Panel Decision for dispute CAC-ADREU-007712

Case number	CAC-ADREU-007712
Time of filing	2019-02-23 17:23:07
Domain names	transports-duboc.eu

Case administrator

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

Complainant

Organization	Transports Duboc

Respondent

Name	Merlin Boncoeur

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 about any other legal proceedings, either pending or decided, which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a French company created in 1964 and specialised in road haulage of sea containers. The Complainant employs 130 workers and owns 100 trucks and 200 chassis.

The Complainant is the owner of the figurative trademark DUBOC, French registration No. 123923353 of 12 May 2012 covering services in class 39.

The disputed domain name was registered on 29 October 2018.

A. COMPLAINANT

According to the Complainant, the Complainant was the owner of four domain names, namely <transports.duboc.fr>, <transports-duboc.com>, <transports-duboc.net>, and <transports-duboc.eu>. The latter domain name expired on 28 October 2018 and the Complainant's provider failed to renew it on time. Consequently, the Complainant lost the ownership of this domain name in favour of the Respondent.

The Complainant further maintains that the disputed domain name is now used by a company that is not active in the field of transportation or related fields. Moreover, according to the Complainant, the user of the disputed domain name is not based in Europe and is not called Duboc.

B. RESPONDENT

The Respondent did not submit a Response.

DISCUSSION AND FINDINGS

According to Paragraph B.1.(b)(10) of the ADR Rules, the Complainant shall describe the grounds on which the Complaint is made including, in particular:

A. why the domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or Community law (...);

B. why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint; or

C. why the domain name should be considered as having been registered or being used in bad faith.

Regarding the identity or confusing similarity of the disputed domain name, the Panel notes that the Complainant is the owner of the figurative trademark DUBOC, registered in 2012, i.e., approximately 6 years before the registration of the disputed domain name. The latter consists of the same term "duboc" followed by the generic term "transports".
Panels in ADR procedures for resolutions of disputes regarding .EU domain names usually consider that domain names including a name for which a right is recognized combined with a descriptive or generic term, are confusingly similar to that name, especially in situations where the descriptive or generic terms describe the goods and/or services of the right holder (see section II.5 of the CAC .EU Overview 2.0).
In the case at hand, the disputed domain name consists of the Complainant's trademark DUBOC followed by the term "transports", which describes the Complainant's area of activity. The figurative elements of the Complainant's trademark have no bearing in the assessment of confusing similarity since they cannot be reproduced in a domain name, and in any case are not particularly striking.
Thus, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Regarding the Respondent's lack of rights or legitimate interests in the disputed domain name, the Panel notes that the Complainant has provided only very few elements to assess this point. The main arguments of the Complainant are that the disputed domain name pertained to the Complainant until the Complainant's provider forgot to renew it at its expiry date. As a consequence, the disputed domain name was registered by the Respondent. Also, the Complainant maintains that the disputed domain name is currently used by a non-EU company, and that this company is not active in the transport field.
It is the consensus view of Panels dealing with .EU ADR proceedings, that "[a]fter a "prima facie" case made by the complainant the respondent has to show rights or legitimate interests in the domain name" (see section IV.1. of the CAC .EU Overview 2.0).
Although the Complainant has spent only few words to explain why the Respondent should lack rights or legitimate interests in the disputed domain name, in the absence of any Response, the Panel finds that the Complainant's arguments should be considered enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.
In particular, although not clearly expressed in the Complaint, it is likely that the Respondent and the Complainant have no business relationship, nor are they linked by any other kind of relation that would enable the Respondent to register the disputed domain name. There is nothing in the file that could let the Panel believe that the Complainant authorised the Respondent to incorporate its trademark in the disputed domain name, or that the Respondent has been commonly known by the disputed domain name.
The Complainant does not mention the kind of use that the Respondent is making of the disputed domain name but stresses the fact that it is used by a non-EU based company and that this company is not active in the transportation field. According to Section 7 of the ADR Rules, "[t]he Panel is not obliged, but is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case". According to the CAC .EU Overview 2.0, the extent of the independent investigation varies a lot from case to case and no appropriate extent of the independent investigation has been established. This Panel is of the opinion that the extent of its investigation should not be too broad, as it is up to the Complainant to provide evidence and arguments to support its case. However, within the Panel's power is certainly the possibility to examine the Respondent's website, which the Panel has done in this case. In reviewing the Respondent's website, the Panel has noted that it is written in Arabic although the address provided at the bottom of the page is located in China. The contents of the website are not intelligible to this Panel, however by using an automatic translation it appears that the contents of the website are not related to the field of transports, and nowhere in the website is the word "duboc" displayed.
Thus, from the website it is not clear why the Respondent has registered the disputed domain name. Furthermore, the Panel notes that both the Complainant and the Respondent are from France and that the disputed domain name was registered one day after the Complainant's provider failed to renew it. The disputed domain name is too peculiar to have been registered without knowledge of the Complainant's trademark and activity.
The Respondent had the possibility to explain its rights or legitimate interests in the disputed domain name, but failed to file a Response.
For all the aforesaid reasons, the Panel concludes that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Under the ADR Rules, the Complainant is required to either prove the Respondent's lack of rights or legitimate interests in the disputed domain name, or the Respondent's bad faith in the registration and use of the disputed domain name. The Complainant's arguments are so limited that the Panelist would have had difficulties in affirming that the Complainant was able to prove the Respondent's bad faith. Nonetheless, since the two requirements are alternative, it is not necessary for the Complainant to prove that the Respondent acted in bad faith in the registration and use 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 domain name

<TRANSPORTS-DUBOC.EU> be transferred to the Complainant

PANELISTS

Name	Angelica Lodigiani

DATE OF PANEL DECISION 2019-02-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: TRANSPORTS-DUBOC.EU

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

III. Date of registration of the domain name: 29 October 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. combined trademark registered in France, reg. No. 12 3 923 353 for the term DUBOC, filed on 30 May 2012, registered on 30 May 2012 in respect of services in class 39.

V. Response submitted: No

VI. Domain name is 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. Yes
2. Why: The Respondent does not appear to be known by the disputed domain name; the parties do not have any business relationship or any other kind of relationship; the Complainant never authorised the Respondent to reflect its trademark in the disputed domain name; the disputed domain name is used to access a website, which does not appear related to the field of transports and does not display the trademark DUBOC anywhere. All these circumstances have been found sufficient to establish a prima facie case of the Respondent's lack of rights or legitimate interests in the disputed domain name and to shift the burden of proof to the Respondent. The latter has however failed to submit arguments in favor of its position in a Response.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. The matter has not been evaluated since the Panel has already found that the Respondent lacks rights or legitimate interests in the disputed domain name and the two conditions are alternative.

IX. Other substantial facts the Panel considers relevant:

Due to the little amount of arguments made, and evidence filed, by the Complainant, the Panel had to make its own investigations in compliance with Section 7(a) of the ADR Rules. These investigations were however limited to the review of the Respondent's website, since it is up to the Complainant to explain why it should prevail in a ADR Complaint.

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: none

XII. If transfer to Complainant, is Complainant eligible?: Yes