Panel Decision for dispute CAC-ADREU-007668

Case number	**CAC-ADREU-007668**
Time of filing	**2018-08-20 22:30:12**
Domain names	**axaxlgroup.eu**

Case administrator

Sandra Lanczová (Case admin)

Complainant

Organization

Respondent

Organization	**Teamlee B V**

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

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, AXA SA, is the holding company of the AXA Group which was founded in 1817 through the merger of several insurance companies. The AXA Group is known as a world leader in three major lines of business: property and casualty insurance, life insurance and savings, and asset management, both B2C and B2B. AXA Group currently serves 107 million customers around the world, employing 165,000 people in 64 countries.

On 5 March 2018, the Complainant announced to acquire XL Group, a leading global property & casualty commercial lines insurer and reinsurer with strong presence in North America, Europe and Asia-Pacific.

The Complainant uses the AXA trademark to identify its insurance and financial products and services on the market. The AXA trademark has a worldwide reputation (see on that point WIPO Case No. D2014-0863: http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0863).

The Complainant is the owner of registered trademarks and domain names that it uses in connection with its business (see below).

The Respondent's name is Teamlee B.V. (hereby represented by Arjan van Schooten). The Respondent holds the disputed domain name AXAXLGROUP.EU (the "Domain Name") which was registered on 6 March 2018. The Domain Name does not direct to a webpage.

The Respondent replied to the Complainant's contentions. In an exchange of emails dated April 2018, the Respondent expressed its wish to sell the Domain Name to the Complainant, or to sell it via www.sedo.com, which means for valuable consideration.

The Respondent complied with the CAC's request to file a Response within the specified timelines, as required by the ADR Rules, by informing the CAC that the Respondent "was not aware that [registering] could lead to problems (…); that [the Respondent] had requested KPN to immediately cancel [the Respondent's] arrangements with them; that [the Respondent] has and had no intention to use this domain name in any way with a webshop or whatever; and that with regard to this domain name [the Respondent] is currently in contact with www.eurid.eu to "free" this domain name as soon as possible from [the Respondent's] name etc. (…)".

A. COMPLAINANT

The Complainant considers the Domain Name to be identical or confusingly similar to several marks it holds in the AXA name. The Complainant considers the Respondent not to have any rights or legitimate interest in the Domain Name and asserts that the

Respondent registered and is using the Domain Name in bad faith.

B. RESPONDENT

The Respondent wrote the CAC that the Respondent “was not aware that [registering] could lead to problems (…); that [the Respondent] had requested KPN to immediately cancel [the Respondent’s] arrangements with them; that [the Respondent] has and had no intention to use this domain name in any way with a webshop or whatever; and that with regard to this domain name [the Respondent] is currently in contact with www.eurid.eu to "free" this domain name as soon as possible from [the Respondent’s] name etc. (…)”.

DISCUSSION AND FINDINGS

The ADR Procedure relates to the domain name AXAXLGROUP.EU (the “Domain Name”). The Respondent registered the Domain Name on 6 March 2018 and is the holder of the Domain Name.

1. In accordance with Article 21.1 of the Regulation (EC) No 874/2004 (the “Regulation 874/2004”), it should be established whether the Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law (i.e., the rights mentioned in Article 10.1 of Regulation 874/2004).

The Complainant is the owner of the following trademarks:

• International trademark “AXA” n°490 030 filed on 5 December 1984 in classes 35, 36 and 39, in particular for “advertising and business; insurance and financial services”, duly renewed and designating inter alia Austria, Bosnia, Croatia, Spain, Germany, Hungary, Italia, Portugal, Romania, and Benelux;

• Community trademark “AXA (+design)” n°373 894 filed on 28 August 1996 in classes 35 and 36, in particular for “insurance; personal insurance; life insurance; bereavement insurance” and duly renewed;

• Community trademark “AXA” n°008 772 766 filed on 21 December 2009 in classes 35 and 36 in particular for the following goods: “advertising; assistance to commercial or industrial firms in the conduct of their business; insurance and finance; banking services;

• French trademark “AXA” n°1 270 658 filed on 10 January 1984 in classes 35, 36 and 42, in particular for “insurance and finance” and duly renewed.

