# Panel Decision for dispute CAC-ADREU-005685

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| Case number | **CAC-ADREU-005685** |
| Time of filing | **2010-05-05 09:13:43** |
| Domain names | **bigbank.eu** |

## Case administrator

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| Name | **Tereza Bartošková** |

## Complainant

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| Organization / Name | **BIGBANK AS, Mr Targo Raus** |

## Respondent

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| Organization / Name | **Aphrodite Ventures, Ltd, Aphrodite Ventures Ltd** |

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 proceedings between the parties related to the domain name in question.

FACTUAL BACKGROUND

The Respondent registered the domain name “bigbank.eu” on April 7, 2006.

In this context, the Complainant brought a complaint against the Respondent on 5 May, 2010 (hereinafter the “Complaint”).

The Respondent failed to file the response (hereinafter the “Response”) to the Complaint.

A. COMPLAINANT

The Complainant summarized that it is a credit institution established in Estonia in 1992 with banking license since 2005 currently operating under the business name “BIGBANK” in six EU Member States, namely, in Estonia, Latvia, Lithuania, Finland, Germany and Austria, holding several trademarks and domain names that include the respective business name “BIGBANK”.

The Complainant pointed out that the Respondent registered several domain names on the first days of the land rush, including following domain names: “spacewall” (ADR case no. 05040), “kornferry” (ADR case no. 04843), “microapp” (ADR case no. 04616), “skinstore” (ADR case no. 04440) and “eurokera” (ADR case no. 04069). According to the Complainant, in these cases the Respondent failed to file a response and the cases led to the revocation (transfer) of the respective domain name. In the opinion of the Complainant, this clearly confirms that the Respondent has been engaged in systematic bad faith domain name registrations. To support its standpoint, the Complainant further stated that has tried to contact the Respondent via e-mail, fax, phone and registered letter using the contact information indicated in the WHOIS database for “bigbank.eu” and/or “aphroditeventures.com”. However, the Respondent was unreachable and did not reply and the registered letter was returned as undelivered. Furthermore, the webpage of Aphrodite Ventures (aphroditeventures.com) seems to be inactive, no IP address or DNS records were found.

In the opinion of the Complainant, the registration of the domain name “BIGBANK” is speculative and abusive, because the domain name is confusingly similar to a name in respect of which a right is recognized by national and/or Community law.

According to the Complainant more than 25 trademarks are registered or being registered by the Complainant, in particular:

(a) in Estonia, the word trademark “BIG“, registered on January 28, 2010, (registration no. 47103) and several figurative trademarks with the dominating verbal element “BIGBANK” have been applied for;

(b) in Lithuania, a figurative trademark with the dominating verbal element “BIGBANK” registered on April 8, 2008 (registration no. 56877) and another similar trademark with the dominating verbal element “BIGBANK” registered on January 21, 2010 (registration no. 61565);

(c) in Latvia, figurative trademark containing the dominant verbal element “BIGBANK” registered on January 20, 2010, (registration no. M 61 672);

(d) in Finland, registration of the figurative trademark containing the dominant verbal element “BIGBANK” is pending based on application dated July 11, 2008.

Moreover, the Complainant has registered a community trademark containing the dominating verbal element “BIGBANK” (applied for on June 4, 2008), registration completed on March 20, 2009 (reg. no 006962138).

The Complainant further argued that it bears a full business name “BIGBANK AS” since January 23, 2009, however, at least since September 2005 it has been commonly known as “BIG“ bank as official business name since 2005 was Balti Investeeringute Grupi Bank. The business name was commonly abbreviated as BIG which results from the first letters of “Balti Investeeringute Grupi” and additionally the word “bank” has been added in common speech to mark the field of activity. Therefore, even before the official change of the business name the abbreviation BIG was extensively used both in Estonia and in several other countries with the addition of bank as the field of activity. Moreover, the branch offices of the Complainant in Latvia, Lithuania and Finland carry the same business name “BIGBANK“ with the addition of the word “branch” in the local languages. The Complainant also operates in Germany and Austria on cross-border basis carrying a business name “BIGBANK“.

It was further stressed by the Complainant that the Respondent on the other hand has no relationship to the word “BIGBANK“. By registering the domain name the Respondent created a likelihood of confusion. An average consumer may easily get the false impression that a relation exists between the Complainant and the Respondent.

The Complainant stated that it is a holder or user of about 30 domain names and more than
10 of them contain the word “BIGBANK“. The Complainant further claimed that it is the proprietor of unregistered trademark rights in relation to laws of the Member states of the European Union and Community law by virtue of the substantial reputation that it has developed in the “BIGBANK“ trademark, even though the Complainant has not yet deemed necessary to ask for such recognition by the courts.
According to the Complainant the mark “BIGBANK” became well known and famous in the field of offering consumer credit and deposit services already before changing the business name officially to “BIGBANK AS“. Thus, the Complainant has better rights to hold the domain name “bigbank.eu“.

