Panel Decision for dispute CAC-ADREU-007715

Case number	CAC-ADREU-007715
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Domain names	baikowski.eu

Case administrator

Lenka Náhlovská (Case admin)

Complainant

Organization	BAIKOWSKI

Respondent

Name	pierre lachatte

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

N/A

FACTUAL BACKGROUND

The Complainant is a manufacturer of specialist organic compounds intended for a variety of hi-tech markets. Its headquarters are in France and it has operations in a number of countries across the world.
The Complainant trades as BAIKOWSKI and it is the owner of several trade marks for BAIKOWSKI. These include, by way of example only, French trade mark number 1706232 for BAIKOWSKI, registered on November 13, 1991 in Class 1. A subsidiary of the Complainant also owns the domain name <baikowski.com>, which it registered on November 27, 1996.

The disputed domain name, <baikowski.eu>, was registered on June 18, 2018. It resolves to a website which features a series of seemingly unconnected pay-per-click links such as “Assurance Auto”, Assurance Habitation” and “Location Espagne”.

A. COMPLAINANT

The Complainant says that the disputed domain name is identical to its BAIKOWSKI trade marks. It comprises the entirety of the Complainant’s mark without any alteration. The addition of the .eu designation does not change the overall impression of the disputed domain name as being connected with the Complainant’s trade mark, nor does it prevent a likelihood of confusion arising between the disputed domain name and the Complainant and its trade marks.

The Complainant also asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once it has done so, the Respondent carries the burden of demonstrating that it has such rights or interests. If the Respondent has failed to do so, the Complainant is deemed to have satisfied its burden.

The Respondent is not commonly known by the disputed domain name and has not acquired any rights in this term. The Respondent is not affiliated with nor authorised by the Complainant in any way and the Complainant does not carry out any activity for, nor has any business with, the Respondent. No license or authorisation has been granted to the Respondent to make any use of the Complainant’s trade mark or to apply for registration of the disputed domain name. The disputed domain name points to a parking page with commercial links. Previous panels have found that this does not comprise a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or of whether the respondent is itself commercially profiting from the click-through fees.

The Complainant draws attention to the decision under the Uniform Dispute Resolution Policy (“UDRP”) of the panel in WIPO Case No.

D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd which held that, once a complainant had made out a prima facie case that a respondent lacked rights or legitimate interests in a domain name, the burden shifted to the respondent to show that it had rights or legitimate interests. The Complainant suggests that the same approach be taken in these proceedings.

Finally, the Complainant says that the disputed domain name was registered and is being used in bad faith. The website to which the disputed domain name is a registrar parking page which contains commercial links. All the Google search results for BAIKOWSKI are related to the Complainant. This amounts to bad faith use: see for example, the decision of the panel in Dubizzle Limited BVI v. Syed Waqas Baqir, WIPO Case No. D2018-0564 , also a decision under the UDRP, in which the panel commented that: "By allowing the use of pay-per-click links on a website having a confusingly similar domain name to the Complainant's marks, the Respondent must have intended to use the disputed domain name to attract Internet users to its website for commercial gain and such intentional use constitutes bad faith under UDRP paragraph 4(b)".

B. RESPONDENT

The Respondent failed to file a response.

DISCUSSION AND FINDINGS

Paragraph B 10 (a) of the ADR Rules provides that the Panel may consider the failure to comply with the time limits established by the ADR Rules as grounds to accept the claims of the other party.
Moreover, paragraph B 10 (b) of the ADR Rules states that if a party does not comply with any provision of, or requirement under, the Rules or the Supplemental Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate. Note, however, that paragraph 10(d) of the ADR Rules provides that it is nevertheless for the Complainant to prove that the requirements of Article 21(1) are satisfied.

