Panel Decision for dispute CAC-ADREU-007374

Case number	**CAC-ADREU-007374**
Time of filing	**2017-03-03 09:39:10**
Domain names	**adlpartner.eu**

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	**ADLPartner**

Respondent

Name	**KYRABEL**

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 other pending or decided legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

ADLPartner (the Complainant) is a French company having as main activities the marketing of subscriptions to the press magazine as well as B2B client marketing. The company also acts as a specialized intermediary in the trade of specific products of others.

ADLPartner is owner of the French trademark “ADLPartner”. It moreover holds the domain names <adlpartner.fr> and <adlpartner.com>, both pointing to the Complainant’s official web site www.adlperformance.com. The former domain name is also used as email address by its employees on the model “p.nom@adlpartner.fr”.

In August 2016, ADLPartner discovered that someone had maliciously registered the domain names <adl-partner.fr> and <adl-partner.eu> and had sent emails to suppliers structured in a way to make them to believe that they came from the real company ADLPartner. Most of these orders /requests for information were transmitted from a person named “Justyne Kyrabel” who was neither employee nor anyhow affiliated to ADLPartner.

The emails dated July/August 2016 enclosed with the complaint as evidentiary documents show an identical / very similar structure: (i) they were sent from an email address “j-kyrabel@adl-partner.eu”and/or “jkyrabel@adl-partner.fr”; (ii) in the aforesaid emails the sender Mr. Kyrabel introduced himself as acting on behalf of the company ADLPartner and made requests for quotations and orders of specific products; (iii) below Mr. Kyrabel’s signature the name of ADLPartner, its address and VAT number were clearly reported together with a telephone number that was unknown to the Complainant.

ADLPartner, warned by suppliers, started receiving requests from third companies asking it to confirm that orders placed by a person called “Justyne Kyrabel” could be actually referred to this company. The matter became even more worrying when in August 2016 the Complainant received from a Polish company an invoice of € 81.300,23 for an order coming from Justine Kyrabel, presenting himself expressly on behalf of ADLPartner and including in his signature the Complainant’s name, its postal address and VAT number.

Because of these attempted frauds, ADLPartner decided to file a complaint with the French police for unauthorized appropriation of the name ADLPartner, having it been incorporated in the domain names <adl-partner.fr> and <adl-partner.eu> registered by a third party, and having it been used in a manner that could determine criminal proceedings against him/her.

New cases of attempted fraud and misuse of ADLPartner identity however occurred in the subsequent months and a new invoice for € 99.407,00 was addressed to the Complainant further to an order made by Justine Kyrabel on a fake writing paper of ADLPartner sent to a

supplier by using the e-mail address “jkyrabel@adl-partner.fr”. In November 2016 the Complainant was moreover warned by a German company that the same Justyne Kyrabel was trying to place an order for electronic devices on behalf of ADLPartner and by using the email address “marketing@adlpartner.eu”, incorporating the Disputed domain name.

Because of the detected fraud attempts, ADLPartner decided to start separate proceedings before the Czech Arbitration Court for getting the transfer of the domain names <adl-partner.eu> and <adlpartner.eu>, as well as before AFNIC for the transfer of the domain name <adl-partner.fr>.

The present Complaint was filed on December 9, 2016 against the Disputed domain name <adlpartner.eu>, directly registered in the name of KYRABEL. Said domain name still points to the Complainant’s official web site www.adlperformance.com.

The Czech Arbitration Court, failing to receive a confirmation receipt of the ADR proceeding e-mail notice from the Respondent, sent him the same by post on December 20, 2016. This last notice was however returned as undelivered to the Provider. In the same way, no Response to the Complaint was submitted within the terms set according to the ADR Rules.

A. COMPLAINANT

The Complainant asserts the Disputed domain name is identical and reproduces the following prior rights:

a) Company name ADLPartner – registered in the French Trade and Company Register on 22.08.2005 (SIREN 393376801) – evidences: registration certificates enclosed with the complaint;

b) French trademark registration No. 98729815 filed/registered on 24.04.1998 in the Complainant’s name, last renewal made on 24.04.2008, covering Nice classes 9, 16, 35, 38, 39, 41 and 42 – evidences: official abstracts enclosed with the complaint;

c) Domain name <adlpartner.fr> registered on 23.06.1998 – present status: alive - evidences: Whois information sheet enclosed with the complaint;

d) Domain name <adlpartner.com> registered on 2.03.1999 - present status: alive - evidences: Whois information sheet enclosed with the complaint.

Because of its identity with said prior rights, the Disputed domain name leads third parties to erroneously believe that it is the Complainant’s domain name.

The Complainant moreover remarks that the Respondent has no rights or legitimate interests in the Disputed domain name. In particular:

a) The Disputed domain name is subsequent to the Complainant’s rights;

b) The Complainant has never authorized the Respondent to register and/or use a domain name incorporating its trademark ADLPartner;

c) The Disputed domain name moreover points to the Complainant’s official website www.adlperformance.com, this circumstance being a clear evidence of the Respondent’s attempt to make third parties to believe that he is related to the Complainant.

