Panel Decision for dispute CAC-ADREU-007527

Case number	**CAC-ADREU-007527**
Time of filing	**2017-08-23 15:17:17**
Domain names	**ayrex.eu**

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	**Advanced Binary Technologies Ltd**

Respondent

Organization	**ERA Media Online SL**

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

1 The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

2 The Complainant is "Advanced Binary Technologies Ltd, Artem Kovalenko". Advanced Binary Technologies Ltd is a company incorporated in Saint Kitts and Nevis with registered office at Office 590, Suites 5 Horsfords Business Centre, Long Point Road, Charlestown, Saint Kitts and Nevis. Artem Kovalenko appears to be associated with the company.

3 The Complainant operates a binary options trading platform under the domain ayrex.com.

4 The Complainant adduced evidence of an EU trade mark registration for the word and device mark AYREX BINARY OPTIONS REINVENTED (trade mark number EU014187983) held jointly by Artem Kovalenko and Advanced Binary Technologie Ltd, filed on 4 June 2015 and registered on 4 December 2015.

5 The Respondent is "ERA Media Online SL, Keith Waring". ERA Media Online SL has its registered office at El Zoco de Nerja 42, Malaga 29780, Spain. The Respondent is the registrant of the disputed domain name ayrex.eu. The domain name was registered on 9 March 2017. The webpage accessed through the disputed domain has no content other than to display the message "401 Authorization Required".

6 On 21 June 2017, the Complainant filed a complaint in the present ADR proceedings. On 27 June 2017, the ADR Center notified the Complainant that the fee payment required in accordance with the ADR Supplemental Rules remained outstanding. On 30 June 2017, the ADR Center confirmed receipt of the Complainant's fee payment and therefore acknowledged receipt of the complaint as of that date. On 4 July 2017, the ADR Center notified the Complainant of deficiencies in the complaint. On 7 July 2017, the Complainant re-submitted a formally compliant amended complaint. The complaint does not include any annexes. On 12 July 2017, the ADR Center notified the Respondent of the commencement of ADR proceedings against it. On 25 July 2017, the Respondent filed a response to the complaint. The response likewise does not include any annexes. On 27 July 2017, the ADR Center notified the parties of the appointment of the ADR Panel and, on 31 July 2017, the ADR Center transmitted the case file to the Panel.

A. COMPLAINANT

7 The Complainant seeks a decision revoking and transferring the disputed domain name to it.

8 The Complainant submits that the disputed domain name is squatted and has been resold various times. The Complainant relies on the EU trade mark registration for the word and device mark AYREX BINARY OPTIONS REINVENTED, states that the trade mark belongs

solely to the company (i.e., Advanced Binary Technologies Ltd) and alleges that the Respondent infringes EU trade mark law.

9 With regard to the transfer of the disputed domain name, the Complainant's legal representative, Pavel Prozorov, states that, even though the company owning the trade mark rights is not based in the EU, he, the legal representative and UBO (the panel takes this acronym to mean "ultimate beneficial owner") of the business is a legal EU resident and therefore has all rights to claim the domain revocation and transfer to him.

10 The complaint is not supported by any annexes or evidence.

B. RESPONDENT

11 The Respondent states in his response to the complaint that he bought the domain at an inflated cost after signing up as an affiliate for Ayrex and that the domain was used for a couple of months to promote the Complainant's business.

12 The Respondent further complains that he received no payment from Ayrex in this time, and when requested not to use the domain due to copyright law, he deactivated the redirect to Ayrex so that it "goes nowhere". The Respondent further states that he told Eliah Kelly of Ayrex many times that he will not be renewing the domain upon expiry of the domain registration in March 2018.

13 The Respondent further submits that this was "not enough" for Eliah Kelly, that he was asked to name a price [for the transfer of the domain] and that this was rejected. The Respondent states that he is now out of pocket for purchasing this domain and partnering with Ayrex.

14 The Respondent avers that he has not used the disputed domain name to "extort" Ayrex and that he did everything they asked. He states that although Ayrex say that they are willing to offer a sum for his purchase, they have yet to commit to a figure. The Respondent alleges that he has incurred further costs after being instructed by Eliah Kelly to port the domain to the registrar Godaddy, a cost he would not have incurred if Ayrex had simply waited for the domain to expire and ordered it on back order.

15 The Respondent objects to the Complainant insisting that it must have the disputed domain name now, and for free, and for him as partner, who was promoting the Complainant's business, being treated like some sort of criminal. The Respondent asserts that he acted fairly, is happy to transfer the domain if he is compensated for his time and financial outlay, and is even happy to let the Complainant offer a figure it felt was fitting for this. Alternatively, it was open to the Complainant simply to be patient and wait for the domain registration to expire and get it without having to pay the Respondent.

