Panel Decision for dispute CAC-ADREU-006856

Case number	CAC-ADREU-006856
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Domain names	mapfre-es.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Organization	L.Garcia LLC

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 Complainant claims it lodged a complaint against the Respondent with the Spanish police (Guardia Civil) for misuse of identity, given that the Respondent was posing as an employee of the Complainant and seeking to obtain from third parties the payment of certain amounts of money in return for a (fictitious) job in the complainant's organization.

FACTUAL BACKGROUND

The Complaint was filed in relation to the domain name mapfre-es.eu (the Disputed Domain Name). According to the EURid's verification the disputed domain name was registered on September 20, 2014 by Luis Garcia on behalf of L.Garcia LLC.

The Complainant, MAPFRE Familiar, is a company belonging to the MAPFRE group, Spain's main insurance company and one of the country's most important business groups. MAPFRE is the leader in the field of insurance in Spain and has significant international standing.

MAPFRE was established in Spain in August 1933 as Mutua de Accidentes de Trabajo. Since then, it has grown at a constant rate to become the main insurance group in Spain and one of the leading insurers in Latin America. This is evidenced by the fact that its workforce is currently made up of 34,390 employees (11,046 in Spain and 23,344 in other countries) and that its revenues in 2011 amounted to 23,530 million euros.

MAPFRE is present in Spain via 423 direct offices and 2,732 delegated offices and in another 46 countries via 243 companies.

The Complainant claims that the standing of the trademark MAPFRE is such that it is also included in numerous Spanish and international rankings (Merco, Forbes, Fortune, etc.). Moreover, the Complainant contends that the reputation of the Complainant's trademark was recognized by several UDRP Panels.

The Complainant MAPFRE Familiar is the owner, among many other registrations, of the following trademarks:

Community trademark no. 104133 MAPFRE, filed on 1 April 1996, in force for goods and services in classes 16, 35, 36, 37, 41 and 42.

- Community trademark no. 385278 , filed on 28 October 1996, in force for goods and services in classes 16, 35, 36, 37, 41 and 42.

- Community trademark no. 4267563 , filed on 1 February 2005, in force for goods and services in classes 16, 35, 36, 37, 38 , 39 41, 42 and 44.

- Spanish trademark no. 2588995 , filed on 30 March 2004 and in force for goods and services in classes 16, 35, 36, 37, 38, 39, 41, 42 and 44.

The complainant's group is the holder of the domain name mapfre.es.

A. COMPLAINANT

The Complainant states that the Domain Name is confusingly similar to the Complainant's trademark MAPFRE, since the terms are practically identical. The domain name MAPFRE-ES.EU contains, in full, the trademark MAPFRE which is easily recognizable. The Complainant states that the Respondent has merely added thereto the element –ES which makes direct reference to Spain, the country of the registration and business of the Complainant.

The Complainant states that there is no evidence that the Respondent has been known under the name "mapfre-es" or has trademark/s or other rights therein.

The Complainant states that the Respondent has registered and used the domain name MAPFRE-ES.EU in bad faith in order to create confusion with the Complainant, endeavouring to foster the impression that the domain name and the Respondent actually belonged to the Complainant. The Complainant provided evidence that the Respondent posed as "HR Talent Manager" of "MAPFRE Insurance" giving the address of the Complainant and using the Disputed Domain Name mapfre-es.eu by way of identification. Moreover, in communications sent to third parties the Respondent offered job openings at MAPFRE, waiving the formality of an interview given the urgent need to cover the position and asking those parties to make contact with an agency by the name of Zicasso Travels, supposedly used by MAPFRE, in order to advance the money required to "pay for their work permit processing fees, as proof of their readiness to join our team", adding that "all and any expense incurred during this process shall be refunded to the candidate after 5 working days of concluding all immigration arrangement".

B. RESPONDENT

The Responded has failed to file its Response and to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding for the submission of his Response in the case.

In accordance with the .eu Dispute Resolution Rules (the ADR Rules) and the Supplemental Rules of the Czech Arbitration Court (the ADR Supplemental Rules), the consequences of the Respondent's default include the appointment of an ADR single-member Panel who decided in its sole discretion to commence the proceedings and to issue the decision without the Response.

DISCUSSION AND FINDINGS

According to Article 21(1) of Regulation No (EC) 874/2004 (hereinafter referred to as "The Regulation"), the Complainant must show that the Disputed Domain 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 (1) and that the disputed domain name 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 (2).

1 - The Complainant has provided evidence of ownership of both the Spanish Registered Trademark and three CTM all comprising the denomination MAPFRE.

While comparing the Complainant's marks to the Disputed Domain Name it should be taken into account that the suffix .eu shall be excluded from consideration as being merely a functional component of a domain name.

In view of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark MAPFRE, since the terms are practically identical to the trademarks in which the Complainant has rights in accordance with Article 21(1) of the Regulation. The Respondent has merely added thereto the element - ES which makes direct reference to Spain, the country of the Complainant.

2 - The Complainant must show that the Respondent has no rights or legitimate interests in respect of the Domain Name or that the Domain Name has been registered or is being used in bad faith. This double OR clause, i.e. legitimate interest OR bad faith, on the one hand, and registered OR used in bad faith, on the other, makes the Complainant's task easier.

In its complaint the Complainant tried to establish both elements.

1st element. Legitimate interest.

