Panel Decision for dispute CAC-ADREU-006907

Case number	CAC-ADREU-006907
Time of filing	2015-04-16 17:16:56
Domain names	fiduciairebelval.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	FIDUCIAIRE BELVAL SARL

Respondent

Name	BLONDEAU

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 informed the Panelist that a legal action is to be introduced in Luxembourg against the Respondent.

FACTUAL BACKGROUND

On December 30, 2014, a complaint has been filed by Mrs. Fatma Benhara on behalf of FIDUCIAIRE BELVAL SARL, an accounting company incorporated in Luxembourg, seeking the transfer of the domain name fiduciairebelval.eu.

The Czech Arbitration Court (hereinafter “the CAC”), having detected several errors and other misinterpretation of the Rules, invited the Complainant to file an amended complaint. On January 14, 2015 the Center notified the Respondent of the commencement of the adr.eu proceedings, inviting the Respondent to file the response.

On January 14, 2015 the CAC received an email from Florin Caministeanu from the FCA Software Media Lux Div S.a.r.l. written on behalf of the Complainant and providing additional statements and evidence in support of the complaint as well as an email from the Complainant. The emails were uploaded in online case file on January 14, 2015, and January 15, 2015, via nonstandard communication.

On February 16, 2015, the CAC received an email from the Complainant which was uploaded in online case file via nonstandard communication on January 17, 2015.

On March 9, 2015 the Center declared Respondent’s default, and then appointed Mr. Roberto Manno as the selected Panelist for the present dispute, projecting the decision date on April 17, 2015.

The disputed domain name was registered on July 24, 2014.

A. COMPLAINANT

The Complainant is, according to the records from the Luxembourg company register, the representative and owner of the FIDUCIAIRE BELVAL Sarl, a financial accounting company in Luxembourg incorporated on October 1, 2010.

The Complainant claims that the domain name fiduciairebelval.eu is identical to Complainant’s trade and business name, allegedly redirected to a porn site and was used in bad faith. In an email sent to the Center on January 14, 2015, the Complainant informed that “this domain name was created for the incorporation of my company, this domain has the same name of my company and make confusion when someone try to look for my company in internet. and in internet when someone looks for my company FIDUCIAIRE BELVAL SARL, the link to the web site "www.fiduciairebelval.eu" still exist. Moreover the web site "www.fiduciairebelval SARL" is not used directly, they do ONLY a transfer of this domain to a porn site.IT APPEARS CLEARLY THAT HAS BEEN REGISTERED IN BAD FAITH. I am

working in accounting field and they are working in porn field, this are completly different. Moreover "FIDUCIAIRE" means ACCOUNTING in French. I hope that the court will understand my position and how much this situation is bad for business."

On the same day, the Center received an email from Florin Caministeanu, on behalf of Complaint's internet and media company in Luxembourg, containing several explanation about the history of the fiduciairebelval.eu domain name prior to the actual registration by the actual registrant. Among the other information, Mr. Florin Caministeanu informed the Center that "Mrs. Benhara has already made a complaint in court."

This latter information was indeed reported also in the first version of the Complaint, filed in French on December 30, 2014, where the Complainant wrote "Je vais déposer plainte au bureau de police de Luxembourg".

B. RESPONDENT

Respondent is on default.

DISCUSSION AND FINDINGS

As a preliminary remark in the present case is that the complaint was brought without the assistance of a professional representative: this is not an impediment for the admissibility of the complaint, which has been indeed (almost patiently) processed by the Center. However, it is hard for the Panelist to orientate in the vast amount of nonstandard communication and overlapping submissions provided by the Complainant in several instances and in several languages.

In particular, it is difficult to evaluate the admissibility of emails and communications directly sent to the Case Administrator by third parties deprived of any representation ability, containing arguments and documents referring to the case, as this is a typical activity reserved to the parties in the proceedings or, more properly, to adr.eu attorneys.

It is true that, according to the Rules, the Panelist have enough power to instruct and conduct the proceedings, but according to the procedural rules parties have to provide supporting arguments and documentary evidences of all of the classical three elements (identical with earlier right – lack of legitimate interest – bad faith in the registration OR use of the domain name), which is something different from simply asking the transfer of a domain name "because they use it for a pornsite". However, it should be noted that pursuant to Paragraph B7(a) of the ADR Rules a panel can at their own discretion conduct an independent investigation.

