Panel Decision for dispute CAC-ADREU-005818

Case number	**CAC-ADREU-005818**
Time of filing	**2011-02-15 10:28:00**
Domain names	**koudsi.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Mohammad Ziad Koudsi**

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 which are presently pending in relation to the disputed domain name <koudsi.eu>.

It has been brought to the Panel's knowledge that court proceedings have been taken place at the Brussels Court of first instance and subsequently at the Brussels Court of Appeal in the relation to the disputed domain name <koudsi.eu> with EURid as the Complainant and with Zheng Qingying as the Respondent. The Brussels Court of Appeal has issued its decision in the case confirming, inter alia, that Zheng Qingying was not eligible to register .eu domain name according to Regulation (EC) No 733/2002. The afore mentioned court proceedings are according to the Panel's knowledge now concluded and there are no pending legal proceedings in relation to the disputed domain name <koudsi.eu>.

FACTUAL BACKGROUND

The Complainant has requested transfer of the domain name <koudsi.eu> to the Complainant by initiating ADR proceedings.

The Complainant is Mohammed Ziad Koudsi, who is a Dutch citizen residing in Nijmegen in the Netherlands.

The Complainant is the proprietor of, inter alia, the trade name Koudsi Graphics registered on 1 March 1990 at the Chamber of Commerce in the Netherlands, and also the proprietor of a Benelux trademark registration no. 886729 in the international trademark classes 16, 35 and 42 for a figurative mark comprising the word element Koudsi. The application for the said trademark was filed on 24 August 2010 and the trademark was registered on 10 November 2010.

The Complainant originally filed an application for the domain <koudsi.eu> on 2 February 2006 basing its application on its rights to the trade name Koudsi Graphics, but the application was not accepted for registration by EURid. The reasoning of the refusing decision was that the trade name did not consist solely of the dominant element "Koudsi", but also incorporated the element "Graphics".

The Respondent registered the domain name <koudsi.eu> on 12 December 2006.

The Complaint was filed on 11 October 2011 and was amended on 24 October 2011 based on notification received on deficiencies on the Complaint.

The Respondent filed a Response to the Complaint on 8 November 2011.

A. COMPLAINANT

The Complainant seeks a transfer of the disputed domain name <koudsi.eu> (hereinafter referred to as the "Disputed Domain Name")

from the Respondent to the Complainant.

The Complainant has made the following contentions:

The transfer of the Disputed Domain Name is sought by the Complainant based on Paragraph B 11 (d) (1) (i) and the Paragraph B 11 (d) (1) (iii) of the .eu Alternative Dispute Resolution Rules (hereinafter "the ADR Rules"). The afore mentioned means that the Complainant argues that the Disputed 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 a Member State and/or Community law and that the Disputed Domain Name has been registered or is being used in bad faith.

The Complainant is Dutch citizen and his full name is Mohammed Ziad Koudsi. This is evidenced by submitting the Panel with a copy of the Dutch Passport of Mohammed Ziad Koudsi.

The Complainant states that it has run a one man business under the trade name Koudsi Graphics since 1 march 1990 and submits a copy of the Trade Register extract evidencing that the trade name Koudsi Graphics has been registered at the Chamber of Commerce in the Netherlands on 3 March 1990.

The Complainant further submits proof of that he is the proprietor of a Benelux trademark registration no. 886729 for a figurative mark comprising the word element Koudsi since 24 August 2010 (the application for the said trademark was filed on 24 August 2010 and the trademark was registered on 10 November 2010).

According to the Complainant, it is apparent that the Disputed Domain Name is identical and/or confusingly similar to the rights owned by the Complainant, these rights being the family name of the Complainant, the trade name owned by the Complainant and the Benelux trademark registration owned by the Complainant.

The Complainant states that the Respondent, Zheng Qingying, has no interest whatsoever to the Disputed Domain Name <koudsi.eu>.

