Panel Decision for dispute CAC-ADREU-005844

Case number	CAC-ADREU-005844
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Domain names	orieme.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	ORIEME ITALIA S.p.A.

Respondent

Organization / Name	ICRON SERVICES LTD, ICRON SERVICES 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 has not been informed of any other legal proceedings that are pending or decided in relation to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an Italian company which manufactures and installs electrical appliances, exhaust fans, cooling and heating air conditioning.
The Complainant's company name ORIEME ITALIA S.p.A. was registered in Italy in 1973, as highlighted by the extract from the Italian Register of Companies attached to the Complaint.
The Complainant is the owner of the following trademark registrations:
- International Trademark Registration No. 592512 for "Orieme" (word mark), registered on October 16, 1992, in classes 9 and 11;
- the Community Trademark Registration No. 3624749 for "orieme" (figurative mark, constituted by the word "orieme" surmounted by the stylised representation of a bird), filed on January 19, 2004 and registered on June 28, 2005, in classes 9, 11 and 14.
The Complainant is also the owner of the domain name "orieme.com", registered on June 21, 1997.

The disputed domain name has been registered by the Respondent on July 11, 2006.

A. COMPLAINANT

The Complainant contends that it has established rights to the name ORIEME and relies on its registered trademarks for ORIEME, on the registered company name Orieme Italia S.p.A. and on its prior domain name <orieme.com>.
The Complainant points out that, between October 20, 2010 and October 22, 2010, the disputed domain name has been redirected to the web site <axo.cz>, which promotes a Czech company that offers products of various brands competing with the products offered by the Complainant, such as electrical appliances, exhaust fans, cooling and heating air conditioning.

The Complainant states that the Respondent has not rights or legitimate interest in the disputed domain name since it has not been granted any permission to register the disputed domain name by the Complainant and is not commonly known by the name ORIEME.

The Complainant also states that the Respondent has registered the disputed domain name in bad faith.

B. RESPONDENT

The Respondent has not submitted a Response to the Complaint.

DISCUSSION AND FINDINGS

Article 22(10) of Commission Regulation No. 874/2004 (hereinafter “the Regulation”) provides that the Respondent’s failure to respond to a Complaint may be considered by the Panel as grounds to accept the claims of the Complainant. However, as stated in ADR Case No. 05665 (OANDA), this does not mean that a Complaint will automatically be upheld whenever a Respondent fails to respond, since the Complainant is required to demonstrate that the provisions of Article 21(1) of the Regulation are satisfied.

According to article 22 of the Regulation, an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21. Article 21 (1) provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, and where:
(a) it has been registered by its holder without rights or legitimate interests in the name; or
(b) it has been registered or is being used in bad faith.

With reference to the first element, the Panel finds that the Complainant has proved its rights on the name ORIEME within the meaning of the Article 10 (1) of the Regulation. Indeed the Complainant has provided evidence of ownership of an International Trademark Registration and of a Community Trademark Registration for ORIEME.

In light of the above, the Panel finds that ORIEME is a name in respect of which the Complainant has rights and concludes that it is clearly identical to the disputed domain name, since the top level domain '.eu' may be excluded from consideration as being merely functional component of a domain name.

Accordingly, the first requirement of Article 21 (1) of the Regulation has been satisfied.

Moreover, the Panel also notes that the disputed domain name is identical to the Complainant’s prior domain name <orieme.com> and confusingly similar to the Complainant’s company name “ORIEME ITALIA S.p.A.”.

With reference to the right or legitimate interest, the Article 21 (2) of the Regulation states that “a legitimate interest may be demonstrated where:
(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) it has been commonly known by the domain name;
(c) it is 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 in which a right is recognised or established by national and/or community law.

There is no relation, disclosed to the Panel, between the Respondent and the Complainant and Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks under any circumstance.

In the case at hand, the Respondent is in default and thus has not proved to the Panel any right or legitimate interest. As stated in ADR Case N. 04040, “In the absence of a Response or any evidence showing a legitimate interest or fair use of the Domain Name by the Respondent, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.”

Furthermore, the Panel finds that the use of the disputed domain name merely for redirecting visitors to a the web site which promotes the products of Complainant’s competitors, does not constitute a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of the name in which the Complainant has right.

According to the Article 21(1) of the Regulation, the Complainant must prove that the disputed domain name has been registered by its holder without rights or legitimate interests in the name; or that it has been registered or is being used in bad faith. However, for the sake of completeness, the Panel will examine whether the contested domain name has been registered or is being used in bad faith.

Article 21 (3) (d) states that bad faith may be demonstrated where the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national law, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the web site.

The Panel finds the Article 21 (3) (d) to be applicable in this case since the disputed domain name has been redirected to a web site which promotes the products of Complainant’s competitors, circumstance which is certainly apt to mislead Internet users as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site.

Since the Complainant is an entity eligible to be the holder of .eu domain name in accordance with the Paragraph 4(2) (b) of Regulation 733/2002, the Panel orders that the domain name <orieme.eu> be transferred to the Complainant.

DECISION

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

PANELISTS

Name	**Dr. Luca Barbero**

DATE OF PANEL DECISION 2011-02-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the owner of an International registration and of a Community Trademark registration for ORIEME. Moreover, the Complainant is the holder of the domain name <orieme.com> and of the registered company name “Orieme Italia S.p.A.”. The Panel found that the Complainant has proved rights on the name ORIEME within the meaning of the Article 10 (1) of the Regulation.

The Respondent failed to file the Response and, therefore, has not provided the Panel with any grounds proving any legitimate interests it may have in registering and using the domain name.

As to the bad faith, the Panel found Article 21 (3) (d) to be applicable in this case since the disputed domain name is redirected to a web site which promotes the products of Complainant’s competitors.

The Panel decided that the domain name <orieme.eu> shall be therefore transferred to the Complainant, in accordance with paragraph B12(b) and B(12)(c) of the ADR Rules.