Panel Decision for dispute CAC-ADREU-005973

Case number	**CAC-ADREU-005973**
Time of filing	**2011-03-31 11:49:54**
Domain names	**mtelbg.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Mobiltel EAD, Ms Dorotea Georgieva Tosheva**

Respondent

Organization / Name	**Sdrujenie Asotsiatsiya na potrebitelite na telekomunikatsionni i internet uslugi - Yadets, Yanaki Ganchev**

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 between the Parties.

FACTUAL BACKGROUND

Complainant is a licensed telecommunications operator providing electronic communication services in Bulgaria.

It is the owner of the following duly registered trademarks (the “MTEL Trademarks”):
- the trademark Mtel with reg. No. 44708, registered for the territory of Bulgaria for goods and services in International Classes 01-45, with priority from 04.07.2002;
- the trademark Mtel with reg. No. 44709, registered for the territory of Bulgaria for goods and services in International Classes 01-45, with priority from 04.07.2002;
- the trademark MTel with reg. No. 57044, registered for the territory of Bulgaria for goods and services in International Classes 9, 12, 14, 16, 18, 20, 24, 25, 28, 30, 32, 33, 34, 35, 38, 39, 41, 42, with priority from 17.12.2004;
- the trademark МТел with reg. No. 57045, registered for the territory of Bulgaria for goods and services in International Classes 9, 12, 14, 16, 18, 20, 24, 25, 28, 30, 32, 33, 34, 35, 38, 39, 41, 42, with priority from 17.12.2004;
- the Community trademark M-TEL with reg. No.006502751, with priority date 11.12.2007, registered for goods and services in International Classes 9, 35, 38, 42;
- the Community trademark Mtel with reg. No.006500797, with priority date 10.12.2007, registered for goods and services in International Classes 9, 35, 38, 42;
-the Community trademark Mtel with reg. No.006500482, with priority date 10.12.2007, registered for goods and services in International Classes 9, 35, 38, 42; and
-the Community trademark М-ТЕЛ with reg. No.006500938, with priority date 10.12.2007, registered for goods and services in International Classes 9, 35, 38, 42.
Complainant is also the registrant of the domain name <mtel.bg>.

The Domain Name <mtelbg.eu> (the “Domain Name”) was registered with Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”) on 24.11.2010.

A. COMPLAINANT

According to the Complainant, the Domain Name is identical or confusingly similar to a trade mark and domain name with regard to which Complainant has rights recognised by the national and the Community law. Complainant submits that the MTEL trademarks are well known on the territory of the Republic of Bulgaria. These trademarks designate all services that have been provided by Complainant since 1995 when it became the first company in Bulgaria to obtain a license for the provision of telecommunication services through a

GSM network. In the course of the years that followed, Complainant's MTEL trademarks have been widely popularized through various information and advertising channels and events. These trademarks are a significant asset of Complainant. According to its 2009 and 2010 financial statements, the value of the MTEL trademarks amounts to BGN 514,383,000.

Complainant states that the Domain Name fully incorporates the MTEL trademarks and Complainant's domain name <mtel.bg>. The addition of generic words to trademarks has been considered in numerous ADR decisions not to avoid confusing similarity between a domain name and a trademark. Therefore, the "www" prefix and the "eu" TLD suffix are to be disregarded for the purposes of the comparison between the Domain Name and the MTEL trademarks.

Complainant contends that Respondent has no rights or legitimate interests in the Domain Name. Respondent has registered the Domain Name without Complainant's consent and without a right or legitimate interest for such registration, because the requirements under Paragraph 21(2)(c) of the Commission Regulation (EC) No. 874/2004 are not met. Respondent intentionally misleads consumers and tarnishes the good name of Complainant.

The website at the Domain Name contains the explicit statement that "WWW.MTELBG.EU is a virtual reception room for complaints regarding consumer rights violated by Mobiltel EAD". However, it is unclear how the received complaints will be processed and how the consumers' claims will be resolved and satisfied. Thus, consumers could be mislead to believe that they file a complaint with Complainant and that Complainant will itself review and resolve the complaint, which cannot happen because the complaints remain solely with Respondent and are never transmitted to Complainant.

