Panel Decision for dispute CAC-ADREU-005792

Case number	CAC-ADREU-005792
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Domain names	timet.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Titanium Metals Corporation

Respondent

Organization / Name	ATAK TEKNOLOJI, Bahaddin YAZICI

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 legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner of several trademarks containing word “TIMET”.
The Respondent registered the domain name “timet.eu”. The Complainant requests revocation of the domain name “timet.eu” pursuant to paragraph B11(b) of the ADR Rules.

A. COMPLAINANT

The Complainant was formed in 1950 and was incorporated in Delaware, United States of America, in 1955. The Complainant has been known on the market since 1950 as TIMET, and is the world’s largest supplier of titanium metal products including titanium research, manufacturing and sales. The Complainant has a global presence, including premises in the United States of America, the United Kingdom, France and Italy. The Complainant’s products include titanium sponge, melted products, mill products and industrial fabrications. The Complainant’s products are used in commercial and military aerospace applications, armour plating, structural components, chemical plants, power plants, desalination plants, pollution control equipment, oil and gas production installations, automotive, geothermal facilities and architectural applications. The Complainant is also a major recycler of titanium scrap.

The Complainant is very well known the world over, including in Europe, under the TIMET name, and prominently features the TIMET name in its advertising. The Complainant owns over 65 trademark registrations worldwide for its various marks, including TIMET, TIMET and Design, and TIMETAL. The trademarks are registered for metals, titanium and titanium alloys in Class 6, in the United States of America, the United Kingdom, Community Trade Marks, Germany, France, Italy and Belgium. Since long prior to the registration of the disputed domain name by the Respondent, the Complainant has owned the registered domain name <timet.com>, as well as the following domain names also including the “TIMET” name or variants thereon: <timetautomotive.com>; <timetal.com>; and <tmet.com>.

The Complainant has built up goodwill and reputation in the TIMET mark in relation to titanium and other metals around the world.

The disputed domain name was registered on 01 October 2007 by "Bahaddin Yazici" of Atak Teknoloji. However, the Complainant understands that the company using the disputed domain name is Turkish company Timet Titanium & Medical & Mining, which is involved in the titanium industry. Therefore, there can be no doubt that it was aware of the Complainant and its marks at the time that it registered the disputed domain name. The website accessible under the disputed domain name resolves the web users to www.timettitanyum.com after a few seconds.

The Complainant fulfils the criteria in the first element of Article 21(1) of the Public Policy Rules. The Complainant has rights in names

which are recognised by national and/or Community laws, such as the trade mark registrations. The disputed domain name is identical to the registered trademarks that consist solely of TIMET and confusingly similar to the registered trademarks which contain the word TIMET, which are rights recognised by Community law. The disputed domain name would be understood as the European arm of the mark TIMET, leading consumers to perceive a nexus between the Complainant and the Disputed Domain Name. The disputed domain name is further identical (or in some cases confusingly similar) to the Complainant's own name, names of subsidiaries and affiliates of the Complainant.

There is no legal or business relationship between the Complainant and the Complainant has not licensed, authorised or permitted the Respondent to use any of its trade marks nor has it licensed, authorised or otherwise permitted the Respondent to apply for or use any domain name incorporating its trade mark. The Complainant's use and registration of its TIMET trademarks predates registration of the disputed domain name (01 October 2007) by many years. The Respondent is not commonly known by the disputed domain name, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant's trade marks in issue. In summary, there is no justification for the Respondent's registration of the Disputed Domain Name: it is a commercial exploitation of the TIMET marks, with all of their positive associations and goodwill. The Complainant therefore submits that the Respondent has no rights or legitimate interests in the disputed domain name: the Complainant fulfils the criteria in Article 21(1)(a) of the Public Policy Rules.

The Complainant submits that the Disputed Domain Name was registered and is being used by the Respondent in bad faith. While the Complainant is unaware of an approach from the Respondent regarding selling, renting, or otherwise transferring the domain name to the Complainant, the effect, rather than the intention of the registration is to prevent the earlier rights holder from reflecting its name in a corresponding domain name: the Complainant fulfils the criteria in Article 22(3) of the Public Policy Rules. By registering and using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web sites or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web sites or location or of a product or service on the Respondent's web sites or location. In this respect any Internet user interested in titanium products or the titanium industry will know that the Complainant is the world's largest supplier of titanium products, and that those products are supplied under the TIMET mark. As such, an Internet user as described above would be confused into thinking that any website at the disputed domain name were in some way sponsored, affiliated or endorsed by the Complainant. This is even more the case when the websites at the Disputed Domain Name offer for sale titanium products. The company which actually uses the website has used the contact details of its web developer, Atak Teknoloji Ltd. Sti., rather than its own. The Complainant believes this was in an attempt to shield its real identity.

For the above reasons, the Complainant submits that the disputed domain name should be revoked, on the basis that it is identical to TIMET, which is a name in which the Complainant has rights recognised by national and/or Community laws (as appropriate); and has been registered without rights or legitimate interest in the name; and registered and is being used in bad faith.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

According Article B11(d)(1) of the .eu Alternative Dispute Resolution Rules (ADR Rules) the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR proceeding where the Respondent is the holder of the domain name in respect of which the Complaint was initiated that
(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.
Article 21(1) of the Commission Regulation (EC) 874/2004 of 28 April 2004 (Public Policy Rules) contains similar provision.

