Panel Decision for dispute CAC-ADREU-007246

Case number	CAC-ADREU-007246
Time of filing	2016-09-01 13:14:29
Domain names	TIMOTION.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	A&E Trading BV

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 legal proceedings which are pending or decided and which relate to the disputed domain name

FACTUAL BACKGROUND

The Complainant is a limited liability company (in French société à responsabilité limitée) existing under the laws of France and a subsidiary of TiMOTION TECHNOLOGY INC. a corporation registered and located in Taiwan which has a world-wide business providing electric linear actuators for the medical, furniture, ergonomic, and industrial markets under the TiMOTION mark.

The Complainant's parent corporation TiMOTION TECHNOLOGY INC. is the owner of EUTM registration number 007507965 TiMOTION, filed on 8 January 2009 and registered in classes 7 and 9 for the following goods: in Class7 "Linear motors; AC motors; DC motors; mechanical actuators and linear actuators, linear motors, other than for land vehicles; motors with retractable tube; gear boxes other than for land vehicles"; and in class 9 "Transformers (electricity); circuit switching controllers (electric); AC/DC voltage converters; electric actuators; batteries; transmitters of electric signals; controllers of automated door systems; electric door openers and closers; wired and wireless remote controls; infrared sensors."

Since 05/02/2011, (which may be either 5 February 2011 or 2 May 2011), the Complainant has held, and has carried on business with, an exclusive licence to use said EUTM registration number 007507965 TiMOTION in the European Union and certain specified neighbouring territories.

In addition, the Complainant uses the tradename "TIMOTION" in the Netherlands where the Respondent is based and other jurisdictions in Europe.

The Respondent was an authorised distributor of the Complainant's products up until 1 October 2014 when the distributorship relationship ended.

On 7 August 2014, prior to the termination of the distributorship relationship, the Respondent registered the disputed domain name <timotion.eu>. After the ending of the distribution relationship, the Complainant requested the Respondent to transfer the disputed domain name, but the Respondent has refused so to do.

A. COMPLAINANT

The Complainant submits that the disputed domain name is identical to, or at least confusingly similar to the Complainant's trademark and tradename, arguing that the word TiMOTION is the predominant element of the trademark, tradename and disputed domain name. The Complainant submits that the TLD extension <.eu> may be ignored for the purposes of the comparison and that when tradenames

are incorporated into domain names they seldom include references to a region (e.g. Europe, the Netherlands, France, US, etc.) nor to the form of corporate entity (e.g. Sarl, Gmbh, BV, Inc).

The Complainant argues that the use of the disputed domain by the Respondent creates confusion among internet users by inferring that there is a continuing economic relationship between the Complainant and the Respondent - which is no longer the case.

The Complainant argues that the Respondent has no rights or legitimate interest in the disputed domain name, the TiMOTION trademark or the TiMOTION tradename and that the Respondent is using the disputed domain name to redirect Internet traffic to an identified website where only products of competitors are offered for sale.

The Complainant argues that the Respondent is not making any legitimate and non-commercial or fair use of the disputed domain name; and the Respondent no longer has any connection with Complainant or its TiMOTION branded products.

The Complainant states that when the distributorship relationship between the Complainant and the Respondent ended 1 October 2014, all remaining stock (apart from one minor product that is not offered online by the Respondent) was bought back by the Complainant. The Complainant asserts that the Respondent no longer sells any TiMOTION branded products, and only sells products of competitors.

The Complainant submits that the Respondent has not been commonly known by the disputed domain name nor has it ever operated any enterprise under the trade name TiMOTION.

Furthermore, the Complainant asserts that it has not authorised the Respondent to use its trademark and that the disputed domain name was registered by the Respondent without any authority in the first place.

The Complainant submits that the disputed domain name is being used to attract Internet users for commercial gain to the Respondent's own website on which only products of competitors of Complainant are offered for sale. The website to which the disputed domain name resolves does not disclose that there is no commercial relationship existing between the Respondent and the Complainant. The Complainant argues that therefore the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's mark and therefore according to Article 21(3)(d) of Commission Regulation (EC) No 874/2004 and Paragraph B 11 (f)(4) of the ADR Rules such use amounts to bad faith.

