Center did not receive any Respondent’s communication. The Respondent did not file a Response to the Complaint and did not provide any communication in the required period. On 28 October 2009, the Czech Arbitration Court issued a Notification of Respondent’s Default.

A. COMPLAINANT

1. The Complainant seeks a decision transferring the disputed domain name to the Complainant.

2. The Complainant submits that the Respondent should be considered as having no right or legitimate interest in the disputed domain name because

• The Respondent has no rights in the contested domain name since the last does not correspond to a trademark registered in the name of Zheng Qingying.
• The domain name at stake does not correspond to the name of the Respondent and, Zheng Qingying is not commonly known as “TRENTINGRANA”.
• The Complainant states that the Respondent registered the domain name which exactly reproduces the trademark in which the

Complainant has exclusive rights. The Respondent's domain name is identical to the domain name "trentingrana.it" registered by the Complainant and connected to its official web site.
• The Complainant is the trademark holder of the name "TRENTINGRANA" (Italian trademark registration n. 800975 "TRENTINGRANA & device", in classes 29 and 30, priority March 26, 1997.
• The Complainant is also the holder of the domain name "trentingrana.it", which is connected to the official web site of the Complainant. (www.trentingrana.it).

3. The Complainant argued that the domain name was registered and is being used in bad faith, because the Respondent does not have any rights or legitimate interests in the domain name, moreover the disputed domain name is not currently used and it has never been used since it was registered more than two years ago. There is no evidence of any preparations for a legitimate commercial or non-commercial use of the disputed domain name.

The Complainant pointed out that the Respondent has already been a party to several ADR .eu cases in which the Panelist ordered the transfer of the disputed domain names since the Respondent failed to produce conclusive evidence of a right or legitimate interest in the domain names. According to the Complainant, the Respondent's frequent speculation in domain names should be considered as further evidence of bad faith.

B. RESPONDENT

The Respondent did not file a Response to the Complaint or any other submission.

DISCUSSION AND FINDINGS

1. The Panel has reviewed and considered the Complainant's Complaint and annexed documents in detail.

2. Article 22.10 of Commission Regulation (EC) No 874/2004 (the "Regulation") and Paragraph B.10(a) of the ADR Rules provide that if a party fails to respond within the given deadlines, the Panel shall proceed to a decision on the Complaint, and may consider the failure to respond as grounds to accept the claims of the counterparty. However in order for the complaint to succeed, the Complainant must demonstrate that the requirements of Article 21.1 of the Regulation and Paragraph B.11(d)(1) of the ADR Rules are satisfied.

3. In accordance with Article 21.1 of the Regulation and Paragraph B.11(d)(1) of the ADR Rules, in order to succeed, the Complainant must establish that:
(a) the disputed domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by national and/or Community law; and either
(b) the domain name has been registered by the Respondent without rights or legitimate interest in the domain name; or
(c) the domain name has been registered or is being used in bad faith.

3.1. The Complainant provided evidence according to the requirements of Article 21 (1) that the domain name is identical to the name of the Complainant's trademark. A trademark is a right recognized or established by national or Community law, therefore the Complainant met the requirements. The Respondent's registration of the disputed domain name is later than the priority of the trademark. In the absence of any Respondent's communication or Response, the Panel agreed with the Complainant's arguments and could not determine any fact or circumstances meeting the Article 21 (2) to establish a right or legitimate interest of the Respondent for using the name.

3.2. The Complainant has also stated that it is the holder of the domain name trentingrana.it, but this domain name registration is not a right within the meaning of Article 10 of the Regulation, not least because it does not arise nor is protected under the law. While the Complainant has also relied upon its trading activities, the Complainant has neither suggested that this gave rise to rights within the meaning of Article 10 of the Regulation, nor explained how such rights would have arisen or be protected under the laws of a Member State. However the right of a trademark holder is enough to comply with the requirements as it was expressed above.

3.3. Therefore, the Panel holds that the Respondent registered the trentingrana.eu domain name without rights or legitimate interest within the meaning of Article 21 (1) (a) of the Regulation.

4. Finally the Panel dealt with the Complainant's submission that the Respondent registered and/or uses the disputed domain name in bad faith.

4.1. The disputed domain name is not currently used and no evidence has been put forward that it ever was in use. The Complainant also proved that the Respondent registered several domain names under .eu and has engaged in abusive domain name registration and use

of the domain names. These facts confirm that the domain name has been registered in order to prevent the trademark holder - Complainant - from reflecting the „trentingrana" name in a corresponding domain name under .eu and the lack of use in a relevant way is also a proof of the bad faith of the Respondent.

4.2. According to the Article 21 (3) bad faith may be found to be present by the existence of the fact that "… (b) 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: … (ii) the domain name has not been used in a relevant way for at least two years from the date of registration"

4.3. On this basis, it is the Panel's view that the registration of the Disputed Domain Name was done in bad faith.

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 trentingrana.eu be transferred to the Complainant in Italy.

DECISION

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

PANELISTS

Name	**Dr. Erika Mayer**

DATE OF PANEL DECISION 2009-12-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought an action against the Respondent for a speculative and abusive registration of the Domain Name "trentingrana.eu". The Complainant is the owner of the Italian trademark „Trentingrana". The Panelist held that the disputed domain name is identical to the Complainant's right derived of the trademark.

The Respondent did not respond to the Complaint.

The Panel finds that the Respondent had no rights or legitimate interest in the name. The Panel made this finding based upon the absence of any evidence that the Respondent was authorized to trade under the name or is commonly known by the name.
The Panel also found that the Disputed Domain Name had been registered in bad faith because the disputed domain name is not currently used and no evidence has been put forward that it ever was in use. The Respondent registered several domain names under .eu and has engaged in abusive domain name registration and use.
The Panel therefore ordered that the Disputed Domain Name be transferred to the Complainant.