According to Complainant, consumers have the opportunity to file complaints through Complainant's 160 shops across the country and through the website of Complainant at www.mtel.bg. The General Conditions of Mobiltel EAD for the relations between Mobiltel EAD and the subscribers and users of electronic communication services also contain a procedure for accepting and resolving complaints (Section XI and XII). These General Conditions have been coordinated with and approved by the relevant Bulgarian regulation authorities (the Customer Protection Commission and the Commission for Regulation of the Communications) as required by the Bulgarian legislation, and form an integral part of the service contracts entered into with consumers.

Respondent has been established according to the Non-profit Legal Persons Act as an organization pursuing activities for private benefit, which according to Complainant precludes it from stating that it can legitimately perform activities related to the protection of consumers' rights.

The content of the website at the Domain Name is entirely related to the distribution of materials which tarnish the good name of Complainant, including articles and links to video clips which contain ungrounded accusations against Complainant and its services.

Complainant submits that the Domain Name has been registered and used in bad faith. The content of the website at the Domain Name is evidence for the bad faith of Respondent. Complainant's MTEL trademarks are popular and well known in Bulgaria and their use by Respondent confuses and misleads consumers. Respondent intentionally and without Complainant's consent uses Complainant's MTEL trademarks in its activities with the purpose to attract as users of its website people who belong to the target group of Complainant's services and to tarnish the name and the prestige of Complainant and the consumers' trust in the services provided by Complainant. By exploiting the popularity of Complainant's trademark Respondent aims to enlarge the number of users of its website and to harm Complainant by establishing a negative perception of Complainant in the consumers and by provoking changes in their economic behaviour and refusal of Complainant's services.

Complainant requests the revocation of the Domain Name and its transfer to Complainant.

B. RESPONDENT

Respondent did not submit a Response in this ADR proceeding.

DISCUSSION AND FINDINGS

According to Paragraph B11(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that Complainant proves in the ADR proceeding 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.

Is the Domain Name identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law?

The Panel finds that Complainant is the holder of the MTEL trademarks, details of which are given above. These trademark registrations give rise to rights of Complainant in the name MTEL within the meaning of Paragraph 10(1) of the Commission Regulation (EC) 874/2004, i.e., rights established by Community law.
The dominant feature of both the Domain Name and the trademarks is the word MTEL. The “bg” element of the Domain Name would be regarded by Bulgarian consumers as an indication of a link to Bulgaria, as it is used in numerous domain names for this purpose, and therefore this element does not detract from the dominance of the “mtel” element of the Domain Name. As to the suffix “.eu”, it is widely accepted that this element is not relevant for the purposes of the test for identity or confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to the MTEL trademarks, and the condition set forth under Paragraph B11(d)(1)(i) of the ADR Rules is fulfilled.

Does Respondent have rights or legitimate interests in the Domain Name?

Under Paragraph B11(e) of the ADR Rules, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the domain name for purposes of Paragraph B11(d)(1)(ii):
(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;
(3) the Respondent 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 recognized or established by national law and/or Community law.

Under the ADR Rules, the burden of proof for the lack of rights and legitimate interests of Respondent lies with Complainant. However, the existence of negative facts is difficult to prove, and the relevant information for Respondent (including any potential evidence of rights and legitimate interests) is mostly in its sole possession. Therefore, the Panel holds that it is sufficient that the Complainant to make a prima facie demonstration that Respondent lacks rights or legitimate interests in the Domain Name. The burden of proof then shifts to Respondent to substantiate its rights or legitimate interests in the Domain Name.

In the present proceeding, Respondent was given a fair opportunity to present its case. However, it remained silent and did not submit any Response to the Complaint, although required to do so under Paragraph B3(a) of the ADR Rules. Thus, it chose not to present to the Panel any allegations or documents in its defense or the consequences that a Panel may extract from the fact of a default (see Paragraph B10 of the ADR Rules). If Respondent had any justification for the registering or using the Domain Name, it could have provided it. In particular, Respondent has failed to contend that any of the circumstances described in Paragraph B11(e) of the ADR Rules - or indeed any other circumstance - is present in its favor. Therefore, Respondent’s default entitles the Panel to conclude that Respondent has no arguments or evidence to rebut the assertions of Complainant, and any such evidence would have been unfavorable to Respondent.