The Complainant also refers to the judgement of the Brussels Court of Appeal concerning the Disputed Domain Name in which EURid was the Complainant and the Respondent was the same as in this case, i.e. Zheng Qingying. According to the Complainant the Brussels Court of Appeal has issued its decision in the case confirming that Zheng Qingying was not eligible to register .eu domain name according to Regulation (EC) No 733/2002.

According to the Complainant both the Brussels Court of first instance and the Brussels Court of Appeal ruled that the Respondent Zheng Qingying was not eligible to register .eu domain name due to being a Chinese citizen and not a citizen of any of the member states in the European Union. Further, the Brussels Court of first instance and the Brussels Court of Appeal ruled that the Respondent Zheng Qingying registered altogether 9000 domain names in bad faith.

The Complainant finally refers to the decisions already issued against Zheng Qingying concerning other .eu domain names than the Disputed Domain Name stating that this demonstrates a pattern of conduct of registering domain names in bad faith.

B. RESPONDENT

The Respondent has in its response stated that it requests to have the Disputed Domain Name revoked or transferred to the Complainant, referring (rather vaguely) to a decision issued by a Belgian court.

DISCUSSION AND FINDINGS

First of all, the Panel notes that the Complainant satisfies the general eligibility criteria for registration according to Paragraph 4 (2) (b) of Regulation (EC) No 733/2002.

According to Articles 21 (1) and 22 (11) of the Commission Regulation (EC) No 874/2004 and Paragraph B 11 (d) (1) of the ADR Rules the Complainant bears the burden of proof in proving the following:
(i) The 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 a Member State 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.

The first requirement is that the 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 a Member State and/or Community law. The Panel finds as follows:

- The Disputed Domain Name is <koudsi.eu>. The Complainant is the holder of the trade name Koudsi Graphics registered at the Chamber of Commerce in the Netherlands and the proprietor of a Benelux trademark registration no. 886729 in the international trademark classes 16, 35 and 42 for a figurative trademark comprising a clear and predominant word element Koudsi.

- At the time when the Respondent registered the disputed domain name, the Complainant did not yet own the Benelux trademark registration no. 886729, but was already the holder of the trade name Koudsi Graphics, which is identical with respect to its predominant prefix element “Koudsi” to the Disputed Domain Name and therefore also confusingly similar to the Disputed Domain Name

- The Disputed Domain Name is identical to the trade name to which the Complainant holds rights to and which right is recognized by the national law of a Member State. The disputed domain name is also identical to, or at least confusingly similar to the trademark to which the Complainant holds rights to at the time of filing of the Complaint, even though this was not the case at the time the Respondent registered the Disputed Domain Name.

- The Disputed Domain Name is identical to the family name of the Complainant. However, it is unclear to the Panel whether a right to a family name can be considered as a right which is recognized or established by the national law of a Member State, i.e. in this case the Netherlands, since no evidence of such recognition under the national law has been brought to the Panel’s attention.

- Based on the foregoing and after considering all the facts of the case carefully the Panel concludes, that it finds that the requirements under Paragraph B 11 (d) (1) (i) of the ADR Rules are met.

The second (alternative) requirement is that the domain name has been registered by the Respondent without rights or legitimate interest in the name. The Panel finds as follows:

- The Respondent has been duly given a proper chance to provide argumentation and evidence on having rights or legitimate interest in the Disputed Domain Name, but the Respondent has not made any submissions in this respect. The Respondent has thus failed to present any evidence of rights or legitimate interest in the Disputed Domain Name, although it was duly given a chance to do so.

- As the Complainant has made a fair effort to establish a prima facie lack of rights or legitimate interest in the disputed domain name on the part of the Respondent, and the Respondent has failed to rebut the Complainant’s claims as well as failed to present any evidence of its rights or legitimate interest in the Disputed Domain Name, the Panel must come into conclusion that the Respondent has registered the disputed domain name without rights or legitimate interest in the name.

- Based on the foregoing, the Panel concludes that it finds that the requirements under Paragraph B 11 (d) (1) (ii) of the ADR Rules are met.

