Panel Decision for dispute CAC-ADREU-007727

Case number	CAC-ADREU-007727
Time of filing	2019-03-15 17:37:17
Domain names	deutscheranwaltverein.eu

Case administrator

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

Complainant

Organization	

Respondent

Name	Renee Fontane

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

FACTUAL BACKGROUND

The Complainant Deutscher Anwaltverein e.V. (hereinafter called “the Complainant”) is a registered association in Germany representing the interests of German lawyers. The Complainants states that they own the rights in several trademarks including the word “DeutscherAnwaltverein”.

The Complainant has provided details of trademark registration including the following registration owned in the EU being DeutscherAnwaltverin & device under registration number 016287062 registered on January 25 2017 in classes 9,16,35,36,38,41,42,43,45

The Complainant relies on the above trademark registration as well as their common law rights arising from their long use of the name and their operation of the websites <deutscheranwalverein.de> and <anwaltverein.de> to sustain that the disputed domain name <deutscheranwaltverein.eu> infringes their trademark, is confusingly similar to their trademark, creates a danger of confusion to the public that the Respondent has no rights or legal interest in the subject domain name and that the Respondent registered and is using the domain name in bad faith.

The Respondent has not filed any response to the Complaint.

A. COMPLAINANT

The Complainant states that it received information some months ago from German citizens regarding fake warning letters alleging copyright infringement. The email address used for these letters was info@deutscheranwaltverein.eu. The Complainant enclosed a copy of such a warning letter as Annex A to its complaint. The Complainant points out that the disputed domain name hosts a website that appears to belong to EU law Solicitors which purport to be an IP law firm. The country code for their telephone number uses an Austrian prefix. The Complainant has exhibited copies of the website pages and evidence that the website itself is a copy of another London law firm, Palmer Biggs even featuring their staff photographs.

In relation to the disputed domain name the Complainant states as follows:

1. The subject domain name is confusingly similar to its trademark, particularly in the circumstances in which it is being used and that where the subject domain name incorporates the entire trademark of the Complainant.

2. That the respondent has no legal interest in the subject domain name. The Respondent is using the subject domain name for legal services which are also covered by the Complainants trademark and related signs used by the Complainant.

3. That the Respondent has registered and is using the subject domain name in bad faith. They contend that the Respondent is solely using the name to create a pretence of a legal relationship between his entity and the Complainant in order to mislead recipients of warning letters sent by the email address info@deutscheranwaltverein.eu.

4. Lastly it contends that there is no legitimate use for the disputed domain name by the Respondent.

B. RESPONDENT

The Respondent has not filed any response to the complaint. It is noted that a reminder notification was sent to the Respondent on 01.02.2019 and a default notification was sent to them on 12.02.19. The case file contains no reply whatsoever from the Respondent.

DISCUSSION AND FINDINGS

According to article B11(d)(1) of the ADR rules the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in the ADR proceeding that:

(i) 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 and; either
(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name or
(iii) The domain name has been registered or is being used in bad faith

The Panel also notes the provisions of article B10 of the ADR Rules regarding the failure of either Party to a complaint to comply with the time periods as set out in the ADR Rules and inferences that may be drawn from same.

(i) Identical or Confusingly Similar

The disputed domain name incorporates the Complainants´ trademark and business name in full. The Complainant has proven that it is the holder of the trademark and evidence has been provided of Community Trademark registrations and usage. The Respondent has not made any submission in response to this submission. The Panel finds that the domain name <deutscheranwaltverein.eu> is confusingly similar to a name in respect of which the Complainants have established a right. The Condition set forth at Article B11(d) (i) is fulfilled.

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

Under the ADR Rules the burden of proof for the lack of rights and legitimate interests of the Respondent lies with the Complainant. The Complainants have demonstrated their legitimate interest in the Deutscher Anwaltverein name. The Complainants have further stated that they are not aware of any rights or legitimate interests that the Respondent has in respect of the disputed domain name. The Complainants in this case have submitted that the Respondent is only using the subject domain name to create a false impression of a legal relationship between his entity and the Complainant association.

Article B11 (e) of the ADR rules provides a non exhaustive list of circumstances that a respondent may use to demonstrate a legitimate interest. The Respondent has failed to provide any response and has therefore not demonstrated any legitimate interest or rights in the name. In the absence of any response from the Respondent or the presentation of any other evidence to the Panel proving any legitimate interest or rights of the Respondent the Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Having regard to paragraph B11(e) of the ADR Rules the Panel does not find that the Respondent has met any of the three threshholds set out therein namely:

1. The Respondent has not furnished evidence that prior to any notice of the dispute, it 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;
2. It has not been known by the domain name;
3. The Respondent has not furnished any evidence to ground a claim that it has a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by

national law and/or Community law

(iii) The domain name has been registered or is being used in bad faith

As the Panel has reached the decision at (2) above it is not necessary to investigate if the domain was registered in bad faith but it is clear to the Panel that the disputed domain name was intentionally used to create a false impression of connection to the Complainant and this created a likelihood of confusion for consumers.

The Complainant Deutscher Anwaltverein e.V. has a registered office within the EU; therefore it satisfies the eligibility requirements under Paragraph 4 (2) (b) (i) of Regulation 733/2002 and is entitled to request the transfer 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 DEUTSCHERANWALTVEREIN.EU be transferred to the Complainant

PANELISTS

Name	Griffin Conor

DATE OF PANEL DECISION 2019-03-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: deutscheranwaltverein.eu

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

III. Date of registration of the domain name: [27 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.. figurative CTM, reg. No. 016287062, for the term 10 years, filed on 25 January 2017, registered on [25 January 2017 in respect of goods and services in classes 9, 16, 35, 36, 38. 41, 42, 43, 45

V. Response submitted: No

VI. Domain name/s is/are identical/confusingly similar to the protected right/s of the Complainant Yes

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Respondent has not provided a response to demonstrate any rights or legitimate interests

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Evidence has been submitted showing that the domain name is being used to mislead consumers regarding fake breach of copyright claims and to create a false impression of association with the Complainant.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

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