As the Domain Name is confusingly similar to Complainant’s MTEL trademarks, consumers may easily regard it as affiliated to or at least approved by Complainant. It appears from the content of Respondent’s website that it represents itself as a virtual reception room for complaints against Complainant, and this website contains no disclaimer of any affiliation to Complainant. According to the Complainant’s statements, Respondent has never been authorised by Complainant to carry out such an activity, and no complaints against Complainant have been forwarded by Respondent to Complainant.

In the lack of any rebuttal by Respondent, the Panel is prepared to accept that the registration of the Domain Name and the setting up of the associated website is a deliberate conduct on the part of Respondent aimed at misleading of consumers that the Domain Name is affiliated to Complainant, with the purpose to attract them to Respondent’s website and to expose them to its content. In addition, if consumers file with Respondent’s website a complaint against Complainant in the belief that this is the proper place for filing such complaints, their complaint would not be raised in the proper venue, and would probably remain with Respondent without being transmitted to Complainant. All this may prejudice their interests and create an unjustified negative impression in these consumers about Complainant.

In the Panel's view, the above actions by Respondent do not appear as a good faith offering of services or a legitimate non-commercial use that may give rise to a legitimate interest of Respondent in the Domain Name under Paragraph B11(e) of the ADR Rules.

The Respondent has made no allegations that it has been commonly known by the Domain Name, and the case file contains no evidence in this regard. The English translation of Respondent's name is "Association of the consumers of telecommunication and Internet services". This name shows that Respondent targets the users of a broad scope of services which would encompass the clients of various unidentified providers of telecommunication and Internet services. Respondent's name is not similar to or related in any way to the Domain Name. To sum up, there appear to be no circumstances that would justify a finding that Respondent has legitimate interests in the Domain Name under Paragraph B11(e)(2) of the ADR Rules.

Taking all the above into account, the Panel finds that the Respondent has registered the Domain Name without having rights or legitimate interests in it, and the condition under Paragraph B11(d)(1)(ii) of the ADR Rules is satisfied.

The Panel notes that, in case Respondent is found to have registered the Domain Name without rights or legitimate interests in it, it is not necessary to investigate Respondent's possible bad faith under Paragraph B11(f) of the ADR Rules.

Therefore, the Panel finds that Complainant has established the prerequisites under Paragraph B11(d)(1) of the ADR Rules for revocation of the Domain Name.

DECISION

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

PANELISTS

Name	**Assen Zahariev Alexiev**

DATE OF PANEL DECISION 2011-07-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

This Decision relates to the domain name MTELBG (the "Domain Name").

The Complainant Mobiltel EAD is a licensed telecommunications operator providing electronic communication services in Bulgaria. The Complainant requests the revocation and transfer of the Domain Name.

The Panel has made the following findings:
- the Domain Name is confusingly similar to the Complainant's MTEL trademarks, as the dominant feature of both the Domain Name and the trademarks is the word MTEL, and the "bg" element of the Domain Name would be regarded by Bulgarian consumers as an indication of a link to Bulgaria, and therefore this element does not detract from the dominance of the "mtel" element of the Domain Name;
- the Respondent has no rights or legitimate interests in the Domain Name, as the registration of the Domain Name and the setting up of the associated website is a deliberate conduct on the part of Respondent aimed at misleading of consumers that the Domain Name is affiliated to Complainant, with the purpose to attract them to Respondent's website and to expose them to its content. If consumers file with Respondent's website a complaint against Complainant in the belief that this is the proper place for filing such complaints, their complaint would not be raised in the proper venue, and would probably remain with Respondent without being transmitted to Complainant. These actions by Respondent do not appear as a good faith offering of services or a legitimate non-commercial use that may give rise to a legitimate interest of Respondent in the Domain Name.
- Respondent's name is not similar to or related in any way to the Domain Name, and there appear to be no circumstances that would justify a finding that Respondent has legitimate interests in the Domain Name under Paragraph B11(e)(2) of the ADR Rules.

On the basis of the above, the Panel finds that Complainant has established the prerequisites under Paragraph B11(d)(1) of the ADR Rules for revocation of the Domain Name. On these grounds, and in view of the fact that the Complainant is established in the European Union, the Panel has ordered the transfer of the Domain Name to the Complainant.