Panel Decision for dispute CAC-ADREU-007257

Case number	CAC-ADREU-007257
Time of filing	2016-10-20 09:27:46
Domain names	reparstores.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization

Respondent

Name	MUSTPAHA MESSAOURI

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 other legal proceedings that the Complainant may have undertaken against the Respondent, in relation to the disputed domain name.

FACTUAL BACKGROUND

The Respondent registered the disputed domain name on December 10, 2015. On January 11, 2016, the Complainant sent the Respondent a cease-and-desist letter requesting the transfer of the disputed domain name.

The Complainant submitted a complaint on June 28, 2016, which was amended – upon demand of the Center – on July 15, 2016.

The deadline for submitting a Response to the Complaint expired on September 20, 2016. No Response was filed by the Respondent by this deadline and the Respondent was therefore in Default.

However, after the Notification of Default, sent to the Respondent on September 21, 2016, the latter replied to the Complaint on the same day.

A. COMPLAINANT

Firstly, the Complainant contends that the disputed domain name is identical to its “REPAR’STORES” trademarks, inter alia protected in France and in Benelux.

The Complainant therefore argues that the ccTLD <.eu> is not to be taken into consideration when assessing the likelihood of confusion. If anything, it rather enhances the risk of confusion, since it designates the European Union, where the Complainant is located.

Secondly, the Complainant contends that the Respondent lacks any right or legitimate interest in respect of the disputed domain. The Respondent would have no right to the denomination “REPARSTORES” and the Complainant would not have granted him any license or authorization to use its trademarks. The Complainant also indicated that it has no business relationship with the Respondent.

The Complainant also alleges that the Respondent does not make any commercial use of the disputed domain name.

Thirdly, the Complainant argues that the disputed domain name was registered in bad faith, considering that the Respondent was necessarily aware of the Complainant’s rights, inter alia, because of the particular structure of the denomination “REPARSTORES”.

The Complainant also deems that the disputed domain name is used in bad faith and was solely registered for cybersquatting purposes.

The Complainant states that it has sent a cease-and-desist letter to the Respondent, who filed a Benelux trademark application on the sign “REPARSTORES.BE BELGIQUE + logo” two days after the sending of the cease-and-desist letter.

Therefore, the Complainant requests the Panel to order that the disputed domain name <reparstores.eu> be transferred to the Complainant.

B. RESPONDENT

The Respondent had a deadline to submit a Response to the Complaint by September 20, 2016. Since no arguments were filed by this date, the Respondent was in default. The Respondent’s Default was notified on September 21, 2016. However, on the same day, the Respondent submitted a Response, consequently challenging the Notification.

The Respondent indicated that the disputed domain name was acquired because the company he works in is a leader in Belgium in the repair of windows and that this company also wants to engage in the manufacture of blinds. The Respondent would have registered the disputed domain because it was free for registration.

DISCUSSION AND FINDINGS

In accordance with Article 21 of the Regulation 874/2004 and Rule B 11 of the ADR rules, the Complainant is required to 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 law of a Member State and or/Community Law.
ii. the domain name has been registered by the Respondent without rights or legitimate
interest in the name.
iii. that the domain name has been registered or is being used in bad faith.

A. Likelihood of confusion

The Complainant has demonstrated that it owns valid trademarks for the denomination “REPAR’STORES”, registered in several countries, in its own name in France and in its CEO’s name in Benelux. For instance, the Complainant owns the French semi-figurative trademark "REPAR'STORES" No. 3 640 343, dated March 31, 2009.

Furthermore, “REPAR’STORES” is also the name under which the Complainant operates its activities. These trademarks are also reflected through the registration and use of domain names such as <reparstores.com>, <repar-stores.com> and <repar-store.com>.

The disputed domain name, <reparstores.eu>, incorporates the dominant part of Complainant’s trademarks, namely the denomination “REPAR’STORES”. The fact that the Complainant’s trademarks are stylized does not suffice to avoid a confusing similarity. In the same way, the deletion of the apostrophe in the disputed domain does not diminish the likelihood of confusion.

Moreover, the disputed domain name does not bear any additional word to distinguish it from the Complainant’s trademark.

Finally, it is well established that a top-level domain name, <.eu> in the present case, should be disregarded when assessing whether or not the disputed domain name is identical or confusingly similar to a complainant’s trademark (see e.g. TiMOTION Europe SARL v.A&E Trading BV, ADR Case No. 07246).