B. RESPONDENT

The Respondent has not filed a Response or made any submissions.

DISCUSSION AND FINDINGS

Article 21 of Regulation 874/2004 and Rule B 11 of the ADR Rules require that the Complainant must prove that

i. the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community Law and
ii. the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
iii. that the domain name has been registered or is being used in bad faith.

The Complainant has provided convincing evidence that it has an exclusive licence to use the TiMOTION trademark which is the subject of the above-referenced EUTM registration. The disputed domain name is identical to the TiMOTION mark except for the addition of the <.eu> TLD extension which may be ignored for the purpose of comparison.

This Panel finds therefore that the domain name is identical to the name TiMOTION in respect of which the Complainant has a right as an exclusive licensee of said EUTM which is recognized and established by EU Law.

The Complainant has made out a strong prima facie case that the Respondent has no rights or legitimate in the disputed domain name, which, in the absence of a Response, has not been denied or contradicted in any way.

On the evidence, the Respondent was not authorised to register the Complainant's trademark as a domain name; the Respondent has never been known by the domain name or any similar name; the authorised distributorship relationship that existed between the Complainant and the Respondent terminated on 1 October 2014; the Respondent no longer sells the Complainant's goods; the disputed domain name resolves to a website that offers products which compete with the Complainant's products; and the Respondent's website does not disclose that there is no commercial relationship between the Complainant and the Respondent or that the Complainant has no

association with the website.

Article 21.3(d) of the Regulation provides that bad faith may be demonstrated inter alia where " the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name".

In the circumstances this Panel finds that it follows that the Respondent is not making a bona fide use of the disputed domain name but is instead using the disputed domain name in bad faith by making intentional, predatory unauthorised use of the Complainant's trademark and tradename to attract Internet users to its website which offers directly competing products for sale.

On the evidence this Panel finds therefore that the domain name has been registered by the Respondent without rights or legitimate interest in the name and that the domain name has been registered and is being used in bad faith.

The Complainant is entitled to succeed in this Complaint.

The Complainant is an organisation established within the European Union being a company existing under the laws of France and therefore satisfies the general eligibility criteria for registrants set by Article 4(2)(b) of Regulation (EC) No. 733 of 2002. In the circumstances this Panel finds that the disputed domain name should 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 TIMOTION.EU be transferred to the Complainant.

PANELISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2016-09-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: TIMOTION.eu

II. Country of the Complainant: FRANCE, country of the Respondent: NETHERLANDS

III. Date of registration of the domain name: 7 August 2014

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. EUTM reg. No. 007507965 TiMOTION, filed on 8 January 2009 and registered in classes 7 and 9 for the following goods: in Class7 "Linear motors; AC motors; DC motors; mechanical actuators and linear actuators, linear motors, other than for land vehicles; motors with retractable tube; gear boxes other than for land vehicles"; and in class 9 "Transformers (electricity); circuit switching controllers (electric); AC/DC voltage converters; electric actuators; batteries; transmitters of electric signals; controllers of automated door systems; electric door openers and closers; wired and wireless remote controls; infrared sensors."

V. Response submitted: No

VI. Domain name is identical 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: The Complainant has rights as the exclusive licensee of the TiMOTION trademark. The disputed domain name is identical to the TiMOTION trademark. The Registrant is a former distributor of the Complainant's electrical products. The Respondent registered the disputed domain name on 7 August 2014 shortly before the termination of the distributorship relationship without the licence or authority of the Complainant or its parent corporation which is the owner of EUTM registration for the TiMOTION mark. The distributorship has ended as of 1 October 2014.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the Respondent has refused to transfer the disputed domain name to the Complainant and is using the disputed domain name to resolve to a website through which the Respondent markets products which compete with those of the Complainant.

IX. Other substantial facts the Panel considers relevant: NONE

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: NONE

XII. If transfer to Complainant, is Complainant eligible? Yes. The Complainant is an organisation established within the European Community being a société à responsabilité limitée existing under the laws of France and therefore satisfies the general eligibility criteria for registrants set by Article 4(2)(b) of Regulation (EC) No. 733 of 2002.