In the opinion of the Complainant, the respective domain name has been registered by the Respondent without rights or legitimate interest in the name and it has been registered or has been used in bad faith and no proof of rights or legitimate interest to the respective domain name has been found.
The Complainant argued that to its knowledge there has been no use of the domain name in question whatsoever. According to the Complainant, before coming to that conclusion among others, it conducted a search via Google® to see whether the name “BIGBANK“ and the name of the Respondent have been used and no results came up. No such press releases or other information can be found as well.

Complainant further summarized that it is eligible for the transfer of the domain name on the ground, that it satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No. 733/2002. The Complainant is registered in Estonia and it has its central administration there.

Based on the above stated, the Complainant requested the transfer of the disputed domain name “bigbank.eu” to the Complainant.

## B. RESPONDENT

The Respondent did not submit the Response to the Complaint.

## DISCUSSION AND FINDINGS

As it results from section B 11 (d) (1) of the ADR Rules, Article 21 (1) of the (EC) Regulation No. 874/2004 (hereinafter the “Regulation”), Article 4 (2) (b) (EC) Regulation No. 733/2002, it is possible to transfer the respective domain name in question to the entity (having its registered office or central administration within the EU or is established within the EU) in a case the following conditions are fulfilled:

(A) domain name in question is identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a Member State and/or Community law (hereinafter also referred to as the “Prior Right”) and; either

(B) domain name in question has been registered by its holder without rights or legitimate interest in the name; or

(C) domain name in question has been registered or is being used in bad faith.

According to Article B 11 (a) of the ADR Rules a Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules. Due to the fact that the Respondent did not provide any statement in the ADR Proceeding the Panel could only examine the submission and documentary evidence provided from the part of the Complainant.

Firstly, the Panel dealt with the question whether domain name “bigbank.eu” is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law. Based on the review of the submission and documentary evidence provided by the Complainant, the Panel concluded that the Complainant has Prior Right to the name “BIGBANK” that is confusingly similar to the domain name in question, i.e. “BIGBANK”. This fact clearly appears from the company name of the Complainant that contains dominant and characteristic element “BIGBANK” as well as from various trademarks registered by the Complainant, in particular, from the Community Trademark (reg. no. 006962138) containing dominating verbal element “BIGBANK”. The condition mentioned under letter (A) above is therefore fulfilled.

Secondly, regarding the fulfillment of the condition set out under letter (B) above, the Panel examined whether the Respondent has registered domain name in question without rights or legitimate interest. Due to the fact that the Respondent did respond to the Complaint, the Panel further considered the Complaint including attached documentary evidence provided by the Complainant. As it results from the review of relevant facts and documentary evidence available to the Panel, there is no proof of the existence of any rights or legitimate interest related to the domain “BIGBANK” from the part of the Respondent. Thus, it appears that the Respondent has registered the domain name “bigbank.eu” without rights or legitimate interest. The condition mentioned under letter (B) above is therefore fulfilled.
On the ground that the conditions stated above under letters (A) and (B) are fulfilled, the Panel did not further consider whether the condition specified under letter (C) above is met as well.

Moreover, due to the fact that the Complainant is registered by the Commercial Registry in Estonia and has its registered office and central administration in Estonia, the general eligibility criteria set out in Article 4(2) (b) of the Regulation (EC) No. 733/2002 is met as well.

Based on the reasons mentioned above, the Panel concluded that all conditions set out for the transfer of the disputed domain name “bigbank.eu” to the Complainant are met.

DECISION

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

## PANELISTS

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| Name | **Aleš Chamrád** |

DATE OF PANEL DECISION 2010-08-17

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has brought a complaint against the Respondent who registered domain name “bigbank.eu” on April 7, 2006.

The Complainant inter alia argued that the domain name is confusingly similar to the relevant part of the company name “BIGBANK” of the Complainant as well as it is confusingly similar to the dominating verbal element “BIGBANK” contained in various national and community trademarks owned by the Complainant, in particular, the Community Trademark (reg. no. 006962138). Furthermore, the Complainant stated that the Respondent registered the respective domain without having any rights or legitimate interest and in bad faith. The Respondent failed to provide any Response to the Complaint.

The Panel came to the conclusion that the domain in question, i.e. “BIGBANK” is confusingly similar to the respective part of the

company name of the Complainant, i.e. “ BIGBANK” and confusingly similar to the dominating verbal element “BIGBANK” contained in the Community Trademark (reg. no. 006962138).

Moreover, due to the fact that the Complainant provided the Panel with the facts confirming the lack of rights or legitimate interest from the part of the Respondent in regard to the disputed domain name and the Respondent failed to provide the Panel with any Response the Panel further concluded that the Respondent has no rights and no legitimate interest in regard to the disputed domain name “BIGBANK”.

Therefore, the Panel orders that domain name be transferred to the Complainant.