Panel Decision for dispute CAC-ADREU-007395

Case number	CAC-ADREU-007395
Time of filing	2017-02-28 10:47:22
Domain names	lifeventure.eu

Case administrator

	Aneta Jelenová (Case admin)

Complainant

Organization	Lifemarque Limited

Respondent

Name	Bernadette Zakhm Selim Abou

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 which are pending or already decided concerning the Disputed domain name.

FACTUAL BACKGROUND

The Complainant, Lifemarque Limited, is a company with an address in Aldermaston, United Kingdom. It owns the UK word trademark LIFEVENTURE (UK02141798) filed on 9 August 1997, and registered on 26 June 1998, in classes 3, 6, 9, 11, 18, 20, 21 and 25 to designate a wide range of goods, including toiletries, locks, bags and cases, containers and articles of clothing and footwear. It owns another UK trademark (UK02179098) for the same word, filed on 8 October 1998, and registered on 7 May 1999, in classes 1, 3, 5, 9, 11, and 24. It also owns two EU trademarks (EU000737460 and EU002731131) for the same word, with registrations dating from 2000 and 2003 respectively in essentially the same classes.

The Complainant runs a Lifeventure website advertising bags and storage, accessories, security, wash gear, sleep gear, eat and drink, and spares.
The Disputed domain name <lifeventure.eu> was registered on 5 September 2015. The registrant appears to be an individual with an address in Paris.

A. COMPLAINANT

The Complaint is very short, and gives little information about the Complainant, or the circumstances which led to the registration of the Disputed domain name. In addition to relying upon the trademark registrations in its name, the Complainant says that “The domain name was snatched by the Respondent in September 2015, due to a mistake by the Complainant regarding automatic renewal”. It claims to have substantial goodwill and reputation in the name “Lifeventure”. The holding page at the website currently displayed “at this address” (which the Panel assumes to be a reference to the Disputed domain name) refers to products sold by the Complainant, but the links lead to third party websites. This therefore gives the Complainant reason to believe that the acquisition of the domain name was in bad faith. Attempts to contact the Respondent have led to no response.

B. RESPONDENT

The Respondent did not reply formally to the Complaint. However, in a non-standard communication dated 13 January 2017 sent to info@adr.eu, the Respondent indicated that she had communicated with the Complainant's legal representatives, agreeing to transfer the Disputed domain name to the Complainant, having verified the Complainant's trademark documents. No further communication appears to have been received from the Respondent.

DISCUSSION AND FINDINGS

Respondent did not file a formal Response. Therefore, pursuant to Paragraph B (10) "Default" of the ADR Rules:
"(a) In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.
(b) Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate".
According to ADR Rules Paragraph B11 "Basis of the decision":
" A Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules".
Pursuant to ADR Rules paragraph 11 (d) "Basis for decision":
"(d) The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves
(1) in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated 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; either
(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) The domain name has been registered or is being used in bad faith".

A. The domain name is identical or confusingly similar to a name of which a right is recognized or established by the national law of a Member State and/or Community law

The Complainant relies on its registered trademark rights, its website, and what it says is its substantial reputation and goodwill. The website is only evidenced by a screenshot of a front page, with no website address given. No supporting material is supplied to give a better idea of the extent of its reputation and goodwill. However, the registered trademarks are sufficient to establish the requirement of rights. The Disputed domain name is identical to that trademark (as the suffix .eu can be disregarded for these purposes).
The first requirement of Article 21(1) of the Commission Regulation (EC) 874/2004 and of Paragraph B11(d)(1)(i) of the ADR Rules is therefore met.

B. Respondent registered the domain name without rights or legitimate interests in the name.

As noted above, the Respondent has not responded to this Complaint. Although the Complainant does not specifically address this issue, it would normally be incumbent on the Respondent to put forward a positive case on this aspect, if it wished to assert that it did have such rights or legitimate interest. There is nothing before the Panel which would lead it to speculate that there might be such rights or legitimate interest. Therefore, in the absence of a formal response, the conclusion which the Panel draws is adverse to the Respondent, and the Panel finds that registration was without rights or legitimate interests in the name LIFEVENTURE. The Panel also notes that the non-standard communication from the Respondent dated 13 January 2017 appears to be an implicit acceptance by the Respondent that she has no such rights or legitimate interest.

C. The Disputed domain name has been registered or is being used in bad faith.

The Panel has not been provided with evidence of the content of the site at the Disputed domain name. The Complainant alleges that it is a holding page, which links to third party websites, although referring to the Complainant's products. However, no screen shot has been provided, and if the Disputed domain name was being used in the way alleged, it appears no longer to do so. A search conducted by the Panel returns the result "cannot be found". This is unfortunate, and makes it difficult for the Panel to accept the Complainant's assumptions. The Panel also notes that the Complaint refers to a mistake on automatic renewal (although without specifying what that mistake was). Again, a fuller or better explanation of the position would have been helpful.
Nevertheless, the Respondent has chosen not to respond to these proceedings, and does not seem to contest the Complaint in her non-standard communication of 13 January 2017. The majority view of previous panelists is that the absence of a formal response should not of itself mean that the Complaint succeeds (see paragraph 20 of the Overview of CAC Panel views, second edition, August 2016). The Complainant needs to do more than just rely on that failure, and in the Panel's view, it needs to establish at least a prima facie case. The Complaint is undoubtedly a weak one. However, in the Panel's opinion, an explanation of a mistake on automatic renewal, combined with an unanswered assertion of the Respondent misusing the Disputed domain name to link to other websites, is just enough to get the Complainant over that threshold.
Therefore, the Panel finds that the Disputed domain name was registered in bad faith, within the meaning of Article 21(1)(b) of the Regulation (EC) 874/2004 and of paragraph B11(d)(1)(iii) of the ADR Rules.

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 <LIFEVENTURE.EU> be transferred to the Complainant

PANELISTS

Name	Robert Elliott

DATE OF PANEL DECISION 2017-02-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <lifeventure.eu>
II. Country of the Complainant: United Kingdom, country of the Respondent: France

III. Date of registration of the domain name: 5 September 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 trademark registered in United Kingdom, reg. No. UK02141798, for the term LIFEVENTURE, filed on 9 August 1997, registered on 26 June 1998 in respect of goods and services in classes 3, 6, 9, 11, 18, 20, 21, and 25
2. word trademark registered in United Kingdom, reg. No. UK02179098, for the term LIFEVENTURE, filed on 8 October 1998, registered on 7 May 1999 in respect of goods and services in classes 1,3,5,9,11, and 24
3. word CTM, reg. No. EU000737460, for the term LIFEVENTURE, filed on 29 January 1998, registered on 23 February 2000 in respect of goods and services in classes 3, 6, 9, 11, 18, 20, 21, and 25
4. word CTM, reg. No. EU002731131, for the term LIFEVENTURE, filed on11 June 2002, registered on 16 December 2003 in respect of goods and services in classes 3, 8, 18 and 22

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 has not advanced any positive case in support of a claim for rights or legitimate interests, and none is apparent.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: it appears to the Panel on the balance of probabilities that the Respondent has taken advantage of a mistake by the Complainant on automatic renewal to register the Disputed domain name without rights or legitimate interests and used the Disputed domain name to link to other third party websites.

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: from her non-standard communication to ADR.eu of 13 January 2017 it would appear that the Respondent does not contest these proceedings. Nevertheless, given the non-standard nature of that communication, the Panel has considered the Complaint on its merits.

XII. Is Complainant eligible? Yes