16 The response to the complaint is likewise not supported by any annexes or evidence.

DISCUSSION AND FINDINGS

General

17 The Panel has reviewed and considered the parties' submissions, such as they are.

18 In order for the complaint to succeed, the Complainant must show, in accordance with Article 21.1 of Commission Regulation EC 874/2004 (the “Regulation”) and Paragraph B11(d)(1) of the ADR Rules, that:

(a) the disputed domain name is identical with 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

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

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

19 If the Complainant succeeds in this respect, in order to obtain a transfer of the disputed domain name to itself, Article 22.11 of the Regulation further requires that the Complainant applies for the disputed domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

Is the domain name identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law?

20 Article 10.1 of the Regulation recognises registered EU trade marks as ‘prior rights’. The Complainant has adduced evidence of a registration for the EU word and device trade mark AYREX BINARY OPTIONS REINVENTED. However, while the registration indicates that the trade mark is jointly held by Artem Kovalenko and by Advanced Binary Technologies Ltd, the Complainant states in its submissions that the "trademark Ayrex belongs solely to our company". The Panel therefore finds that a relevant trade mark right recognised by Community law has been established by Advanced Binary Technologies Ltd but not by Artem Kovalenko.

21 The Panel accepts that the disputed domain name ayrex.eu is confusingly similar to the registered trade mark AYREX BINARY OPTIONS REINVENTED, AYREX being the dominant element of the trade mark.

Has the domain name been registered by the Respondent without rights or legitimate interest in the name?

22 Beyond the bold assertion, unsupported by evidence, that the domain name is squatted and has been resold various times, and that the Respondent is alleged to infringe EU trade mark law, the Complainant does not indicate whether and if so why registration of the domain name by the Respondent should be considered to be without rights or legitimate interest within the meaning of Paragraph B11(d)(1)(ii) of the ADR Rules and adduces no evidence to this effect.

23 The Respondent submits that he bought the disputed domain name after signing up as an affiliate for Ayrex and used the domain to promote the Complainant's business. While equally unsupported by evidence, these circumstances would ordinarily be apt to demonstrate the Respondent's rights or legitimate interests to the domain name for the purposes of Paragraph B11(d)(1)(ii) of the ADR Rules.

24 In the circumstances, the Panel finds that the Complainant has not established that the disputed domain name been registered by the Respondent without rights or legitimate interest in the name.

Has the disputed domain name been registered or is it being used in bad faith?

25 The fact that the Respondent is seeking payment for the transfer of the domain name does not in itself establish that the Respondent is acting in bad faith within the meaning of Paragraphs B11(d)(1)(ii) and B11(f)(1) of the ADR Rules. The Complainant does not make any submissions or adduce any evidence suggesting that the Respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant. The Respondent submits, unsupported by evidence, that he registered the domain name after he entered into a business association with the Complainant for the purpose of promoting the Respondent's business.

26 The Complainant's submissions do not identify or prove any other circumstances that would establish registration or use of the disputed domain name by the Respondent in bad faith within the meaning of Paragraphs B11(d)(1)(ii) and B11(f)(1) of the ADR Rules. In the circumstances, the Panel therefore finds that the Complainant has not established that the disputed domain name has been registered or used in bad faith.

Revocation or Transfer of the Disputed Domain Name

27 The Panel notes in the interest of completeness that Advanced Binary Technologies Ltd does not meet the general eligibility criteria within the meaning of Article 22(11) of the Regulation and Article 4(2)(b) of Regulation (EC) No 733/2002, being a company registered in Saint Kitts and Nevis, and therefore cannot seek transfer of the domain name to itself. Artem Kovalenko cannot seek transfer of the domain name to himself on the grounds that he has established no rights to the trade mark that the disputed domain name is confusingly similar to. Finally, Pavel Prozorov, the Complainant's legal representative, is not entitled to seek transfer of the domain name to himself because Article 22(11) of the Regulation permits transfer only to the Complainant, not to any third party. Even if the Complainant would otherwise have established its case, the remedy which the Panel would have been able to award would have been restricted to a revocation of the disputed domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is Denied.

PANELISTS

Name	**Hunters, Gregor Kleinknecht, LLM MCIArb**

DATE OF PANEL DECISION 2017-08-23

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: ayrex.eu
II. Country of Complainant: Saint Kitts and Nevis, country of Respondent: Spain
III. Date of registration of the domain name: 9 March 2017
IV. Rights relied on by the Complainant (Art 21(1) Regulation (EC) No 874/2004) on which the Panel based its decision: word/combined EUTM, reg. No. EU014187983, for the term AYREX BINARY OPTIONS REINVENTED, filed on 2 June 2015, registered on 4 December 2015 in respect of goods and services in classes 36
V. Response submitted: yes
VI. Domain name is confusingly similar to the protected right of the Complainant
VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes
2. Absence of rights not established by Complainant
VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Bad faith not established by Complainant
IX. Other substantial facts the Panel considers relevant: none
X. Dispute Result: Complaint denied
XI. Procedural factors the Panel considers relevant: none