Panel Decision for dispute CAC-ADREU-005903

Case number	**CAC-ADREU-005903**
Time of filing	**2010-12-21 14:58:02**
Domain names	**manako.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Manako Ltd & Co KG, Christian Clad**

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 related to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is Manako Ltd & Co KG, a company incorporated in Germany.
2. The Respondent is Zheng Qingying, an individual, resident in the U.K.
3. The Respondent registered the disputed domain name MANAKO on 22 August, 2006.
4. The Complainant submitted the Complaint on 16 December, 2010.
5. The Respondent failed to submit a Response.
6. The Case was transmitted to the Panel on 14 March, 2011.

A. COMPLAINANT

7. The Complainant seeks a decision transferring the disputed domain name to the Complainant.
8. The Complainant briefly contends that the Respondent has no rights or legitimate interest in the disputed domain name and that the disputed domain name has been registered through a company that is well known for its multiple abusive registrations of EU-domains.
9. The Complainant demonstrates rights to the disputed domain name by presenting English and Welsh company certificate of MANAKO Ltd, German company certificate of Manako Ltd & Co KG and German trademark registration of "manako" for MANAKO Ltd.

B. RESPONDENT

10. The Respondent filed neither a Response nor any other submissions regarding the Complaint.

DISCUSSION AND FINDINGS

11. Article 21(1) of the Commission Regulation (EC) No 874/2004 (the “Regulation”) provides that a registered domain name shall be subject to revocation where that 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 it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.
12. Article 10(1) of the Regulation provides that rights a priori considered as recognised or established by national and/or Community law are those arising from registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic work.
13. Article 22(10) of the Regulation provides that failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty. Article B10(b) of .eu

Alternative Dispute Resolution Rules (the "ADR Rules") provides that if a Party does not comply with any provision of, or requirement under, the ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

RIGHTS OF THE COMPLAINANT

14. The evidence provided by the Complainant shows that the Complainant has rights to the indication "manako" arising from two company names and one trademark. As this indication is identical to the distinctive part of the disputed domain name, the Panel finds that the Complainant has proven the existence of rights required by Article 21(1), first sentence, of the Regulation.

RIGHTS OF THE RESPONDENT

15. As it was held in a number of prior decisions of the Panel, it is not necessary for the Complainant to submit, in the absence of a Response, any extensive evidence of the fact that the Respondent does not have any rights or legitimate interest in the disputed domain name according to Article 21(1)(a) of the Regulation. Moreover, it is even difficult to imagine in general, how such extensive evidence of the absence of rights of the counterparty would have to look like.
16. However, as the Complaint contained neither particular contestations nor any evidence at all as to the absence of rights or legitimate interest of the Respondent, the Panel could not rely on simple statement of the Complainant that "[t]he registrant Zheng Qingying, London, has no legitimate interest to register manako.eu." and had to examine whether there are any signs of the existence of rights or legitimate interest of the Respondent.
17. The Panel found that the disputed domain name is not being used by the Respondent. Also, the Panel did not find any signs of any sort of activity that would be carried out by the Respondent under the disputed domain name or its distinctive part "manako". Finally, there is obviously no relation or similarity between the disputed domain name and the name of the Respondent.
18. The Panel found no signs of the existence of any rights or legitimate interest of the Respondent in the disputed domain name. Thus, the Panel accepts the claim of the Complainant and finds according to Article 22(10) of the Regulation and subsequent Article B10(b) of the ADR Rules that the Respondent has no rights or legitimate interest in the disputed domain name.

BAD FAITH

19. The Complainant deducts the registration and use of the disputed domain name being in bad faith from the fact that the disputed domain name was registered "through a company that is well known for its multiple abusive registrations of EU-domains without any legitimate interests".
20. The Panel neither received any evidence nor found any facts that would support this contestation of the Complainant. Moreover, even the fact that the disputed domain name would have been registered through a registrar whose activities were in some earlier cases found abusive, cannot directly imply that the Respondent himself acted or acts in bad faith in the present case.
21. As the Complainant filed neither any further contestation nor any evidence regarding the registration or the use of the disputed domain name by the Respondent in bad faith, the Panel finds that neither the registration nor the use of the disputed domain name by the Respondent in bad faith was proven.

CONCLUSIONS

22. The Panel finds that the disputed domain name is identical to a name in respect of which a right is established for the Complainant and that it has been registered by the Respondent without rights or legitimate interest.

DECISION

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

PANELISTS

Name	**Radim Polcak**

DATE OF PANEL DECISION 2011-04-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed relatively brief Complaint against the registration of domain name "manako.eu" arguing that the Respondent has

no rights or legitimate interest in the disputed domain name and that the disputed domain name has been registered and is being used in bad faith. The Complaint was supported by documentary evidence of Complainant's rights to the disputed domain name.

The Respondent did not respond to the Complaint.

The Panel found that the disputed domain name was identical to a name in respect of which a right was established for the Complainant and that it had been registered by the Respondent without rights or legitimate interest. The Panel also held that neither the registration nor the use of the disputed domain name by the Respondent in bad faith was proven.

Consequently, the Panel ordered that the disputed domain name be transferred to the Complainant.