Panel Decision for dispute CAC-ADREU-007188

Case number	CAC-ADREU-007188
Time of filing	2016-08-06 14:52:34
Domain names	eurofir.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	EuroFIR AISBL

Respondent

Name	Sam Farrell

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 another pending or decided legal proceeding which relates to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an international, member-based, non-profit association under Belgian law. Its purpose is to develop, publish and exploit food composition information and promote international cooperation and harmonisation of standards to improve data quality, storage and access.

The Complainant is the owner of the following intellectual property rights:

(i) A Word European Union Trademark (EUTM) “EUROFIR” registered with the European Union Intellectual Property Office (EUIPO) under No. 11618667 with prior rights from 1 March 2013 in classes 9, 16, 35, 41, 42;
(ii) A Figurative EUTM “EuroFIR” registered with the EUIPO under No. 011693769 with prior rights from 27 March 2013 in classes 9, 16, 35, 41, 42;
(iii) A Domain Name “EUROFIR.ORG” registered since 24 January 2001 which has been used by the Complainant in order to conduct its business and offer its services;
(iv) A Company Name “EUROFIR” which the Complainant has been using since its establishment in Belgium on 19 May 2009.

The Respondent, an individual Sam Farrell, occupation unknown and residing in Modena, Italy, registered the domain name <eurofir.eu> on 27 November 2015 and uses the domain name for a website called "EuroFIR Insurance". The site promotes health insurance plans, but contains mostly copies of entire pages of the Complainant's website, including images, texts on food information, logo's and a statement that he actually is the Complainant.

A. COMPLAINANT

The Complainant claims

1) that by registering a domain name identical to the Complainant's trademarks, domain name and company name the Respondent deliberately violates the Complainant's IP rights. The usage of the different generic top level domain .eu instead of .org as the only differentiating element does not sufficiently distinguish the Respondent's domain name from the Complainant's name.

2) that the Respondent has no rights or legitimate interest in the name. This is evident from the obviously abusive content of the Respondent's website as well as from the WHOIS contact information, none of which indicates any affiliation whatsoever or another legitimate interest in the nomination.

3) that the Respondent has registered and has been using the domain name in bad faith. He has literally copied the Complainant's website and even has been posing as the Complainant.

4) that the Complainant has not authorized, licensed or otherwise permitted the Respondent to use the IP rights in any way.

Therefore the Complainant requests that the disputed domain name be transferred to the Complainant.

B. RESPONDENT

The Respondent did not respond to the cease and desist letter by the Complainant, nor to the complaint and the notification of commencement of the ADR procedure.

DISCUSSION AND FINDINGS

According to Article 22 (10) of the of the Commission Regulation (EC) No. 874/2004 of 28 April 2004 and Paragraph B 10 (a) of the ADR Rules, failure of any of the parties involved in an ADR procedure to respond within the given deadlines may be considered as grounds to accept the claims of the counterparty. Article 21 (1) of the Commission Regulation (EC) No. 874/2004 of 28 April 2004 nevertheless requires that the conditions for revocation of the domain name be met.

These conditions are that the 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 and that it 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.

1) By submitting the certifications attached to the complaint the Complainant has established that it is the owner of the intellectual property rights in the name EUROFIR under EU law.

The disputed domain name incorporates the Complainant's trademark in its entirety, i.e. the disputed domain name is composed of the Complainant's trademark and .eu suffix. There is a strong consensus view among the panels that for assessing identity or confusing similarity the .eu suffix has to be disregarded. Therefore, the Panel has no doubt that the disputed domain name is identical to the Complainant's trademark and that the first condition laid down in Article 21 (1) of the Commission Regulation (EC) No. 874/2004 of 28 April 2004 has been met.

2) The Respondent's website promotes health insurance plans, while the Complainant is a non-profit association that develops, publishes and exploits food composition information. Prima facie it is very unlikely that the Respondent could have any right or legitimate interest in the food business of the Complainant, let alone in his name and since the Respondent fails to show evidence thereof he is deemed to have none. In other words, the Complainant successfully established that Respondent lack rights or legitimate interests in the disputed domain name for :

(i) The Complainant has not licensed or otherwise permitted the Respondent to use its trademarks or to register the disputed domain name incorporating its trademark;

(ii) The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of the Complainant;

(iii) The Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights;

(iv) The Complainant has no relationship with The Respondent.

Therefore, the second condition laid down in Article 21 (1) of the Commission Regulation (EC) No. 874/2004 of 28 April 2004 has been met.

3) The website of the Respondent mentioning that he is "EuroFIR ASBL, your source for best available food information" is sufficient evidence that a large part of the website is an exact copy of the website of the Complainant. Furthermore, this fact also supports a conclusion that the Respondent had actual knowledge of the activities and the name of the Complainant before registering it. It demonstrates beyond doubt that the disputed domain name was intentionally used to attract internet users by profiting from the business and the client base of the Complainant and therefore sufficiently demonstrates bad faith within the meaning of Article 21 (1) of the Commission Regulation (EC) No. 874/2004 of 28 April 2004.

4) Finally, it should be emphasized that the Complainant satisfies the general eligibility criteria under Article 4(2)(b) of the Regulation No. 733/2002 given the fact that it is a non-profit association established under Belgian law with its principal office in Belgium.

DECISION

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

PANELISTS

Name	**Herman Sobrie**

DATE OF PANEL DECISION 2016-08-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: EuroFIR

II. Country of the Complainant: Belgium, country of the Respondent: Italy.

III. Date of registration of the domain name: 27 November 2015

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Word European Union Trademark (EUTM) “EUROFIR” registered with the European Union Intellectual Property Office (EUIPO) under No. 11618667 with prior rights from 1 March 2013 in classes 9, 16, 35, 41, 42;
2. Figurative EUTM “EuroFIR” registered with the EUIPO under No. 011693769 with prior rights from 27 March 2013 in classes 9, 16, 35, 41, 42;
3. Company Name “EUROFIR” which the Complainant has been using since its establishment in Belgium on 19 May 2009.

V. Response submitted: No

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The Respondent's website promotes health insurance plans, while the Complainant is a non-profit association that develops, publishes and exploits food composition information. Prima facie it is very unlikely that the Respondent could have any right or legitimate interest in the food business of the Complainant, let alone in his name and since the Respondent fails to show evidence thereof he is deemed to have none.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The website promotes health insurance plans, but contains mostly copies of entire pages of the Complainant's website, including images, texts on food information, logo's and a statement that he actually is 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: None

XII. Is Complainant eligible? Yes