Panel Decision for dispute CAC-ADREU-006662

Case number	CAC-ADREU-006662
Time of filing	2014-02-14 09:18:30
Domain names	tecdocoem.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	TecAlliance GmbH

Respondent

Organization	Proxy Service 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 is not aware of any pending or decided legal proceedings pertaining to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is TecAlliance GmbH, a company organized under the laws of Germany.
The Respondent is the Maltese organization Proxy Service Ltd.
The disputed domain name TECDOCOEM.eu was registered on June 9, 2011
A Complaint was filed on February 13, 2014, seeking the transfer of the disputed domain name TECDOCOEM.
The Respondent failed to respond to the Complaint within the time limit set by the Center.
The case was assigned to the Panel on May 6, 2014.

A. COMPLAINANT

The Complainant claims earlier rights on the Trademarks “TecDoc” in Germany, EU and other countries of the world. The said trademark is used in relation with a service of retail of automotive spare parts.
The alleged earlier rights are International Registrations "TecDoc" Figurative # 0972933 and Word # 0705136 designating the European Union.
The Complainant declares that the Respondent has no right to use the trademark ‘TecDoc’ within a domain name, especially within a .eu domain name, and that the disputed domain name has been registered in bad faith to promote services that are confusingly similar or identical to the services provided by the Complainant.

B. RESPONDENT

The Respondent failed to respond to the Complaint.

DISCUSSION AND FINDINGS

The Panel is to decide, in view of the facts and arguments of the parties, whether the conditions of article 21 of Reg. No. 874/2004 are satisfied to decide whether the disputed domain name should be transferred to the Complainant or not.

1) ON THE PRIOR RIGHTS

Pursuant to Article 21. Reg. No. 874/2004, “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 recognized or established by national and/or Community law, such as the rights mentioned in Article 10.”

The Panel finds that the trademark rights vested in the name TECDOC claimed by the Complainant are substantiated.

In support of its trademark rights claim, the Complainant provides the copies of two International Registrations designating the European Community for TECDOC word mark and figurative respectively numbered No. 705136 and No. 972933 and recorded in its own name.

2) ON THE IDENTITY OR CONFUSINGLY SIMILARITY OF THE DOMAIN NAME

The disputed “tecdocoem.eu” domain name is not identical to the Complainant’s registered trademark.

The Complainant points out that its trademark TECDOC is entirely reproduced within the contested domain name, with the addition of the suffix OEM, which stands as an usual abbreviation of Original Equipment Manufacturer.

The addition of OEM to TECDOC is not sufficient to cast away any risk of confusion or association between the Complainant’s trademark and the contested domain name, for the earlier trademark TECDOC preserves its individuality within the combination TECDOCOEM, and whereas the use of OEM does convey the message that the domain name would be owned by an entity related to the proprietor of the trademark TECDOC, and/or used in relation with original spare parts of the Complainant’s products.

Consequently, the public is likely to believe that the domain name TECDOCOEM.EU is registered and used by the Complainant or with its approval.

The Panel finds therefore that the contested domain name is confusingly similar to the Complainant’s trademark and that the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 are satisfied.

3) ON THE LEGITIMATE INTEREST IN THE NAME

Article 21 (1) : “A registered domain name shall be subject to revocation […] where it (a) has been registered by its holder without rights or legitimate interest in the name ».

Pursuant to Article 21 (2) of the Regulation (EC) No. 874/2004, the legitimate interest condition is considered as fulfilled when:
a) prior to any notice of an alternative dispute resolution procedure, 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
b) the Respondent has been commonly known by the domain name
c) the Respondent is making a legitimate and non commercial or fair use of the domain name, without intend to mislead consumers or harm the reputation of the name on which a right is recognized.

It is the Panel’s view that the overall burden of proof under the above provision rests with the Complainant, which is required to establish that the Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name, and that if the respondent fails to answer such case, the complainant is deemed to have satisfied its burden of proof.

The Complainant states that the Respondent has no right to make any use of the contested domain name for it is a corporation that specializes only in the registration of domain names, which runs no industrial or commercial business other than trading domain names, and which in fact holds the disputed domain name on behalf of a Chinese individual (whose name does appear in the Whois Register related to the domain name). The Complainant contends that the said Chinese individual does use the contested domain name without consent in relation with a bad faith offer for sale of products that are in fact copies of the Complainant’s genuine products.

The Respondent, being in default, has not presented any justification for holding the disputed domain name.

The Panel simply observes on its part that, to date, the disputed domain name does not resolve to any website which would indicate that the Respondent has any kind of trademark or trade name rights in the name “TECDOCOEM” or which would contain any reference to a commercial use of the said name in the course of trade or would indicate that Respondent has been commonly known by the disputed domain name.

In view of this factual situation exposed by the Complainant, and which is not contested by the Respondent, the Panel is to accept the

Complainant's contentions and find that the Respondent does not appear to have any rights or legitimate interests in the disputed domain name.

4) ON THE RESPONDENT'S BAD FAITH

Article 21 (3) : "A registered domain name shall be subject to revocation where it
(b) has been registered or is being used in bad faith."

The Complainant asserts that « the respondent has registered the domain name in bad faith to promote services which are confusingly similar or identical to the services provided by our company " and files as evidence a non dated screenshot of a web page that seems to be the one that was once accessible by the contested domain name TECDOCOEM.

As pointed out above, to date, the contested domain name is not used: it is not routed towards any active web page.

The Panel comes to the conclusion that, at the time when the Complainant filed the present complaint, the domain name was routed towards this web page on which the brand TECDOC is used, in relation with an offer for sale of automotive spare parts. And that the redirection of the domain name was interrupted pursuant to the Complaint, which supports the suspicion that the Respondent may be acting in bad faith.

It is a fact that the Complainant uses the trademark TECDOC in relation with an online catalogue of vehicles spare parts.

In view of the Complainant's assertions, which are not contested by the Respondent, the contested domain name TECDOCOEM, and the trademark TECDOC, were used, at the time when the Complaint was filed, in relation with a non authorized and misleading offer for sale of automotive spare parts ; such business overlaps with that of the Complainant, to the extent that the Complainant's customers may be diverted to the benefit of the Respondent, which deliberately used the contested domain name (formed with the association of the trademark TECDOC and the abbreviation OEM (Original Equipment Manufacturer) with a view to causing confusion .

The Panel is thus satisfied that the domain name is used in bad faith in the meaning of Article 21 (3)

DECISION

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

PANELISTS

Name	**William Lobelson**

DATE OF PANEL DECISION 2014-06-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: TECDOCOEM.EU

II. Country of the Complainant: GERMANY, country of the Respondent: MALTA

III. Date of registration of the domain name: 09 JUNE 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word/figurative trademark registered in EU, "TecDoc" Figurative # 0972933 and Word # 0705136

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: not substantiated by Respondent / Domain name not in use at the date of decision / domain name in use before date of decision, in relation with a bad faith offer for sale

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Use of the disputed domain name in a misleading way, in relation with the same goods as those of the Complainant.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. [If transfer to Complainant] Is Complainant eligible? Yes