Panel Decision for dispute CAC-ADREU-007801

Case number	CAC-ADREU-007801
Time of filing	2019-12-04 12:37:15
Domain names	studymedicineeurope.eu

Case administrator

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

Complainant

Organization	Study Medicine Europe Ltd

Respondent

Name	Adam Milanovic

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 relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a company that provides employment counseling, consultancy in the field of education, and organizing conferences. The Complainant is holder of European Union trademark with no. 015679103 for the semi-figurative mark "Study MEDICINE EUROPE Actualizing Academic Dreams", which was filed on July 21, 2016 and registered on July 21, 2019 (hereinafter referred to as the "Trademark").

The Respondent registered the disputed domain name <StudyMedicineEurope.eu> on October 17, 2018.

A. COMPLAINANT

The Complaint states as follows: "We are a well-known company (..). For those reasons we have registered the Trademark (..) and we have also registered several similar websites, with different top-level domains. The respondent used the registrar to register an identical site with the .eu TLD, appearing to provide services similar to ours, trying to mislead the public, regarding the provider of those services"

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

In absence of a Response, the Respondent has not rebutted any of the Complainant's allegations. In accordance with Paragraph B10 (1) ADR Rules the Panel shall proceed to a decision on the Complaint and consider the Respondent's failure to file a Response as ground to accept the claims of the Complainant, and the Panel shall draw such inferences therefrom as it considers appropriate (Paragraph 10 B (2) ADR Rules).

Under Article 21 (1) of the Regulation (EC) No. 874/2004 in order to succeed under this dispute resolution procedure the Complainant must show that the disputed domain name:
(i) is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either
(ii) has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) has been registered or is being used in bad faith.

The three elements are discussed below.

1. The Trademark is a recognized by national and Community law. Although the Trademark consists of figurative elements and the words "Study MEDICINE EUROPE Actualizing Academic Dreams", the words can be clearly separated and distinguished from the other elements, and the words "Study MEDICINE EUROPE" can be regarded the dominant element of the Trademark. As the disputed domain name exists of the words "Study MEDICINE EUROPE" which are the dominant part of the Trademark, the Panel finds that the disputed domain name is confusingly similar to the Trademark.

2. The Complainant must show a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (see Paragraph I. Procedural questions, section 17 of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition ("CAC .EU Overview 2.0")).
However, the Complaint did not discuss this second element, and the Complainant has therefore failed to meet the second element.

3. Bearing in mind that it is only necessary for the Complainant to meet either the second or third element of Paragraph B11(d)(1), it is possible for the Complainant to succeed even if the Respondent may have rights or legitimate interests in the disputed domain name (CodeProject Solutions Inc. v. Przemysław Malak, CAC 7258). In this respect the Complainant only put forward that the Respondent used the disputed domain name to provide services which are similar to those of the Complainant, trying to mislead the public. The Complainant did not submit evidence of the use which may have been made of the disputed website, and the Panel's own search did not show that the disputed domain name resolved to a website, while the Internet Archive at "web.archive.org" did not have a webpage with the disputed domain name archived. Consequently, the Panel could not establish that the disputed domain name had actually been used by the Respondent. The Complainant therefore failed to prove that the disputed domain name has been registered or is being used in bad faith.

4. The Complainant submitted too little information for the Panel to reasonably rule out the possibility that the Respondent has a right or legitimate interest in the disputed domain name, especially as it may be descriptive for its future use despite the disputed domain name being identical to the dominant part of the Trademark (which seems also descriptive for the services offered by the Complainant), but not yet made use of the disputed domain name in a way that does not mislead the public. Therefore the Panel finds that the Complainant failed to show that the requirements of Article 21 (1) (a) and (b) of the Regulation (EC) No. 874/2004 were met.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is denied.

PANELISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2019-12-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <StudyMedicineEurope.eu>

II. Country of the Complainant: United Kingdom of Great Britain and Northern Ireland; country of the Respondent: Austria

III. Date of registration of the domain name: October 17, 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
combined trademark registered in the European Union, reg. No. 015679103, filed on July 21, 2016, registered on July 21, 2019 in respect of services in classes 35, 39 and 41.

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: No prima facie case shown by the Complainant

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: the Complainant provided insufficient information to rule out the possibility of bona fide registration and use of the disputed domain name

IX. Other substantial facts the Panel considers relevant: No

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: No

XII. [If transfer to Complainant] Is Complainant eligible? N/a