The Complainant finally states and submits several evidences showing that the Disputed domain name was registered and used in bad faith, with the sole purpose to deceive suppliers and get an economic advantage. As a matter of fact, it was used not only as a redirect to the Complainant’s official web site, but also as email address to send the suppliers email orders and requests for information. The Respondent’s purpose was that of making the suppliers to believe that said emails originated from a person working in the real company ADLPartner, with the result to obtain the delivery of products without making any payment in return since the relevant invoices would have been sent to the Complainant.

The Complainant remarks that the attempt of fraud is serious because it concerns three domain names and is moreover emphasized by concurrent misleading behaviors, like but not limited to the fact that the Respondent introduced himself as acting on behalf of ADLPartner and reported below its signature the name and trademark of ADLPartner, the Complainant’s postal address and VAT number.

For all the aforesaid reasons the Complainant asks for the transfer of the Disputed domain name.

B. RESPONDENT

The Respondent failed to submit a response within the terms set according to ADR Rules.

DISCUSSION AND FINDINGS

Under article 21(1) of Regulation EC No. 874/2004 (the Regulation) the disputed domain name is subject to revocation if it is identical or confusingly similar to a name in respect of which a right is recognized or established by a national and/or Community law, such as the rights mentioned in Article 10(1), and when the domain name: a) has been registered by its holder without rights or legitimate interest in the name or b) has been registered or is being used in bad faith.

Rights

The Complainant must first establish a right in the Disputed domain name. Article 10(1) of the Regulation refers to the ownership of registered national and Community trademarks, geographic indications or designation of origin, and, in as far as they are protected under national law in the Member-State where they are held, unregistered trademarks, trade names, business identifiers, etc.

The Complainant has forwarded evidences of ownership of a French trademark registration for the wording “ADLPartner” that is identical to the Disputed domain name; use of an alternation of uppercase and lowercase letters in the mark is irrelevant for the assessment of an identity of signs:

- Trademark: ADLPartner (word mark) - Registration FR No. 98729815 - Filed on / granted on: 24.04.1998 - Present status: duly renewed - Classes of goods and services 9, 16, 35, 38, 39, 41 and 42

The abovementioned French trademark registration is itself enough to establish a right of the Complainant in the Disputed domain name.

The Complainant’s legitimation is moreover strengthened by the ownership of concurrent rights in the name “ADLPartner” that are protected by the national law of the Member State where they are held, namely, by French law.

According to art. L711-4(b) FR-IP Code a protection of the company name is acquired upon completion of the documents founding the company and if such name is known throughout the French territory. If these grounds are proven, the owner of the company name has a right to prohibit use of a subsequent trademark if there could be a risk of confusion in the mind of the public.

In the present proceeding, the Panel maintains that the company name ADLPartner can be well considered as a valid prior right in the Disputed domain name since:

a) the Complainant has forwarded evidences of registration of the company name “ADLPartner” in the French Trade and Company Register on 22.08.2005 (SIREN 393376801); and

b) ADLPartner annual report 2015, attached to the Complaint, shows a strong position of the Complainant on the French market, in the relevant field; and

c) the company name is identical to the Disputed domain name and

d) because of the identity of signs, there could be a risk of confusion for the public.

The Complainant finally claims to be owner of the identical domain names <adlpartner.fr> and <adlpartner.com>:

Domain name Created on Present status
<adlpartner.fr> 23.06.1998 registered
<adlpartner.com> 2.03.1999 registered

Both Whois information sheets enclosed with the Complaint show that the aforesaid domain names belong to the Complainant. According to CAC .EU Overview 2.0, the Panel can accept the ownership of another domain as a relevant right if there are other relevant prior rights, as it is the case.

Lack of rights or legitimate interest

Panels have generally held that a Complainant is only required to establish a prima facie case of lack of rights or legitimate interest and

the burden to show the contrary then shifts to the Respondent (CAC .EU Overview 2.0).

In the Panel's view, the Complainant has established a prima facie case of lack of rights or legitimate interest, while there is no rebuttal by the Respondent, nor any of the circumstances mentioned at article 21(2) of the Regulation as evidence of a Respondent's right or legitimate interest in the domain name can be inferred from the documents and correspondence enclosed with the Complaint. In particular:

a) The Disputed domain name is neither used by the Respondent for a personal offering of goods and services, nor there are evidences of serious plans to do so (art. 21(2) (a) of the Regulation). The Disputed domain name points to the Complainant's official web site, where the Complainant's goods and services are offered and advertised and not the Respondent's ones. The Disputed domain name is moreover used by the Respondent in the e-mail address "marketing@adlpartner.eu", with the purpose to make receivers to believe that e-mails originate from the marketing department of ADLPartner, but the Respondent doesn't work for ADLPartner nor is anyhow related to this company;

b) The Respondent is not commonly known by the Disputed domain name that is on the contrary identical to the Complainant's trademark and company name, nor there are evidences that he has ever registered or applied to register the wording "ADLPartner" as a trademark or service mark or that he has acquired any different right in this name (art. 21(2) (b) of the Regulation);

c) The Respondent seems to be making an unfair use of said Disputed domain name with the intent to mislead consumers, as better explained in the following paragraph (art. 21(2)(c) of the Regulation).

