Panel Decision for dispute CAC-ADREU-005571

Case number	CAC-ADREU-005571
Time of filing	2009-12-09 14:07:52
Domain names	intersky.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	InterSky Luftfahrt 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 has no knowledge of other legal proceedings pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a known Airline, which operates regular flights from Bregenz to Vienna and other destinations in Austria and Germany.

The Complainant applied for the community trademark registration for “InterSky” in October 2005 for classes 37, 39, 41 and received the registration from OHIM Office for Harmonisation in the Internal Market on 22nd of September 2008 No 004702767.

The Respondent has registered the disputed domain name on October 31, 2006. The domain name is not currently used and it has never been used since it was registered.

On December 4, 2009, the Complainant initiated an ADR proceeding. The Complainant submitted a Complaint against the Respondent claiming that the Respondent registered the “InterSky.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 February 2, 2010, 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 has never used the trademark for his business and is also not a company registered in an EU-State.

3. According to article 10 of EC Regulation No 874/2004, the Complainant holds prior rights in the disputed domain name.

4. According to article 21 EC Regulation No 874/2004, the registration by the Respondent was speculative and abusive as the domain has been registered in bad faith.

5. Complainant has legitimate interests in the trademark because it is operating an enterprise for years under the domain name, which is

registered as community trademark.

6. There are circumstances which indicate that the domain was only registered in order to sell the name to the owner of a trademark. According to comments from several internet users, the Respondent registered a lot of domains in order to sell them to companies with the same name as the domain for high amounts.

7. The Respondent never used the trade mark and is also not a citizen or a company established in an EU-member state.

B. RESPONDENT

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

DISCUSSION AND FINDINGS

1. For granting the Complainant's request for the transfer of the disputed domain name, the Panel has to analyse whether the Complainant demonstrated that the requirements of Article 21.1 of EC Regulation No. 874/2004 and Paragraph B.11(d)(1) of the ADR Rules are satisfied.

2. In accordance with Article 21.1 of EC Regulation No. 874/2004 and Paragraph B.11(d)(1) of the ADR Rules, in order to succeed, the Complainant must establish the following elements:
(a) the disputed domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant 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.

2.1. In connection to the first element, the Panel finds that the Complainant provided evidence according to the requirements of Article 21 (1) EC Regulation No. 874/2004 that the disputed domain name is identical to the Complainant’s Community trademark "InterSky". Further, the Respondent’s registration of the disputed domain name has a later date than the date of request for registration of the trademark.

2.2. The Panel considers the third element, the registration and use in bad faith of the disputed domain name. The disputed domain name is not currently used and no evidence has been put forward that it ever was in use. The Complainant also ascertains, and the Panel at its own investigation found it true, that the Respondent registered several domain names under .eu and has engaged in abusive domain name registration and use of the domain names.

Such circumstances confirm that the disputed domain name has been registered and it has been used in bad faith in the sense of article 21(3) (b) (ii) from Ec Regulation No. 874/2004. The Panel notes that the Complainant alleges that there are circumstances of bad faith in the sense of article 21 (3) (a) of EC Regulation No. 874/2004, but the Panel has not found too much support for this allegation.

In finding the above, the Panel relies also on Default of the Respondent to reply to the Complainant's allegations. According to Article 22.10 of EC Regulation No. 874/2004 and Paragraph B.10(a) of the ADR Rules 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.

3. Because the Complainant is an entity eligible to be the holder of .eu domain name in accordance with the Article 4(2) b) of Regulation 733/2002, the Panel orders that the domain name InterSky.eu be 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 INTERSKY be transferred to the Complainant

PANELISTS

Name	**Beatrice Onica Jarka**

DATE OF PANEL DECISION 2010-03-11

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 “intersky.eu”. The Complainant is the owner of the Community trademark „InterSky”. The Panelist considered 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 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.