Panel Decision for dispute CAC-ADREU-007341

Case number	CAC-ADREU-007341
Time of filing	2017-02-03 15:43:06
Domain names	dpd-delivery.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization

Respondent

Name	HOSTER NODE

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the Disputed domain name.

FACTUAL BACKGROUND

The Complainant is the German company DPD Dynamic Parcel Distribution GmbH & Co. KG and operates in the field of parcel delivery and postal services.

The Complainant uses the trademark “DPD” (as an acronym for “Dynamic Parcel Distribution”) and owns numerous “DPD” trademark registrations throughout the world, including:
- European Union trademark n° 002238178 "DPD” (with design), filed on 25 May 2001 and registered on 2 July 2002 for various services in classes 36 and 39; and
- European Union trademark n° 012722427 "DPD" (with design), filed on 21 March 2014 and registered on 14 August 2014 for numerous goods and services in classes 09, 16, 35, 39 and 42.

The Complainant also owns various domain names comprising the acronym “dpd”, amongst them
- <dpd.eu> (registered in 2006),
- <dpd.com> (registered in 1991)
- <dpd.net> (registered in 1997) and
- <dpd.co.uk> (registered in 1996)

The Respondent uses the Disputed domain name for a website having a similar “look and feel” as the Complainant’s own corporate websites. The Respondent’s website particularly reproduces the Complainant’s exact “DPD” logo design as well as other visual elements from the Complainant’s own websites (red colour, square block forms, world maps etc.). The Respondent’s website states the Respondent's company name as “DPD Delivery S.A.” and describes this company as an “international vehicle shipping” company that allegedly handles "thousands international shipping moves every year”.

A. COMPLAINANT

The Complainant contends that the Disputed domain name is confusingly similar to its “DPD” trademarks cited above.

The Complainant also contends that the Respondent has no rights or legitimate interest in respect of the Disputed domain name. Specifically, the Complainant contends that the Complainant has not licensed or otherwise authorized the Respondent to use the “DPD” trademark or to apply for any domain name incorporating the trademark. The Respondent is not making a legitimate non-commercial or

fair use of the Disputed domain name, since the Disputed domain name is being used for a website where both the Complainant's "DPD" trademark and the Complainant's visual design and trade dress are being reproduced without permission.

The Complainant further contends that the Disputed domain name has been registered and is being used in bad faith, namely to create confusion and mislead the internet user into believing that the Complainant and the Respondent are affiliated, or that the Complainant endorses the website to which the Disputed domain name resolves. The Complainant contends that the Respondent abuses the Disputed domain name to fraudulently acquire money and sensitive information (i.e. usernames, passwords, credit card details) from the Complainant's customers by masquerading as a legitimate "DPD" company that is affiliated to the Complainant. The Complainant particularly points out that one of its customers has received fraudulent "phishing" emails from the address customer.care@dpd-delivery.eu, these emails showing the Complainant's logo and "DPD" trademark, linking to the website at www.dpd-delivery, and requesting money transfers from the recipient.

After the Complainant became aware of this situation its legal counsel has sent several warning letters to the Respondent, which remained unanswered.

Based on these arguments the Complainant requests revocation of the Disputed domain name.

B. RESPONDENT

No Response was received from the Respondent.

DISCUSSION AND FINDINGS

1. The Respondent's reply

The Respondent has failed to submit a formal Response to the Complaint.
In Accordance with Paragraph B10 of the ADR Rules the Panel considers it adequate to proceed to a decision as follows.

2. Merits of the case

According to Article 21(1) of Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules the Respondent's registration of the disputed domain name is considered abusive and speculative if

(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 either

(ii) the Disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the Disputed domain name has been registered or is being used in bad faith.

Second Level Domain "DPD-DELIVERY" of The Disputed domain name is confusingly similar to the "DPD" trademarks cited above. The additional element "DELIVERY" is purely descriptive of the Complainant's activity as it refers to the delivering services provided by the Complainant. In addition, it is well established that the Top Level Domain ".eu" does not affect the Panel's determination whether the Disputed domain name is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (EC) No 874/2004 (see, among others, CAC cases No. 00227, 00387, 00596, 06303, and 6452).

On the evidence made available to the Panel and given that there was no response by the Respondent the Panel is convinced that the Respondent has both registered and uses the domain name in bad faith pursuant to Article 21(3)(d) of Regulation (EC) No 874/2004 and Paragraph B11(f)(4) of the ADR Rules. It is evident that the Disputed domain name is intentionally being used to attract Internet users, for commercial gain, to the website operated under <dpd-delivery.eu>, by creating a likelihood of confusion with the Complainant's "DPD" brand as to the source, sponsorship, affiliation or endorsement of the website and of the services offered via this website. On the evidence submitted by the Complainant and absent any response from the Respondent the Panel is convinced that both the Respondent's website under <dpd-delivery.eu> and the "phishing" emails sent from the address customer.care@dpd-delivery.eu are evidently being used for fraudulent purposes.

As the Disputed domain name has been registered and is being used in bad faith the requirements of Article 21(1)(b) of Regulation (EC) No 874/2004 are met. The requirements of Article 21(1)(a) and (b) are alternative and not cumulative, so that it is not necessary to analyse whether the Disputed domain name has also been registered without rights or legitimate interest in the name.

DECISION

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Disputed domain name <DPD-DELIVERY.EU> be revoked.

This decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction (see Paragraphs B12(a) and B14 of the ADR Rules).

PANELISTS

Name	**AMPERSAND Rechtsanwaelte LLP, Dr. Thomas Schafft**

DATE OF PANEL DECISION 2017-01-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. The Disputed domain name: DPD-DELIVERY.EU

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

III. Date of registration of the Disputed domain name: 24 September 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. European Union trademark, reg. No. 002238178, for the term "DPD" (+device), filed on 25 May 2001, registered on 2 July 2002 in respect of services in classes 36, 39;
2. European Union trademark, reg. No. 012722427, for the term "DPD" (+device), filed on 21 March 2014, registered on 14 August 2014 in respect of goods and services in classes 09, 16, 35, 39 and 42.

V. Response submitted: No

VI. The Disputed 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. Not analyzed
2. Why: Not relevant because the Respondent acted in bad faith

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Intentionally used to attract internet users, for commercial gain, by creating a likelihood of confusion (Art. 21(3)(d) Regulation (EC) No 874/2004)

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Revocation of the Disputed domain name

XI. Procedural factors the Panel considers relevant: N/A