The Complainant is the owner of the following domain names, which reproduce the AXA trademarks:

• <axa.fr> registered on 20 May 1996;

• <axa.info> registered on 30 July 2001;

• <axa.com> registered on 28 October 2009;

• <axa.net> registered on 14 January 2011.

Comparison of the Complainant’s trademarks and the Domain Name:

The Domain Name entirely reproduces the AXA trademark which as itself has no particular meaning and is therefore highly distinctive (also see: ADR.eu Case 06430 relating to the domain name <vinci-france.eu>, http://eu.adr.eu/adr/decisions/decision.php?dispute_id=6430).

When a disputed domain name incorporates the entirety of the Complainant's trademark – and in particular a notorious and famous trademark – it is difficult, if not impossible, regardless of added terms to distinguish adequately the mark from the disputed domain name.

AXA is a well-known trademark. As stated in the WIPO Case D2014-0863 regarding the domain name <axacorporatetrust.com>, the Complainant has established its rights in the well-known AXA trademark, duly registered in several countries around the world (see: http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0863).

The likelihood of confusion is obvious. The Domain Name incorporates two trademarks, the AXA trademark belonging to the

Complainant and the XL Group trademark. Given the association of these trademarks created by the acquisition by AXA of XL Group, this combination in the Domain Name does not avoid confusion between the Domain Name and AXA trademarks on one hand and XL Group trademarks on the other hand (also see: ADR.eu Case 05486 relating to the domain name <morganstanley-smithbarneymorganstanley.eu>, http://eu.adr.eu/adr/decisions/decision.php?dispute_id=5486).

The combination of the AXA trademark with the trademark/name XL Group can mislead internet users, who could believe that the Domain Name leads to an official website of AXA.

Finally, the geographical Top-Level Domain ("ccTLD") suffix <.eu> does not eliminate the similarity between the Complainant's registered trademarks and the Domain Name. Indeed, the applicable Top-Level Domain in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element of the confusing similarity test.

Under these circumstances, it is sufficiently demonstrated that the Domain Name is identical or confusingly similar to the trademarks in which the Complainant has rights.

2. Further, the Panel needs to assess whether at least one of the other two elements of Article 21.1 of the Regulation 874/2004 is met. It should be established whether the Respondent registered the Domain Name without rights or legitimate interest in the name "AXAXLGroup" or whether the Respondent registered or used the Domain Name in bad faith (Article 21.1 (a) and (b) of the Regulation 874/2004).

a) The Panel is of the opinion that it is significantly demonstrated that the Respondent registered the Domain Name without rights or legitimate interest in the Domain Name.

It appears that:

The Respondent is not affiliated in any way with the Complainant and appears not to own any trademark applications or registrations for "AXA" and/or "XL Group" or any similar marks in connection with any goods or services.

In addition, the Complainant has not licensed or otherwise authorized the Respondent to use the Complainant's trademark(s) and/or name(s) or to apply for any domain name incorporating such trademark(s) or name(s).

Moreover, the Respondent is not commonly known by the Domain Name and does not trade under the "AXA" and/or "XL Group" name(s) and does not make any legitimate commercial use thereof. The Respondent is not seriously interested in actively using the Domain Name. The Respondent is simply passively holding the Domain Name since having registered it on 6 March 2018. Passive holding of a domain name does not constitute "legitimate non-commercial or fair use" (also see: ADR.eu Case 01328 relating to the domain name <tse-systems.eu>, http://eu.adr.eu/adr/decisions/decision.php?dispute_id=1328).

Under these circumstances, the Respondent has no rights or legitimate interest in respect of the Domain Name.

b) The Panel is of the opinion that it is sufficiently demonstrated that the Respondent registered or used the Domain Name in bad faith.

- The Respondent must have been aware of the Complainant's AXA trademarks at the time that the Respondent acquired the Domain Name. Since the Respondent registered the Domain Name just after the announcement of AXA's acquisition of XL Group, it is clear that the Respondent registered the Domain Name with notice of the Complainant's trademark registration. This is an opportunistic registration of the name of a new entity formed through a merger. This confirms the bad faith registration of the Domain Name. In the WIPO Case D2003-0112 regarding the domain name <konicaminolta.net>, the panel held that: "The inference from the Respondent's joinder of the names of Konica and Minolta shows that it was positioning itself to capitalize on the joinder of two multinational giants. Particularly so, when both Complainants owned trademarks and carried on business in the U.K., where the Respondent is domiciled" (see: http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0112.html).