Article 21(1) of Commission Regulation (EC) No 874/2004 ("the Regulation") and paragraph B11(d)(1) of the ADR Rules provide that a registered domain name shall be subject to revocation if the domain name is identical or confusingly similar to a trademark or service mark in which a complainant has a right which is recognised or established the national law of a Member state and/or Community law and; either
(a) the domain name has been registered by the respondent without rights or legitimate interests in the name; or
(b) the domain name has been registered or is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

The Complainant has produced evidence of its trade marks in BAIKOWSKI, full details of one of these marks being set out above. It has therefore established its rights in this name. For the purpose of assessing identicality or similarity between the disputed domain name and its trade mark, the gTLD .eu suffix is typically disregarded as a technical requirement of registration; see, for example Nicolas De Borrekens v Van der Velden beheer BV, Stephan Van der Veldenm, CAC Case No. 597.
The disputed domain name contains the Complainant's trade mark in full and without alteration. It does not contain any additional letters or words. It is accordingly identical to a trade mark in which the Complainant has rights and the Complainant has therefore satisfied the requirement under Article 21(1) of the Regulation.

NO RIGHTS OR LEGITIMATE INTERESTS

Article 21(2) of the Regulation sets out, on a non-exhaustive basis, examples of how a respondent might be able to demonstrate a legitimate interest within the meaning of Article 21(1)(a) of the Regulation. These are;
(a) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;
(c) the holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

Pointing the disputed domain name to a website which contains pay-per-click links does not constitute use of the domain name in connection with the offer of goods and services. As explained at section IV(11) of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition ("CAC .EU Overview 2.0"); "Use of a domain name to post parking pages or mere pay-per-click links does not of itself confer rights or legitimate interests, especially if links lead to

websites of the right holder's competitors". See also, by way of example, the comment of the panel in Benefit Cosmetics LLC, Christophe LeBoterff v. Domain Master, CAC 6295; "However, providing links to other commercial web-sites unrelated to the Respondent's business in this way does not amount to a genuine offering of goods and services and does not generate rights or legitimate interests".

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name nor is the use being made of the disputed domain name either non-commercial or fair within the meaning intended by section 21(2)(c) of the Regulation.

Irrespective of whether the burden of production has shifted to the Respondent, as the Complainant has asserted, there is no evidence to suggest that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The Complainant has therefore satisfied the requirements of Article 21(1)(a) of the Policy.

REGISTRATION OR USE IN BAD FAITH

Although, under the ADR Rules, the need to establish bad faith registration or use is an alternative requirement to showing no rights or legitimate interests on the part of the Respondent and not an additional requirement, the Panel will briefly consider this issue.

Article (21(3)of the Regulation sets out, without limitation, a number of circumstances, whereby bad faith may be established. The circumstance set out at Article 21(3)(d) is, in summary, if the domain name was intentionally used to attract Internet users, for commercial gain, to a website by creating a likelihood of confusion with a complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the website.

Whilst the use of a domain name to point to parking pages hosting pay-per-click sponsored links is not inherently objectionable such conduct can constitute bad faith use if the domain name which incorporates a complainant's trade mark is simply being used as bait to encourage Internet users to visit the respondent's website. The comparable provisions of the UDRP are broadly the same as the Regulation and see , for example, the decision under the UDRP of Yahoo! Inc. v. Hildegard Gruener, WIPO Case No. D2016-2491, in which the panel considered similar parking pages, and, in finding bad faith registration and use, explained that "the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely pay-per-click or referral revenue achieved through the visitors to the site clicking on the sponsored advertising links".

For this reason, the Complainant has also satisfied the requirements of Article 21(1)(b) of the Regulation.

The Complainant seeks a transfer to it of the disputed domain name. Under Article 22(11) of the Regulation a panel may order a transfer of a domain name to a successful complainant, if the complainant can show that it satisfies at least one of the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002. One of those criteria is that the registrant is an undertaking having its registered office, central administration or principal place of business within the Community. The Complainant is a company based in France and accordingly satisfies this requirement.

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DECISION

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

PANELISTS

Name	Antony Gold

DATE OF PANEL DECISION 2019-03-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <baikowski.eu>

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

III. Date of registration of the domain name: 18, June, 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in France reg. No. 1706232, for the term BAIKOWSKI, registered on November 27 1996 in respect of goods and services in class 1.

V. Response submitted: No

VI. Domain name identical to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
No - no grounds for establishing any rights or legitimate interest evident from the Complaint.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
Yes
Why:Use to which disputed domain name put (pointing to a page of pay-per-click links) considered to be in bad faith

IX. Other substantial facts the Panel considers relevant:N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:N/A

XII. Is Complainant eligible? Yes