In view of the above, the Panel considers that the Complainant has proved that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

It is sufficient that the Complainant shows a prima facie case that the Respondent lacks legitimate rights or legitimate interests in the disputed domain name in order to shift the burden of proof to the Respondent (see e.g. Otokar Otomotiv ve Savunma Sanavi A.S. v. Gbenga Osoba, ADR Case No. 07202).

In the present case, the Complainant has made a prima facie showing that the Respondent does not benefit from a license or authorization granted by the Complainant to use the “REPAR’STORES” trademark. Moreover, there is no business relationship between the Complainant and the Respondent and the Respondent is not commonly known under the name “REPAR’STORES”.

Furthermore, the Respondent has not filed a response to the Complainant's contentions to try and demonstrate a possible legitimate interest or right in the domain name by the deadline for submitting a Response.

The Respondent was therefore in default. However, he challenged the notification of default by submitting a response afterwards. Pursuant to article B3(g), "the Respondent's challenge shall be considered by the Panel in its sole discretion as part of its decision making." The Panel has decided to accept the Respondent's answer since the indications provided by the Respondent are relevant for this case.

Indeed, the Respondent explained his choice in the disputed domain name by indicating that he registered it because it was available, which is not a valid argument to demonstrate a right or legitimate in a domain name. The Respondent also indicates that his company is a leader in Belgium in the repair of windows and that they want to engage in the manufacture. Hence, the Respondent appears to be a competitor of the Complainant, who would then be aware of the Complainant's prior rights.

Furthermore, the Respondent has not provided elements tending to demonstrate preparations to use the disputed domain name.

Therefore, the Panel is of the opinion that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered or Used in Bad Faith

As stated above, the disputed domain name fully incorporates the Complainant's trademark, which is registered in France and in Benelux, where the Respondent is located.
The Complainant's trademark rights on the "REPAR'STORES" sign preceded the registration of the disputed domain name by several years.

The Complainant operates in France, including Northern France, which is near the location of the Respondent. Considering that the Respondent has indicated that he was operating in the same business domain of that of the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant's prior rights.

Furthermore, a simple Google search on the denomination "REPARSTORES" would have revealed the Complainant's existence.

In this regard, the Panel notes that even if the sign "REPAR'STORES" is composed of generic terms, it presents an original structure which further demonstrates the Respondent's knowledge of the Complainant's earlier rights.

Furthermore, the Respondent filed a Benelux trademark application for the sign "REPARSTORES.BE BELGIQUE" right after the Complainant had sent him a cease-and-desist letter on the basis of their prior trademark rights. The latter has not indicated for which reasons he has registered the disputed domain name and stated solely that the domain name was free for registration.

Therefore, the Panel concludes that the Respondent has registered the domain name in bad faith.

Currently, no positive use is made of the disputed domain name which resolves to a default page of the registrar.

However, passive holding does not preclude a finding of use in bad faith and can constitute use in bad faith (see e.g. Conférédation Nationale du Crédit Mutuel, Benoît Wiesel v/ Isabelle Schmitt, ADR Case No. 07211).

This element, added to the fact that the Respondent operates in the same field of activity as of that of the Complainant and considering that the Respondent filed a Benelux trademark "REPARSTORES.BE BELGIQUE" two days after receiving the Complainant's cease-and-desist letter demonstrate a use in bad faith, in the Panel's views.

The Panel concludes that the Respondent has registered or used the domain name in bad faith to divert Internet users, for commercial gain, from the Complainant's websites.

DECISION

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

PANELISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2016-10-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <reparstores.eu>

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

III. Date of registration of the domain name: 10 December 2015

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Combined word/figurative trademark registered in France, reg. No. 3640343, for the term REPAR'STORES, registered on March 31, 2009 in respect of goods and services in classes 6, 9, 19, 20, 22, 35 and 37.
2. International combined word/figurative trademark inter alia registered in Benelux, reg. No. 1298292, for the term REPAR'STORES, registered on 25 January 2016 in respect of goods and services in classes 6, 7, 19, 20, 22, 35 and 37.
3. Commercial sign: REPAR'STORES

V. Response submitted: Yes, but after the deadline set to submit a Response.

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: The Respondent has not demonstrated sufficient rights or legitimate interests in the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why: The disputed domain name incorporates the Complainant's trademark. Besides, the Respondent operates in the same field of activity that the Complainant, which tends to demonstrate registration in bad faith. Furthermore, the disputed domain name is not in use.

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.