The third (alternative) requirement is that the domain name has been registered or is being used in bad faith. The Panel finds as follows:

- The intention beneath the Commission Regulations (EC) 733/2002 and (EC) 874/2004, as is apparent from the recitals of the said regulations, has been to allow holders of legitimate and genuine prior rights to register domain names, which correspond to their proprietary rights. The intention has not been to allow for speculative and abusive domain name registrations based on such applications, which are not based on genuine and bona fide need for an exclusive right, but instead to prevent any such speculative and abusive registrations.

- The Complainant has brought forward that the Respondent has been involved in the court proceedings at the Brussels Court of first instance and the Brussels Court of Appeal, which have both ruled that was the Respondent was not eligible to register .eu domain name due to being a Chinese citizen and not a citizen of any of the member states in the European Union. The Panel finds that the fact that the Respondent has, however, tried to act as a British citizen under a British company name when registering the Disputed Domain Name demonstrates the bad faith of the Respondent.

- The Complainant has brought forward that the Brussels Court of first instance and the Brussels Court of Appeal ruled that the Respondent registered altogether 9000 domain names in bad faith.

- Furthermore, according to the information the Complainant has submitted and in accordance with the Panel’s own investigations, there are several .eu ADR proceedings conducted against the Respondent so far, and the bad faith of the Respondent is evidenced in these already concluded ADR proceedings.

- The Panel finds that the aforesaid conduct by the Respondent indicates that it has been engaged in the conduct of registering domain names which correspond to lawfully recognized rights owned by third parties.

- Based on the foregoing, the Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary.

- The Panel therefore concludes that the Respondent has registered the domain name in bad faith and that the requirements under Paragraph B 11 (d) (1) (iii) of the ADR Rules 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 <koudsi.eu> be transferred to the Complainant

PANELISTS

Name	**Sanna Aspola**

DATE OF PANEL DECISION 2011-12-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has requested transfer of the Disputed Domain Name to the Complainant by initiating ADR proceedings.

The Complainant, Mohammed Ziad Koudsi, is the proprietor of, inter alia, the trade name Koudsi Graphics registered on 1 March 1990 at the Chamber of Commerce in the Netherlands, and also the proprietor of a Benelux trademark registration no. 886729 in the international trademark classes 16, 35 and 42 for a figurative mark comprising the word element Koudsi.

The Respondent registered the domain name <koudsi.eu> on 12 December 2006.

The Panel made, inter alia, the following discussions and findings:

The Panel finds that Disputed Domain Name is identical to the trade name to which the Complainant holds rights to and which right is recognized by the national law of a Member State. The disputed domain name is also identical to, or at least confusingly similar to the trademark to which the Complainant holds rights to at the time of filing of the Complaint. However, the Panel has noted that the Complainant was not the holder of the afore mentioned trademark yet at the time the Respondent registered the Disputed Domain Name. Based on the foregoing and after considering all the facts of the case carefully, the Panel concludes that it finds that the requirements under Paragraph B 11 (d) (1) (i) of the ADR Rules are met.

The Complainant has made a fair effort to establish a prima facie lack of rights or legitimate interest in the disputed domain name on the part of the Respondent, and the Respondent has failed to rebut the Complainant's claims as well as failed to present any evidence of its rights or legitimate interest in the disputed domain name, the Panel must come into conclusion that the Respondent has registered the disputed domain name without rights or legitimate interest in the name. Based on the foregoing, the Panel concludes that it finds that the requirements under Paragraph B 11 (d) (1) (ii) of the ADR Rules are met.

Several .eu ADR proceedings against the Respondent have been conducted so far and the Panel finds that the Respondent has been engaged in the conduct of registering domain names which correspond to lawfully recognized rights owned by third parties.

Based on the foregoing, the Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent has registered the domain name in bad faith and that the requirements under Paragraph B 11 (d) (1) (iii) of the ADR Rules are met.

For all the foregoing reasons, the Panel orders the Disputed Domain Name <koudsi.eu> to be transferred to the Complainant.