Bad faith

As lack of rights or legitimate interest is an alternative requirement to registration or use of the domain name in bad faith, there would be no need for the Panel to address the latter issue. However, the Respondent's bad faith is hereby blatant.

The Complainant has submitted conspicuous evidences of fraud attempts made by the Respondent through the unauthorized use of ADLPartner's distinctive signs. The Panel has focused the attention on the unfair use of the Disputed domain name. The Complainant has forwarded a dossier showing that in November 2016 the German company ITSS-DAMM, a distributor of electronic devices, contacted ADLPartner to check that an order coming from the e-mail address "marketing@adlpartner.eu" and signed by a certain Justyne Kyrabel could be actually referred to the former company. The correspondence attached show that:

- Mr. Kyrabel introduced himself as acting in the name of ADLPartner and he asked for quotations about a few electronic devices;

- After receipt of the supplier's request for a prepayment, he answered that his company got a good score rating with the credit insurance company, thus insisting on a 7-day payment terms; it is remarked that "ADLPartner" device trademark, the Complainant's postal address and VAT number were reported below Mr. Kyrabels's signature together with a telephone number unrelated to the Complainant;

- Further to the supplier's confirmation that prepayment was due, Mr. Kyrabel replied that he would have discussed the matter with his boss. No subsequent correspondence is documented.

The Panel maintains that there are clear evidences showing use of the Disputed domain name by the Respondent with the aim to mislead suppliers and make them to believe that he acted on behalf of the Complainant and worked in its marketing department. The Respondent's final purpose was that of getting the delivery of goods without paying in return, since the relevant invoices would have been addressed to the Complainant.

Evidence of said final purpose comes also from other facts submitted with the Complaint and concerning use of almost identical domain names. The Complainant has shown that Mr. Kyrable contacted the Spanish company Circutor S.A. by using the email address jkyrabel@adl-partner.fr in October 2016. He afterwards placed an order for the purchase of electric products by using a fake writing paper reporting "ADLPartner" device mark, the Complainant's postal address, its trade registry number and VAT number. A corresponding invoice of € 99.407,00 was then issued by Circutor S.A. and addressed to the Complainant while the delivery of goods was made to a UK company in Great Britain that was in no way related to ADLPartner.

The fact that fraud attempts were reiterated at least from July to November 2016 and made through use of three domain names identical and/or almost identical to the Complainant's trademark and company name, the usurpation of the Complainant's distinctive signs with no authorization, all these circumstances are likely to cause a serious economic damage to ADLPartner as well as a debasement of its company reputation and a prejudice to its intellectual property rights.

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 <adlpartner.eu> be transferred to the Complainant.

The Complainant is an undertaking having its registered office in France, thus within the European Community. It therefore satisfies the eligibility criteria set out in Article 4(2)(b) of the Regulation.

PANELISTS

Name	Roberta Calò

DATE OF PANEL DECISION 2017-02-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <adlpartner.eu>

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

III. Date of registration of the domain name: 06 April 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Word trademark registered in France, reg. No. 98729815, for the term ADLPartner, filed on 24 April 1998, registered on the same date in respect of goods and services in classes 9, 16, 35, 38, 39, 41 and 42

2. company name ADLPartner registered in the French Trade and Companies Register on 22 April 2005 (SIREN 393376801)

3. other: domain names <adlpartner.fr> and <adlpartner.com> respectively created on 23 June 1998 and on 2 March 1999

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 Respondent did not submit a response. He does not use the Disputed domain name for a personal offering of goods and services, nor there are evidences of serious plans to do so. He is not commonly known by the Disputed domain name nor there are evidences that he has ever registered or applied to register the wording “ADLPartner” as a trademark or service mark or that he has acquired any different right in this name. He is doing an unfair use of the Disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Respondent is using the Disputed domain name in the email address “marketing@adlpartner.eu” to mislead suppliers and make them to believe said emails come from the Complainant’s marketing department. In said emails the Respondent moreover introduces himself as acting on behalf of the Complainant and uses the Complainant’s trademark and company name. The Respondent’s final purpose is to get the delivery of goods without paying in return, since the relevant invoices would be addressed to the Complainant.

IX. Other substantial facts the Panel considers relevant:

The Respondent is using three domain names that are identical (like the disputed one) or almost identical (like <adl-partner.fr> and <adl-partner.eu>) to the Complainant’s trademark, company name and domain names. Fraud attempts were reiterated at least from July to November 2016 and are likely to cause a serious economic damage to ADLPartner as well as a debasement of the company reputation and a prejudice to its intellectual property rights.

X. Dispute Result: Transfer of the Disputed domain name

XI. Procedural factors the Panel considers relevant: //

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