I. Condition according to Article B11(d)(1)(i) of the ADR Rules

The Complainant submitted several excerpts from the trademarks registers to prove the existence of the registered trademarks containing the name "TIMET". The word element "TIMET" is the only element of the Community trade mark No. 130351, and the most distinctive part of the Community trademark No. 918904. Besides that, there are several Complainant's national trademarks with the only or most distinctive word "TIMET" (e.g. BeNeLux trademark No. 0355009). It may be stated that "TIMET" is a dominant element of all these trademarks.

Without a doubt, the Complainant has proven the existence of its rights to the name “TIMET” as recognized by national law of a Member State (e.g. BeNeLux trademark) and Community law (CTM 130351 and 918904).

The Panel therefore came to the conclusion that the domain name “timet.eu” is identical with the prevailing element of the trademarks of the Complainant. Therefore, the Panel concludes that the condition set forth under Article B11(d)(1)(i) of the ADR Rules has been fulfilled. This conclusion could not be affected by the existence of the suffix “.eu” as a part of the “timet.eu” domain name, as this suffix is not relevant for the consideration of the identity and similarity of the domain name as stated in ADR 596 (RESTAURANTS), ADR 475 (HELSINKI) and ADR 387 (GNC) decisions.

II. Condition according to Article B11(d)(1)(ii) of the ADR Rules

The Complainant contends that the Respondent has no rights or legitimate interest in the domain name.

The Panel is of the opinion that it is very difficult for the Complainant to prove the non-existence of rights or legitimate interest of the Respondent. It is predominantly upon the Respondent to demonstrate the existence of his rights or legitimate interest in the domain name, but the Respondent has not responded to the Complaint at all. Therefore, the Panel had to review the existence of the Respondent’s right or legitimate interest on the basis of Complainant’s arguments and evidence only.

The legitimate interest is defined in more detail in Article 21(2) of the Public Policy Rules (and similarly in Article B11(e) of the ADR Rules) which contains a demonstrative enumeration of the circumstances which may prove the rights or legitimate interest.

The Complainant proved that the domain name is used for the purposes of the redirection of the web user to a website of another company involved in the “titanium” industry. At the moment of the Panel’s decision the website available on the internet address consisting of the “timet.eu” domain name redirects the visitor to a website www.timet.com.tr immediately.

The Panel concludes that it has not been demonstrated that the Respondent (being a person different from the Turkish company Timet Titanium & Medical & Mining to which web presentation domain name “timet.eu” points) has really used the domain name prior to the notice of an ADR procedure in connection with the real offer of goods or services. Furthermore, it has not been demonstrated that the Respondent has made demonstrable preparation to do so (Article B11(e)(1) of the ADR Rules).

Furthermore, it has not been proved that the Respondent has been commonly known by the domain name (Article B11(e)(2) of the ADR Rules), nor was 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 recognized or established (Article B11(e)(3) of the ADR Rules).

No circumstance demonstrating the existence of right or legitimate interest of the Respondent has been proved. Therefore, the Panel concludes that the domain name “timet.eu” has been registered by the Respondent without rights or legitimate interest in the name.

III. Condition according to Article B11(d)(1)(iii) of the ADR Rules

The Complainant contends that the Respondent registered and uses the domain name in bad faith. The bad faith is defined in more detail in Article 21(3) of the Public Policy Rules (and similarly in Article B11(f) of the ADR Rules) which contains a demonstrative enumeration of the circumstances which may prove the registration or use of a domain name in bad faith.

The Panel is of the opinion that the domain name “timet.eu” has been registered in order to prevent the Complainant (or its affiliates) from reflecting this name in the corresponding domain name (Article 21(3)(b)(i) of the Public Policy Rules) or in order to benefit from the general knowledge of the Complainant in the titanium industry (the possible reason why the domain name “timet.eu” is being redirected to the other company involved in titanium industry) and attract, for commercial gain, Internet users to the Respondent’s web sites or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web sites or location or of a product or service on the Respondent’s web sites or location (Article 21(3)(d) of the Public Policy Rules).

Therefore, the conditions set up in Article 21(3)(b)(i) and Article 21(3)(d) of the Public Policy Rules are met and the Panel concludes that the domain name timet.eu has been registered by the Respondent in bad faith.

The Complainant has satisfied the requirements of the Article 21(1) of Public Policy Rules and Article B11(d)(1) of the ADR Rules. Therefore, the Panel finds the Complaint as justified and decided that the disputed domain name should be revoked pursuant to Article B11(b) of ADR Rules and pursuant to Article 22(11) of the Public Policy Rules.

DECISION

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

the domain name TIMET be revoked

PANELISTS

Name	Petr Hostas

DATE OF PANEL DECISION 2010-12-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the owner of several national and Community trademarks with dominant (or only one) word element “timet”. The domain name “timet.eu” registered by the Respondent is therefore identical with the prevailing element of the trademarks of the Complainant.

The Respondent has not responded to the Complaint and has not provided the Panel with any evidence demonstrating the existence of Respondent’s rights or legitimate interest in the name “timet.eu”. Besides that, from the evidence provided by the Complainant, no circumstance demonstrating the existence of right or legitimate interest of the Respondent has been proved. Therefore, the Panel concluded, that the domain name “timet.eu” was registered by the Respondent without rights or legitimate interest in the name.

Furthermore, the Panel is of the opinion that the domain name “timet.eu” was registered by the Respondent in bad faith as it has been highly probably registered in order to prevent the Complainant from reflecting this name in the corresponding domain name as the name “timet” is known as a name of the titanium products used for many years by the Complainant. Besides that, the domain name “timet.eu” is being used for the redirection of the web users only, whereas the targeted web site is a website of another company involved in the titanium industry.

Due to the registration without rights or legitimate interest and registration in bad faith the Panel decided in favor of the Complainant and ordered that the domain name be revoked.