Panel Decision for dispute CAC-ADREU-005670

Case number	**CAC-ADREU-005670**
Time of filing	**2010-04-19 09:49:39**
Domain names	**čsob.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Československá obchodní banka, a. s.**

Respondent

Organization / Name	**Martin Ladyr**

FACTUAL BACKGROUND

The Complainant asked in its Complaint for transfer of the disputed domain name "čsob.eu" to the Complainant. The Respondent applied for the domain name "čsob.eu" and registered the domain name on December 10, 2009. EURid activated and registered the respective domain name of the Respondent according to its rules.

A. COMPLAINANT

The Complainant requested the disputed domain name “čsob.eu” to be transferred to the Complainant. This request is based namely on legal argumentation concerning business name of the Complainant and also trademark protection of the word “csob”. Československá obchodní banka a.s. is one of the most prominent and well-known banks in the Czech Republic using its abbreviation "csob" in its entire business. For purposes of protecting the denomination of ČSOB, the Complainant has among others registered and is the owner of various "ČSOB trademarks".

The Complainant further argued that the domain name “čsob.eu” has been registered by its holder, the Respondent, without rights or legitimate interests and that the Respondent registered the domain name in bad faith as the Respondent undoubtedly knew about existence of the Complainant and its use of the denomination of ČSOB at the time of registration of the domain name. Therefore it is apparent, in Complainant’s opinion, that the Respondent has registered the domain name for purposes of abusive and speculative use as defined in Article 21 of the Regulation, i.e. probably for purposes of sale of the domain name, seeking to attract Internet users to websites under the domain name of čsob.eu. The content of the website under the domain of čsob.eu clearly indicates that the domain is for sale. The Complainant further argued that it was obvious that the Respondent had registered the contested domain čsob.eu for purposes of cyber squatting, i.e. in order to sell it, lease it or otherwise harm the Complainant.

B. RESPONDENT

The Respondent stated that the disputed domain name has been registered for Czech based NGO Czech club of hardy nuts in its short form. Club of hardy nuts is just a small organization and the disputed domain name is not crucial for it. The Respondent further stated that "unfortunately there hasn’t been any contact from Complainant. I am sure together we would find some suitable solution for both parties from this accidental name collision."

DISCUSSION AND FINDINGS

1. All procedural requirements for .eu dispute resolution (ADR) were met. The Panelist carefully reviewed all issues concerning the case and relevant rules and by-laws, namely Commission Regulation (EC) No. 874/2004 and Commission Regulation (EC) No. 733/2002, including the relevant provisions of the ADR Rules. There is no doubt that general legal principles shall be obeyed, taking into account the public policy rules as described by Commission Regulation (EC) No. 874/2004 at the same time. The Panel is of the opinion that the justice shall always rule over the formalistic approach and technical means of communication.

2. Article 22 of the Commission Regulation (EC) No. 874/2004 in its Article 1 clearly says that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of the above Regulation.

3. According to Article 21 of the same Regulation a registered name shall be subject to revocation where:
(i) the 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 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 main question for the decision is whether the Complainant has proven that the registered 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 member state, that the domain name has been registered by the Respondent without its rights or legitimate interest in the name and/or that the domain name has been registered or is being used in bad faith.

The Panel came to the following conclusions:

4. IDENTICAL OR CONFUSINGLY SIMILAR
It was proven by the Complainant that his firm name is “ČSOB” as commonly known abbreviation in the Czech as well as international business.

It is also proven that the Czech law (i.e. the national law according to Article 21 of the Commission Regulation (EC) No. 874/2004 and Article 10 of this Regulation) recognizes the trade marks as so called prior rights. The Complainant is the owner of the following trade marks registered in the Czech Republic:
ČSOB (verbal), Registration No. 226433;
ČSOB (combined), Registration No.: 226435;
ČSOB (verbal), Registration No.: 240752.

The domain name is clearly identical to the trade marks of the Complainant and to the abbreviation of its company name, the .eu suffix not being taken into consideration as commonly concluded by numerous ADR decisions.

5. NO RIGHTS OR LEGITIMATE INTEREST
Article 21 of the Commission Regulation (EC) No. 874/2004 stipulates what shall be understood a legitimate interest and how a legitimate interest can be demonstrated.

The Panel is of the opinion that although the burden of proof lies with the Complainant to prove the non-existence of a right or legitimate interest of the Respondent, the relevant facts lie mostly in the sphere of the Respondent. Therefore the Panel holds that it is sufficient that the Complainant contends that the obvious facts do not demonstrate a right or legitimate interest of the Respondent and the onus then shifts to the Respondent to produce factual evidence for a right or legitimate interest.

It has to be stated that the Respondent did not demonstrate neither did it prove any legitimate interest according to the said Article 21 of the above Regulation.

The Respondent only stated that the disputed domain name has been registered for Czech based NGO Czech club of hardy nuts in its short form (Český spolek otužilých bláznů). As alleged by the Respondent, the club of hardy nuts is just a small organization and the disputed domain name is not crucial for it.

The Panel also verified from the public sources that there is no evidence on trade mark registered in favour of the Respondent, the organization is not listed on different search engines like Google or others. It rather seems that the Respondent and its business is a vehicle to register different domain names probably with a speculative aim.

In the opinion of the Panel, the Respondent did not demonstrate sufficiently its rights or legitimate interest in the domain name when stating just very simple response leading the Panellist to believe that the disputed domain is not crucial for the Respondents business.

6. BAD FAITH
According to Article 21 of the Commission Regulation (EC) No. 874/2004 a registered domain name shall be subject to revocation if EITHER the domain name has been registered by the Respondent without rights or legitimate interest in the name; OR the domain name has been registered or is being used in bad faith. As the Panel already came to the conclusion that the Respondent has no right it legitimate interest in the domain name, it is not necessary to examine the question of bad faith.

Nevertheless, the Panel would like to point out that the Respondent himself, indeed, confirmed its abusive and bad faith behaving when saying in its response only that the domain name is not crucial for him and that he is ready to find a suitable solution. The Respondent did not even try to justify his business and legitimate interest in the disputed domain name.

7. ELIGIBILITY OF THE COMPLAINANT TO REGISTER .EU DOMAIN NAMES
It was proven by the Complainant and from public sources that the Complainant satisfied the general criteria for registration set out in § 4 (2) (b) of Regulation (EC) No. 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 of the ADR Rules and B11 (b) of the ADR Rules, the Panel orders that the domain name “čsob.eu” shall be transferred to the Complainant.

This decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction.

PANELISTS

Name	**Vit Horacek**

DATE OF PANEL DECISION 2010-06-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant requested the disputed domain name “čsob.eu” to be transferred to the Complainant. The Respondent applied for and its domain name was registered on December 10, 2009. The Complainant argued that the domain name “čsob.eu” has been registered by its holder – the Respondent without rights or legitimate interests and therefore shall be transferred to the Complainant. The major argument was that the word “csob” is part of the Complainant’s business name and is also protected under the Czech Trademarks Act. The Respondent did not justify neither has proven its possibility to protect its legitimate interests. The Panel reviewed namely public sources and discovered that the Complainant has registered and used properly the relevant and similar trademarks. The Panel finally decided to transfer the domain name to the Complainant, namely because of the fact that no legitimate interest of the Respondent (the disputed domain name holder) was proven and demonstrated.