The Complainant has only the obligation to indicate a possible lack of legitimate interest while the Respondent, in order to prevail, should prove the real existence of its legitimate interest. The Complainant in this case has proven that the Respondent's legitimate interest was lacking because any of the following was not applicable (Art. 21.2 of the Regulation and Art. B11 (e) of the ADR Rules):

(a) prior to any notice of an alternative dispute resolution (ADR) 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, 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;

(c) 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 on which a right is recognized or established by national and/or Community law.

The Respondent decided not to join the proceeding and, therefore, the arguments put forward by the Complainant on the lack of legitimate interest not contested by the missing response have to be taken as proven.

The Panel observes that there is no legally valid relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not related with the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Furthermore, there is no indication that the Respondent is commonly known by the Disputed Domain Name, has made preparations to use the Disputed Domain Name in connection with bona fide offering services or goods, or that it intends to make a legitimate, non-commercial or fair use of the Disputed Domain Name. On the other hand, it is inconceivable that the Respondent could have made legitimate use of the Disputed Domain Name when this displays in so evident manner the well-known trademark of the Complainant.

2nd element. Bad faith

The Complainant has also proved bad faith of the Respondent.

The Respondent has at all times sought to create confusion with the Complainant, endeavouring to foster the impression that the Disputed Domain Name and the respondent actually belonged to MAPFRE, the Complainant's group. The Complainant lodged a complaint against the Respondent with the Spanish Police and submitted evidence in this regard. The Respondent posed as "HR Talent Manager" of "MAPFRE Insurance" giving the address of the Complainant and using the Disputed Domain Name mapfre-es.eu by way of identification. The case provides evidence that in communications sent to third parties the Respondent offered job openings at MAPFRE, waiving the formality of an interview given the urgent need to cover the position and asking those parties to make contact with an agency by the name of Zicasso Travels, supposedly used by MAPFRE, in order to advance the money required to "pay for their work permit processing fees, as proof of their readiness to join our team", adding that "all and any expense incurred during this process shall be refunded to the candidate after 5 working days of concluding all immigration arrangement". The Respondent sent all those communications in the name of MAPFRE using what appeared to be MAPFRE letterhead.

The Panel has found that the Respondent has registered and used the domain name MAPFRE-ES.EU in bad faith in order to create confusion with the Complainant, endeavouring to foster the impression that the domain name and the Respondent actually belonged to the Complainant.

There is nothing on the face of the facts, statements and documents in this case suggesting the Respondent has not registered the Disputed Domain Name in bad faith. As the Responded decided not to join the proceeding, the arguments and facts put forward by the Complainant on bad faith are therefore not contested and taken as proven.
Moreover, based on decision of previous Panels (see inter alia cases No 06643 and 06754) the Panel makes the conclusion that bad faith in the use of particularly similar domain name to famous and well known trade mark can be determined by the intentional use of

similar name for commercial gain using the reputation which is significant.

All in all, in the Panel's view, the aforesaid elements constitute evidence of registration in bad faith pursuant to Article 21 (3) (d) of the Regulation and Paragraph B 11 (f) (4) of the ADR Rules.

DECISION

For all the foregoing reasons and in accordance with Articles 21(2) and 21(3)(d) of the Regulation, in accordance with Paragraphs B11 (a), (f)(4), B12 (a) and (b) of the ADR Rules, the Panel orders that the domain name MAPFRE-ES be transferred to the Complainant.

PANELISTS

Name	**SORAINEN, Renata Berzanskiene**

DATE OF PANEL DECISION 2015-01-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: MAPFRE-ES

II. Country of the Complainant: Spain, country of the Respondent: United Kingdom

III. Date of registration of the domain name: 20 September 2014

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Word Community trademark No. 104133 MAPFRE, filed on 1 April 1996 for the term 1 April 2016, in respect of goods and services in classes 16, 35, 36, 37, 41 and 42.
2. Figurative Community trademark No. 385278, filed on 28 October 1996 for the term 28 October 2016, in respect for goods and services in classes 16, 35, 36, 37, 41 and 42.
3. Figurative Community trademark No. 4267563, filed on 1 February 2005 for the term 1 February 2015, in respect for goods and services in classes 16, 35, 36, 37, 38, 39, 41, 42 and 44.
4. Figurative Spanish trademark No. 2588995, filed on 30 March 2004 and in respect of goods and services in classes 16, 35, 36, 37, 38, 39, 41, 42 and 44.
5. Registration of Spanish domain name mapfre.es (identity B21F-MIG1) registered on behalf of MAPFRE Servicios de Informatica S.A., expiry date 25 February 2015.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: There is no evidence in the case that the Respondent has been known under the name "mapfre-es" or has trademark/s or other rights therein. The Panel states that the Respondent has deliberately sought to create a likelihood of association with the Complainant, posing as a member of the Complainant's organization.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Paned found that the Respondent has deliberately sought to create a likelihood of association with the Complainant, posing as a member of the Complainant's organization. The Panel has found that there is enough evidence in the case that the Respondent sent all communications in the name of MAPFRE using what appeared to be the MAPFRE letterhead. There is no evidence in the case that the Respondent has been known under the name "mapfre-es" or has trademark/s or other rights therein. The Panel has found that there is evidence in the case that the Disputed Domain Name was intentionally used to attract Internet users, for commercial gain, to the holder of a Disputed Domain Name by creating a likelihood of confusion with the Complainant's organization.

IX. Other substantial facts the Panel considers relevant: The Complainant lodged a complaint against the Respondent with the Spanish Police.

X. Dispute Result: Transfer of the Disputed Domain Name to the Complainant.

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes