# Panel Decision for dispute CAC-ADREU-007418

| | |
|---|---|
| Case number | CAC-ADREU-007418 |
| Time of filing | 2017-06-19 17:32:04 |
| Domain names | pictetwealth.eu |

## Case administrator

| | |
|---|---|
| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

| | |
|---|---|
| Organization | Banque Pictet & Cie SA |

## Respondent

| | |
|---|---|
| Name | Dariane Pictet |

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 decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Pictet Group is among the leading wealth and asset manager in Europe. The Complainant, Banque Pictet & Cie SA, is the owner of a number of trade mark registrations which include:
• Swiss trade mark for PICTET, registered number P-478932 registered 24 November 2000 in class 36 for financial and monetary affairs.
• International trade mark PICTET, registered number no.P-748934 registered 24 November 2000 in class 36 for financial and monetary affairs, with the designation of several European countries.

The Complainant is the registrant of the domain name <pictet.com>.

The disputed domain name, <pictetwealth.eu >, was registered on 3 January, 2017. According to EURid's verification, the name of the registrant is Dariane Pictet.

The Complainant contacted Ms. Dariane Pictet, the daughter of a former partner of the Banque Pictet regarding the disputed domain name. Dariane Pictet confirmed that she did not register the disputed domain name.

A. COMPLAINANT

A. The Complainant asserts that the disputed domain name is identical or confusingly similar to a name in respect of which a right or rights are recognized or established by national and/or Community law. The Complainant says:

(i) It has established rights regarding its trade mark PICTET in several European countries and under national law in Switzerland.
(ii) The disputed domain name incorporates the Complainant’s registered PICTET trademark. In the disputed domain name, the PICTET trademark stands out and leads the public to believe that the disputed domain name is somehow connected to the Complainant.
(iii) The addition of the word “wealth” further creates confusion with the prior PICTET trademark. The term “wealth” is directly related to the activities of the Complainant: banking and wealth management in general are the Complanant's core business.
(iv) The extension .eu should be disregarded as irrelevant for the purpose of the comparison between the trademark and the disputed domain name as it is a required extension for the registration of a domain name.
(v) Therefore, under Article 21 (1) of Regulation EC) 874/2004 (Regulation) the disputed domain name is confusingly similar to a trademark owned by the Complainant.

B. The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and says:

(i) The Respondent is not a licensee of the Complainant, nor has the Complainant authorised the Respondent to use its trademark in the disputed domain name.
(ii) There is no indication that the disputed domain name corresponds to the Respondent's name. Further, Ms. Dariane Pictet, who is the daughter of a former partner of the Banque Pictet, has confirmed that she did not reserve the disputed domain name and has nothing to do with it.
(iii) The Respondent does not use the disputed domain name in connection with a website, which shows that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.
(iv) Therefore, under Article 21(1) (a) and (2) of the Regulation, the Respondent has no rights or legitimate interests in the disputed domain name.

C. The Complainant asserts that the disputed domain name was registered and is being used in bad faith and says:

(i) There is no website related to the disputed domain name and that a passive holding of a domain name can result bad faith use of the disputed domain name.
(ii) The Respondent registered the disputed domain name long after the Complainant's use and registration of its trade mark PICTET in various regions of the world.
(iii) The fact that the Respondent used the name of the daughter of a former partner of the Banque Pictet to create the contact e-mail address related to the disputed domain name on the EURid database shows that the Respondent registered the disputed domain name in bad faith.
(iv) Given the well-known character of the trade mark PICTET and its distinctive character, it is highly likely that the Respondent had knowledge of the Complainant's mark when registering the disputed domain name.
(v) The fact that the disputed domain name is not being used shows that it was registered for the purpose of selling or otherwise transferring the domain name. The Respondent is attempting to disrupt the Complainant's business by misleading potential customers and giving them the impression that the Complainant is not operating and is thus creating confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.
(vi) There is no plausible reason for the Respondent's choice of the disputed domain name other than the will to profit unfairly from the confusion with the Complainant's trademark PICTET.
(vii) Any future use of the disputed domain name would mainly cause confusion with the Complainant and its trademark. The lack of website related to the infringing domain name, coupled with the choice to use the element "Pictet" with connection to the descriptive term "wealth" should be considered as elements proving its bad faith.

B. RESPONDENT

The Respondent did not file a Response by 9 May 2017 as required by the Rules, but on 10 May 2017 filed a short non-standard communication. It states:

"Complainant cannot authoritatively state I have no claim over the domain name by virtue or his/her purported contact with one Dariane Pictet. I do hereby assert that I am Dariane Pictet and therefore have valid and legal claim over the domain name."

DISCUSSION AND FINDINGS

Under the Article 21(1) of the Regulations and Paragraph B1(b) (10) of the ADR Rules the Complainant must prove that:
(i) the domain name is identical or confusingly similar to a name in respect of which a right which is recognised or established by national and/or community law, and either:
(ii) the domain name has been registered by its holder without rights or legitimate interest in the name; or
(iii) the domain name has been registered or is being used in bad faith.

Once the Complainant has proved it has the required rights recognised or established by national and/or community law, it must prove either requirement (ii) or (iii), above.

The Panel must decide the Complaint of the basis of the statements made and the documents submitted and in accordance with the Procedural Rules (Paragraph B11(a)). Further, the Panel must issue a decision granting the remedies requested under the Rules, if the Complainant proves that the the disputed domain name is identical or confusingly similar to a name in respect of which a right which is recognised or established by national and/or community law, and either that the disputed domain name has been registered by its holder without rights or legitimate interest in the name; or has been registered in bad faith.

RIGHTS
The Complainant is the owner of a number of trademark registrations which include:

• Swiss trademark for PICTET, registered number P-478932, registered 24 November 2000 in class 36 for financial and monetary affairs.
• International trademark PICTET, registered number no.P-748934, registered 24 November 2000 in class 36 for financial and monetary affairs, with the designation of several European countries.

The disputed domain name incorporates the Complainant's registered trademark PICTET plus the descriptive word "wealth". The dominant part of the disputed domain name is the Complainant's trademark PICTET. Adding a descriptive word to that trademark, especially one that is so closely associated with the Complainant's business, does nothing to prevent the conclusion that the disputed domain name is confusingly similar to the Complaint's registered trademark PICTET.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark PICTET.

NO RIGHTS OR LEGITIMATE INTERESTS
The Complainant has not licensed nor authorised the Respondent to use its trademark in the disputed domain name. Further, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.
The Complainant has submitted in evidence the email from Ms. Dariane Pictet, the daughter of a former partner of the Banque Pictet, in which she confirmed that she did not register the disputed domain name.

The Respondent asserts that she is Dariane Pictet and says that "Complainant cannot authoritatively state I have no claim over the domain name by virtue or his/her purported contact with one Dariane Pictet." However, the Complainant asserts " that there has been no contact between the Complaiant and the Respondent before the submission of the present Complaint".

The Respondent has provided no evidence that she is in fact Dariane Pictet, nor has she registered her full name "darianepictet" or family name "pictet" alone. The Respondent's registration of <pictetweath.eu> extends beyond the registration of a personal name. The Respondent has registered a domain name designed to suggest a link with the Complainant. The word "wealth" is closely associated with the Complainant's core business and in this context the word "pictet" reflects the Complainant's trade mark. The overall impression is that the disputed domain name is not an expression of a personal name but is the combination of the Complainant's trade mark PICTET and the descriptive word "wealth", which is related to the Complainant's business activities. By linking the word "wealth" with "pictet" the Respondent has increased the likelihood of confusion between the disputed domain name and the Complainant's registered trademark. This is not a case of the Repondent registering a domain name that reflects her personal name, Dariane Pictet or Pictet. The doman name is comprised of the word "pictet" and the descriptive word "wealth". The Respondent is not commonly known by that combination of words, or by the domain name incorporating those words.

The Respondent has not filed a Response to the Complaint in accordance with Paragraph B3 of the Rules. Further, the Respondent in its non-standard communication filed after the date for a Response, has failed to demonstrate a right or legitimate interest in the disputed domain name <pictetwealth.eu>. In particular, the Respondent has not demonstarted that she has used the disputed domain name, or a name coresponding to it, in connection with goods and services; neither that she has been commonly known by the name, nor has she demonstrated that she is making a non-commercial or fair use of the domain name for the purposes of Article 21 (2) of the Regulation (EC) No. 874/2004.

