Panel Decision for dispute CAC-ADREU-007652

Case number	CAC-ADREU-007652
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Domain names	synlawn.eu

Case administrator

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

Complainant

Organization	

Respondent

Organization	Fiolet Holding BV

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

None of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant is the owner of EU-trademark No. 010004703 "SYNLAWN" ("the Trademark"), registered on October 27, 2011 in class 27 of the Nice Classification for "Artificial turf systems consisting of layers of man-made grasses of fibres and filaments and surface coverings of fibres or filaments; artificial carpets, rugs, mats and matting; matting simulating grass; floor coverings; artificial turf; artificial grass; surface coverings in the nature of carpets, for use in sports and athletics; underlay systems for the above goods including shock-absorbing underlay."

The domain name <synlawn.eu> ("the Domain Name") was registered in the name of Arnoud Fiolet ("the Respondent") on December 5, 2016. On January 17, 2018, in response to e-mails from a representative of the Complainant seeking a price for the sale of the Domain Name, the Respondent sent an e-mail in the following terms:

"I don't have a problem selling the domain. Let me give you my thoughts on the value of the domain name. Synlawn is the biggest landscape artificial turf seller in the US. Sportgroup wants it to move to Europe and claim a European position. Sportgroup is a 600.000.000 USD + company. The European landscape market is appr 45 million sqm or appr 450 million € of which appr. 60% goes into website sales and the other 40% through website sales. Your target market is a minimum of € 200.000.000.

The investment in a transnational website in at least UK/France /Benelux and Germany with dedicated SEO – adwords is a minimum of € 150.000-200.000 per year to get on the first page. The turnover you need to make is at least in year 2021 is at least 5.000.000 or a market share of 2-3% at that time if not more.

As far as I can see you have the option of using synlawn.com but you need to reshape the existing website (www.synlawn.com) for global purposes and you need to take the focus of [sic] the US market which is the moneymaker at this moment. It will also have serious SEO consequences. The other option is to make synlawn with country based url's. such as .co.uk - .nl and others. That will seriously increase the management costs if they are not referred to on a central website.

I saw this moment come already a couple of years ago. I am not a greedy person but do understand value. Please make me an offer that is serious based on your own and the above assumptions that reflect my train of thinking. My alternatives are leaving it where it is and perhaps use it as a tool to grow our own landscape business as deferred site."

A. COMPLAINANT

The Complainant is the biggest landscape artificial turf seller in the US and has increasing sales in Europe. The Complainant owns the domain name <synlawn.com>. The Trademark is registered in nearly 50 countries around the world. The Complainant seeks transfer of the Domain Name because it is identical to the Trademark and the Respondent has no legitimate interests in respect of the Domain Name, which he registered in bad faith.

At the beginning of January 2018 the Complainant became aware of the Respondent's registration of the Domain Name. The Respondent appears to be the owner of Fiolet Holding Bv but he is also Managing Partner of European Turf Group, a competitor of the Complainant.

On January 8, 2018 the Complainant asked the Respondent if he is willing to sell the Domain Name, expecting a low price, because the Complainant is the owner of the Trademark, the Domain Name is not used and the word "synlawn" is a combination of the word "lawn" (similar to turf or grass) and the word syn, which is in combination a fantasy word.

The Respondent's answer on January 17, 2018 shows that he registered the Domain Name because he saw the moment coming when the Complainant would increase its business in Europe; that he has never used the Domain Name and never intended to do. That shows that the Respondent never had a legitimate interest in the Domain Name and his only intention was to get a good price. It also shows that the Respondent registered the Domain Name in bad faith. Therefore the Respondent meets the prerequisites of Paragraph B11(f)(1) of the .eu Alternative Dispute Resolution Rules which indicate an act in bad faith.

In addition the Respondent ended his e-mail with the threat:

"My alternatives are leaving it where it is and perhaps use it as a tool to grow our own landscape business as deferred site."

The only reason for writing this is to put more pressure on the Complainant to buy the Domain Name for a high price to avoid a new competitor in the European market. This is further evidence that the Respondent acted in bad faith in the past and is still doing so at present.

The central administration of the Complainant is based in Germany and thereby based in the EU. Therefore it would be eligible to register the Domain Name under the registration restrictions of Article 4(2) of Regulation (EC) No 733/2002. As the Respondent registered the Domain Name in bad faith and the Complainant is the owner of the identical European trademark No. 010004703 "SYNLAWN", the Domain Name should be transferred to the Complainant.

B. RESPONDENT

On behalf of Fiolet Holding the Respondent registered the Domain Name during negotiations to set up Astroturf-Synlawn distribution by Fiolet Holding in Europe for the Complainant, in good faith towards future cooperation. The cooperation was ultimately rejected by the Complainant and the Domain Name has since remained in our possession. And dead.

