Panel Decision for dispute CAC-ADREU-005941

Case number	CAC-ADREU-005941
Time of filing	2011-02-24 08:11:02
Domain names	kannas.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	ANDREAS I. KANNAS & SONS LIMITED, Marios Kannas

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 Panelist is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complaint is filed in the name of ANDREAS I. KANNAS & SONS LIMITED of Nicosia, Cyprus (hereinafter referred to as “first Complainant”).

The Complainant is a company engaged in the business of selling electrical automotive spare parts, batteries, accessories, bearings, parts and tools to the Cyprus market. The Complainant was incorporated as a limited liability company in 1986 (Company Registration No. HE 26666, under the name ANDREAS I. KANNAS & CO. LIMITED. In 1994 the Complainant changed its name to ANDREAS I. KANNAS & SONS LIMITED.

The Complainant is the holder of a valid trademark, issued by the Registrar of Companies in Cyprus (Trademarks Division) in 1990, Trademark Registration Number 32278 under the name ANDREAS I. KANNAS & CO LTD. The Complainant has also registered in its name the domain name www.kannas.com.cy since 22/11/2002.

The Respondent did not provide any information concerning its business as it failed to reply to the Complainants’ contentions. However, the Respondent is known for trying to make money by registering third parties’ trademarks as domain names. The Respondent was involved in numerous ADR proceedings in which the domain names were all transferred to complainants based on the identity with prior rights.

The Complainant filed an application for registration of the domain name www.kannas.eu on 20 March 2006, one month after the opening of Phase 2 of the Sunrise period.

Eurid sent an email confirming the application of 20 March 2006 stating that he was no. 1 in the queue for registration at the time. For the purpose of this registration, he had been requested to submit documentary evidence in order to be able to prove his prior right within 40 days. The Complainant’s representative in Cyprus in charge of handling the procedure for registering the domain name failed to provide the aforementioned documentary evidence within 40 days due to the fact that it never requested the Complainant to provide any supporting documentation.

Following the application for the registration of the domain name which was done within the Sunrise period, Eurid sent an email on 11 July 2006 informing the Complainant that his application for the Domain name kannas.eu had been rejected because the documentary evidence received did not prove the right claimed because no evidence had been provided showing said prior right, and thus the

application had been rejected and the applicant no longer had a priority in the queue.

Following this, the Respondent, registered the domain name after expiry of the Sunrise period on 12 September 2006. The domain name has an “On Hold” status, meaning that it is active but may not be traded or transferred pending the outcome of legal activity.

A. COMPLAINANT

The Complainant asserts that the Respondent does not have any right of registration of a .eu Domain because the Complainant has a prior right on the particular domain name. it contends that the Respondent did not demonstrate a prior right, after the expiry of the Sunrise Procedure and Eurid registered the domain name in favour of the Respondent, on the first come first served basis, without finding that the Respondent had demonstrated a prior right in accordance with the applicable procedure or the rules set out under Article 14 of Regulation 874/2004. It is therefore clear that the domain name under dispute is the official company name of the Complainant’s company which owns all rights on the domain name and trademark.

The Complainant argues that the Respondent has no rights or legitimate interest in the name and that the Disputed Domain Name has been registered and is being used in bad faith. In particular:-

(a) The Respondent has engaged in a pattern of conduct where it has registered a large number of domain names without any apparent intention to trade under such names. Having conducted a search on the world wide web the Complainant has found no evidence that the Respondent trades or that it has at any time traded in goods and/or services in the European Community with or in association with the name kannas.eu. In fact when accessing the domain name kannas.eu there is a notice “Server not Found”.

(b) The Respondent never had or intended to trade under the name kannas.eu. There is no evidence that the Respondent has used the domain name or a name corresponding to the domain name in connection with any goods or services;

(c) The Respondent appears to be a cybersquatter. According to the website http://whois.domaintools.com/buycool.com, the respondent through “Buycool Ltd” registered about 10 000 .EU domains and, according to various other internet websites, Eurid has blocked those 10,000 domain names registered by the Respondent and ending in .eu due to alleged cybersquatting. Over the last years apparently there have been regular registrations of names as varied as family names, business names and generic terms;

(d) there is no evidence of the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

(e) the Respondent (as an individual, business, or other organization) has not been commonly known by the domain name;

(f) there is no connection or affiliation with the Complainant; and

(g) there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

(h) the Respondent is not using the website with meaningful contents referring to the domain name. Respondent has never used the domain name or a name corresponding to the domain name in connection with the offering of Respondent's goods or services nor had the Respondent made demonstrable preparations to do so. Therefore the Respondent does not have any interest in using the domain name for its own purpose.

(i) The Disputed Domain Name has been used in bad faith;

The Disputed Domain Name was registered as a blocking tactic in order to prevent the Complainant from using the Disputed Domain Name in the course of its business;

(j) The Respondent registered the Disputed Domain Name primarily for the purpose of disrupting the professional activities of the Complainant;

(k) The Respondent registered the Disputed Domain Name primarily for the purpose of selling, renting or otherwise transferring the Disputed Domain Name to the holder of a name where a right is recognised and established by National and Community Law;

(l) the Respondent demonstrated a pattern of engaging in bad faith registration and use of domain names which violate third party’s

rights.