The Panel finds on the evidence submitted that the Complainant has made out a prima facie case that the the disputed domain name has been registed by its holder without rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent to show she does have a legitimate interest within the meaning of Article 21(1) (a) of the Regulation. This the Respondent has failed to do. The Respondent has given no reason why she registered the combination of the the words "pictet" and "wealth" in the disputed domain name. Nor has she provide any evidence that she was commonly known by the domain name. Nor has she shown that she was making a non-commercial of fair use of the doman name. In chosing not to file a substantive Response to the Complaint, the Repondent has failed to discharge the burden of proof upon her and has failed to demonstrate that she has rights or a legitimate interest in the disputed domain name <pictetwealth.eu>.

For the reasons set out above, the Panels concludes that the disputed domain name was registered by its holder without rights or legitimate interest in the name for the purposes of Article 21(1)(a) of the Regulation.

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

BAD FAITH
Having found that the Respondent has no rights or legitimate interests in the disputed domain name, it is not necessary to find that the disputed domain name has been used in bad faith. However, for completeness the Panel will deal with this aspect.

The Complainant's registered trademark PICTET predates the registration of the disputed domain name. Combining the trademark PICTET with the descriptive word "wealth" indicates that the Respondent knew of the Complainant’s trademark when registering the disputed domain name.

The Respondent has offered no evidence that she is commonly known by the disputed domain name, nor has the Respondent disputed any of the Complainant's submissions. Ms. Dariane Pictet, the daughter of a former partner of the Banque Pictet, has confirmed that she did not register the disputed domain name. The Respondent has not disputed the Complainant's submission that, in addition to using the name Dariane Pictet, the Repondent also used address of Dariane Pictet, the daughter of the former partner of Banque Pictet, to register the disputed domain name. Dariane Pictet, the daughter of the former partner of Banque Pictet, has confirmed that she did not register the disputed domain name. The Respondent in using the address of Dariane Pictet, the daughter of the former partner of Banque Pictet to register the disputed domain name, indicates that the disputed domain name was registered by the Respondent in bad faith.

There appears to be no demonstrable link between the Respondent and the disputed domain name.

The Panel finds that the disputed domain name has been registered in bad faith.

DECISION

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

## PANELISTS

| Name | Mrs Veronica Marion Bailey |
|---|---|

DATE OF PANEL DECISION 2017-06-13

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: PICTETWEALTH.EU

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

III. Date of registration of the domain name: 3 January 2017.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
• Swiss trademark for PICTET, registered number P-478932 registered 24 November 2000 in class 36 for financial and monetary affairs.
• International trademark PICTET, registered number no.P-748934 registered 24 November 2000 in class 36 for financial and monetary affairs, with the designation of several European countries.

V. Response submitted: No. The Respondent filed short non-standard communication.

VI. The disputed domain name is confusingly similar to the protected right/s of the Complainant.The dominant part of the disputed domain name is the Complainant's trademark PICTET. Adding a descriptive word to that trademark, especially one that is so closely associated with the Complainant's business, does nothing to prevent the conclusion that the disputed domain name is confusingly similar to the Complaint's registered trademark PICTET.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004:
1.No.
2. The Complainant has not licensed nor authorised the Respondent to use its trademark in the disputed domain name. Further there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.
Ms. Dariane Pictet, the daughter of a former partner of the Banque Pictet has confirmed that she did not register the disputed domain name. The overall impression is that the disputed domain name is not an expression of a personal name but is the combination of the Complainant's trade mark PICTET and the descriptive word "wealth", which is related to the Complainat's business activities.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1.Yes

2. Why:The Complainant's registered trademark PICTET predates the registration of the disputed domain name. Combining the trademark PICTET with the descriptive word "wealth" indicates that the Respondent knew of the Complainant’s trademark when registering the disputed domain name. Ms. Dariane Pictet, the daughter of a former partner of the Banque Pictet, has she confirmed that she did not register the disputed domain name. There appears to be no demonstrable link between the Respondent and the disputed domain name.

IX. Domain name revoked.