- The Respondent is also using the Domain Name in bad faith. The Domain Name is not active and does not lead to a website. Passive holding may be considered, in certain circumstances, as use in bad faith.

The particular circumstances of this case, which lead to the conclusion that the Respondent is acting in bad faith, are:

• The Complainant's AXA trademark has a strong reputation and is widely known, as evidenced by the Complainant.

• The registration of a domain name, made shortly after the announcement of a joint venture, merger and/or a transfer of shares, where such domain name reflects the operations carried out, suggests opportunistic cybersquatting.

• The Respondent is not seriously interested in actively using the Domain Name. The Domain Name is not active and does not lead to a website.

• The Respondent acquired the Domain Name primarily to sell it to the Complainant or to others, which is a pattern of conduct preventing the Complainant's use of the registration.

In an exchange of emails dated April 2018, the Respondent expressed its wish to sell the Domain Name to the Complainant, or to sell it via www.sedo.com, which means for valuable consideration. An offer to sell a domain name for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name establishes that the domain name has been registered and is being used in bad faith (see: ADR.eu Case 07591 relating to the domain name <simbaslep.eu>, http://eu.adr.eu/adr/decisions/decision.php?dispute_id=7591).

Under these circumstances, it is sufficiently demonstrated that the Respondent registered or uses the Domain Name in bad faith.

3. The Complainant has requested the transfer of the Domain Name. According to Article 22.11 of the Regulation 874/2004, the Panel shall, in the case of a procedure against a domain name holder, decide that the Domain Name shall be revoked if it finds that the registration is speculative or abusive as defined in Article 21. Furthermore, the Domain Name shall be transferred to the Complainant if the Complainant applies for this Domain Name and satisfies the general eligibility criteria set out in Article 4(2)(b) of the Regulation (EC) No 733/2002.

To satisfy those general eligibility criteria the Complainant must be one of the following:

1. an undertaking having its registered office, central administration or principal place of business within the European Community; or

2. an organisation established within the European Community without prejudice to the application of national law; or

3. a natural person resident within the European Community.

In this case, the Complainant is an undertaking with registered offices within the European Community. As a result the Complainant satisfies the eligibility criteria. The Panel may order to transfer the Domain Name to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the ADR Rules, the Panel orders that the domain name AXAXLGROUP.EU be transferred to the Complainant within thirty calendar days of the notification of the decision to the Complainant and to the Respondent, unless the Respondent initiates court proceedings in a mutual jurisdiction as meant in Paragraph B 12 (a) of the ADR Rules.

PANELISTS

Name	**Bart G. GODDYN**

DATE OF PANEL DECISION 2018-08-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: AXAXLGROUP.EU

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

III. Date of registration of the domain name: 6 March 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
• International trademark "AXA" n°490 030 filed on 5 December 1984 in classes 35, 36 and 39, in particular for "advertising and business; insurance and financial services", duly renewed and designating inter alia Austria, Bosnia, Croatia, Spain, Germany, Hungary, Italia,

Portugal, Romania, and Benelux;
• Community trademark “AXA (+design)” n°373 894 filed on 28 August 1996 in classes 35 and 36, in particular for “insurance; personal insurance; life insurance; bereavement insurance” and duly renewed;
• Community trademark “AXA” n°008 772 766 filed on 21 December 2009 in classes 35 and 36 in particular for the following goods: “advertising; assistance to commercial or industrial firms in the conduct of their business; insurance and finance; banking services;
• French trademark “AXA” n°1 270 658 filed on 10 January 1984 in classes 35, 36 and 42, in particular for “insurance and finance” and duly renewed;
• <axa.fr> registered on 20 May 1996;
• <axa.info> registered on 30 July 2001;
• <axa.com> registered on 28 October 2009;
• <axa.net> registered on 14 January 2011.

V. Response submitted: No.

VI. Domain Name is identical or confusingly similar to the protected right(s) of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No rights or legitimate interests.
2. Why: the Respondent is not affiliated with the Complainant, has no license, is not commonly known by the Domain Name, does not trade under it and does not make any legitimate use thereof.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why: offer for sale of Domain Name. Registration and use in bad faith to take unfair advantage of the reputation of the Complainant's mark.

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: none.

XII. Is Complainant eligible? Yes.