(m) the Respondent being a natural person was never commonly known by the name “kannas”.

The Complainant therefore seeks to have the Disputed Domain Name transferred to it.

B. RESPONDENT

The Respondent did not reply to the Complainants’ contentions.

DISCUSSION AND FINDINGS

The Complaint was filed pursuant to Article 22 (1) (a) of the Regulation (EC) No. 874/2004, which provides that an ADR procedure may be initiated by any party where the registration of a domain name is speculative or abusive within the meaning of Article 21 of the Regulation (EC) No. 874/2004.

Accordingly, the Panelistist’s decision has to be based on the provisions of Art. 21 of the Regulation (EC) No. 874/2004. The domain name has therefore to be transferred if the domain name:

a) 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
b) has been registered by its holder without rights or legitimate interests in the name; or
c) has been registered or is being used in bad faith.

Once the Complainant has established that the Domain Name is identical or confusingly similar to a name in respect of which a Right is recognised or established by national law of a member state and/or community law, the Complainant has only to prove one of the elements set out in Article 21 1.(a) or (b), namely, that it is registered without rights or legitimate interests in the name or has been registered or used in bad faith.

A. Respondent’s rights or legitimate interests with regard to the domain name

The Respondent has not filed a Response in time or at all, and there is no evidence before the Panelistist of any legitimate interest of the Respondent in the Domain Name.

Article 21 (1) (a) of the Regulation (EC) No. 874/2004 requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name. However, as it is often an impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent, it is the Panelistist’s view that if the complainant makes a prima facie case that the Respondent has no rights or legitimate interests and the Respondent fails to show one of the circumstances under Article 21 (2) of the Regulation No. 874/2004, then the Respondent may lack a legitimate interest in the domain name.

The domain name kannas.eu is identical with the Complainant’s trademark. The Complainant has shown that the Respondent has neither a license nor any other permission to use the trademark incorporating the name “kannas” in which the Complainant has exclusive rights. The Panelistist thus finds that the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name kannas.eu.

The Respondent does not dispute the above. There is no evidence of its use, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. Further, no evidence has been provided that the Respondent trades under the domain name or the name “kannas” or is commonly known by the disputed domain name.

The Panelistist therefore accepts the Complainant’s contention that the Respondent has no rights or legitimate interests in the domain name and that the requirement of Article 21 (1) (a) of the Regulation (EC) No. 874/2004 is also satisfied.

B. Identity or Confusingly Similarity

The test of confusing similarity under the Regulation is confined to a comparison of the disputed domain name and the trademark alone,

independent of the products for which the domain name is used or other marketing and use factors, usually considered in trademark infringement cases.

The Domain Name is identical to a name in respect of which the Complainant has Rights recognised by national law of a member state by virtue of its Cyprus Trade Mark registration for the name ANDREAS I. KANNAS & CO LTD.

Further, the name KANNAS forms part of the Complainant's corporate name, ANDREAS I. KANNAS & SONS LIMITED and is used in connection with its domain names www.kannas.com.cy and www.kannas.com

The Panelist thus finds that the domain name kannas.eu is identical to the Complainant's trademark and that therefore the first requirement of Article 21 (1) of the Regulation (EC) No. 874/2004 is satisfied.

C. Bad faith registration and use

Having determined that the Respondent has no rights or legitimate interest in the Domain Name it is not necessary for the Panelist to determine whether it has been registered in bad faith as alleged by the Complainant. Thus, the Panelist need not make a finding concerning bad faith use and registration.

D. Transfer of the domain name

The Complainant is a limited liability company incorporated under Cyprus law and having its place of business within the European Community, Art 4 (2) (b) (i) of the Regulation (EC) No. 733/2002. Therefore, the requirements for the requested transfer of the domain name to the Complainant are satisfied (Section B No. 1 (b) (12) of the ADR 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 KANNAS be transferred to the Complainant

PANELISTS

Name	**Olga Georgiades**

DATE OF PANEL DECISION 2011-06-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is doing business in the field of electrical automotive spare parts, batteries, accessories, bearings, parts and tools to the Cyprus market. The Complainant was incorporated as a limited liability company in 1986 (Company Registration No. HE 26666, under the name ANDREAS I. KANNAS & CO. LIMITED. In 1994 the Complainant changed its name to ANDREAS I. KANNAS & SONS LIMITED. The Complainant is the holder of a valid trademark, issued in Cyprus (Trademarks Division) in 1990, under the name ANDREAS I. KANNAS & CO LTD. The Complainant has also registered in its name the domain name www.kannas.com.cy and www.kannas.com.

The Complainant argues that the Respondent has no rights or legitimate interest in the name and that the Disputed Domain Name has been registered and is being used in bad faith. The Respondent did not dispute the Complainants' assertions.

The Panelist found that the domain name kannas.eu is identical to the Complainant's trademark "ANDREAS I. KANNAS & CO LTD". Furthermore, the Panelist finds that the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name kannas.eu. As the Respondent did not dispute these assertions, the Panelist accepts the Complainant's contention that the Respondent has no rights or legitimate interests in the domain name and ordered that the disputed domain name shall be transferred to the Complainant.