The Complainant must first establish a right that "is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1)". Article 10(1) of the Regulation refers to: "registered national and community trade marks, 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 trade marks, trade names, business identifiers, company names".

The Complainant successfully met this first element, as according to the extract of the Lucembourg company register Mrs. Fatma Benhara incorporated on October 1, 2010, a SARL with the "FIDUCIAIRE BELVAL" business name.

With regard to the second requirement, it is important to point out that Complainant is required to provide at least a prima facie evidence of the lack of Respondent's rights or legitimate interest in the domain name. According to Paragraph B1(b)(10)(i)(B) of the ADR Rules the Complainant is required to describe "why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint". On this point, the complaint is really poorly drafted and no further arguments and evidences are provided, with the exception of the alleged redirect to a porn site. There is nothing, however, supporting this claim and the Panelist is left alone with this assertion.

In that regard, according to the Paragraph B8 of the ADR Rules panels can admit supplemental fillings at their own discretion. In this particular case, the Panel is of the opinion that the supplemental fillings shall be accepted for the reasons of fairness.

Furthermore, the Panel would like to point out that the Respondent failed to submit any response.

Indeed, it appears that the domain name has been registered well after the Complainant incorporated its "financial and tax advisory" company. However, the Complainant submitted no evidence of an existence of the disputed domain name resolving to a porn site (no screenshots neither other evidence has been provided in that regard). As of the date of the decision, the Panel has found out that disputed domain name results to an "under construction" page. Nevertheless, according to the WHOIS information the Respondent is not known under the disputed domain name and there is no evidence of any legitimate use or interest of the Respondent in the disputed domain name. Therefore, it is this Panelist belief that the existence of the disputed domain name has no other possible explanation than

using the same words “fiduciaire” and “belval” (previously used as Complainant’s website) without any right or legitimate interest in the meaning of the Article 21(1)(a) of the Regulation (EC) No 874/2004.

For there is no legitimate interest in the disputed domain name on the part of the Respondent, there is no need for the Complainant to prove bad faith and for the Panel to assess bad faith of the Respondent.

However, for the sake of completeness, the Panel would like to emphasize that under the bad faith test, Complainant’s arguments may be summarized as follows: being the domain name used as a redirect to a porn site, this clearly shows a bad faith as it has bad effect on Complainant’s (accounting) business. It has to be pointed out, however, that this is not one of the traditional bad faith indices set forth by the Rules and by adr.eu jurisprudence.

The Complainant completely failed to provide any documentary evidence of the bad faith requirement, namely that the domain name has been registered or used in bad faith. However, a Webarchive search showed the Panelist that complainant allegations were quite true and correct, and therefore it is possible to infer that the domain name was effectively used to post adult contents online. Therefore, according to the Panel the disputed domain name has been registered with the primary intent to illegally exploit complainant's name thus in bad faith.

Having considered the circumstances of the case, and in particular Respondent’s default to provide any response, the Panelist believes that all the conditions are met to order that the disputed domain be transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name FIDUCIAIREBELVAL, FIDUCIAIREBELVAL be transferred to the Complainant

PANELISTS

Name	**WebLegal, Roberto Manno**

DATE OF PANEL DECISION 2015-04-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: fiduciairebelval.eu

II. Country of the Complainant: [Luxembourg], country of the Respondent: [France]

III. Date of registration of the domain name: July 24, 2014

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

7. unregistered trademark:
8. business identifier:
9. company name:

V. Response submitted: [No]

VI. Domain name/s is/are [identical/confusingly similar/neither identical nor confusingly similar] to the protected right/s of the Complainant: Yes

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. [Yes]
2. Why: in presence of Respondent's default the Panelist is satisfied with Complainant Prima Facie showing of the present requirement

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. [Yes]
2. Why: based on the global appreciation of the circumstances of the case, the Panelist believes that the domain name has been registered with the primary intent to illegally expoit complainant's name.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: [Transfer of the disputed domain name/s/]

XI. Procedural factors the Panel considers relevant: lack of professional representation; content provided by third parties;

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