Fiolet Holding does not use this Domain Name in any commercial way whatsoever and has no intention of doing so. There is no conduct of misleading users / consumers / clients or prospects. The url is non existent on the Internet. When entered into Google it defers to <www.synlawn.com>.

There is no proof of action nor intent of any misconduct of Fiolet Holding in this matter.

In the e-mail of January 17, 2018 Fiolet Holding asked for a fair price for the Domain Name, citing the market conditions, impact and the Complainant's organisational structure and so on.

Fiolet Holding is not in the extortion nor in the fraud business. It does not buy and sell domain names for business. Nor does it use other brandname websites to mislead consumers to its own brand in this and any other case. It has actually commercially sold 0 (ZERO) domain names since its start in 2008.

Furthermore, it has not received one formal offer from the Complainant prior to this proceeding. Since Fiolet Holding has no experience in selling domain names Fiolet Holding asked for a serious offer before mentioning an amount itself. As an industry veteran it does however understand the value of a good website. Hence the explanation in the e-mail.

In summary,
- The registration was not in bad faith. It was in spirit of cooperation.
- The use of the Domain Name has been dead and as such there has been nor will be any action / intent of any wrongdoing towards the

market place.
- The Complainant has not made any effort to make a formal offer.
- The Complainant has not even picked up the phone or requested a meeting to discuss this.
- Fiolet Holding's subsidiary European Turf Group is in touch with the Complainant's higher level management employees on a regular basis and this matter has not even been a topic of discussion.

From Fiolet Holding's perspective there is no legal basis to claim transfer of the Domain Name since there has been no action nor intent of misleading consumers/clients. It is not forbidden to own domain names as long as the market place is not hindered by any confusion.

DISCUSSION AND FINDINGS

Article 22 of the Regulation (EC) No. 874/2004 provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21, which provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law and where:

(a) it has been registered by its holder without rights or legitimate interest in the name; or

(b) it has been registered or used in bad faith.

The Panel is satisfied that the Domain Name is identical to a name in respect of which the Complainant has rights recognised by EU law by virtue of its Community Trade Mark "SYNLAWN", the ".eu" extension being inconsequential for the purpose of this determination (see CAC case No. 00283, lastminute.eu).

As to rights or legitimate interests, according to the Respondent, it registered the Domain Name during negotiations to set up Astroturf-Synlawn distribution by Fiolet Holding in Europe for the Complainant. No doubt the Respondent hoped and expected those negotiations to be successful. However, they came to an end without agreement on such a distributorship.

Under these circumstances it is clear that the Respondent had no rights in the name "synlawn" when it registered the Domain Name.

As to whether the Respondent had a legitimate interest in the "synlawn" name, the Respondent contemplated that Fiolet Holding would become a distributor of Astroturf-Synlawn if the negotiations were successful and appreciated that the Domain Name would be useful in any such distributorship. These considerations no doubt explain why the Respondent registered the Domain Name before any agreement for the distributorship had been reached. While these considerations indicate the Respondent's likely state of mind when it registered the Domain Name, the Panel is satisfied that the Respondent had not by then acquired a legitimate interest in either the "synlawn" name nor in the identical Domain Name. The Respondent states that no use has been made of the Domain Name so there is no possibility that any legitimate interest in the Domain Name might have been acquired through use.

It is unnecessary to consider the question of bad faith registration or use.

Since the Complainant is based in Germany, the Complainant is eligible to register the Domain Name under the registration restrictions of Article 4(2) of Regulation (EC) No 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Domain Name SYNLAWN.EU be transferred to the Complainant.

PANELISTS

Name	**Mr Alan Lawrence Limbury**

DATE OF PANEL DECISION 2018-04-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SYNLAWN.EU

II. Country of the Complainant: Germany, country of the Respondent: Netherlands

III. Date of registration of the domain name: 5 December 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: Word CTM "SYNLAWN", reg. No. 010004703, for the term 10 years, filed on 27 May, 2011, registered on 27 October, 2011 in respect of goods and services in class 27.

V. Response submitted: Yes

VI. The disputed domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: At the time of registration, negotiations (ultimately unsuccessful) were taking place for the Respondent's company to become a distributor for the Complainant. These circumstances did not confer upon the Respondent or his company rights or legitimate interests in the domain name nor in the Complainant's SYNLAWN Trademark. There has been no use of the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Unnecessary to consider
2. Why: The finding regarding legitimacy is sufficient to dispose of this proceeding.

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: The Complainant, based in Germany, owns EU registered trademark SYNLAWN.

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