Panel Decision for dispute CAC-ADREU-007866

Case number	CAC-ADREU-007866
Time of filing	2020-04-03 13:03:22
Domain names	goldbeckgroup.eu

Case administrator

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

Complainant

Organization	GOLDBECK GmbH

Respondent

Organization	goldbeck

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

There are no other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Parties and the disputed domain name: <goldbeckgroup.eu>

Complainant GOLDBECK GmbH is a limited liability company, with its seat in Bielefeld, Germany. Since starting its operations on September 1, 1969 the Company is active in the construction business, mainly in commercial building construction. It employs today more than 7,000 employees within 40 branch locations in Germany and several European countries: Poland, Czech Republic, Slovakia, Austria, the Netherlands, Sweden, United Kingdom and Switzerland.

Complainant is the owner of the following trademark registrations:
1) The Community Trademark Registration No. EM 005604723, "Goldbeck", dating back to December 20, 2006 (application date), received office number: F21554457, Niece class number: 6;
2) The Community Trademark Registration No. EM 015823917, "GOLDBECK", dating back to September 12, 2016 (application date), received office number: E63289200, Nice class number: 6; and
3) The German word trademark DE 303075473, "Goldbeck", dating back to February 14, 2003 (application date), Nice class number: 0.

The disputed domain name <goldbeckgroup.eu> was created on November 7, 2019, expiry date on November 7, 2020, and is registered by Respondent with the Registrar: Arsys Internet S.L., Calle Madre de Dios 21, La Rioja, 26004, Logrono, ES.

Procedural History

The Complaint submitted by GOLDBECK GmbH, Nocole Berenbrinker was received by e-mail on December 23, 2019, at 16:11:29 by the Czech Arbitration Court. The time of Filing is December 30, at 09:43:02.

On December 30, 2019, EURid's verification concerning the domain name <goldbeckgroup.eu> (case no. 07866) was issued. Status: ON HOLD. Registered: November 7, 2019. Expiry date: November 7, 2020.

On January 3, 2020, ADR Center notified Complainant of the Respondent's of deficiencies in Amended Complaint; Complainant has not specified Remedies Sought.

On January 3, 2019, Complainant notified the ADR Center and requested to enter the transfer of the disputed domain name as a "Remedy

Sought".

On January 6, 2020, ADR Proceeding formally commenced and the Respondent was asked to submit a Response within 30 working days from the delivery of ADR notice according to ADR Rules in force.

On January 14, 2020, as the Respondent has not confirmed receiving the notice of the ADR Proceeding by accessing the online platform within 5 days of its sending by e-mail, ADR Center has sent to Respondent the notice of the ADR Proceeding by post.

On March 10, 2020, ADR Center issued a Notification of Respondent's Default.

On March 18, 2020, the ADR Center appointed Sylwester Pieckowski as a sole panelist and established a projected decision date on April 20, 2020 (Notification of Appointment of the ADR Panel and Projected Decision Date). Sylwester Pieckowski has issued a Statement of Acceptance and Declaration of Impartiality and Independence.

On March 23, 2020, the Case File No. 07866 was released to the ADR Panel.

A. COMPLAINANT

Complainant considers the disputed domain name to be confusingly similar to trademarks in which it claims to have legally protected rights. Complainant further claims that Respondent has no rights or legitimate interests in respect of the disputed domain name and uses it with fraudulent intent to deceit the business community at his own benefit. According to Complainant, Respondent has not used the disputed domain name in connection with a legitimate use. In addition, Respondent has not been commonly known by the disputed domain name. Complainant alleges that the disputed domain name was registered and is being used by Respondent in bad faith.

B. RESPONDENT

Respondent did not reply to the Complaint.

DISCUSSION AND FINDINGS

GENERAL FINDINGS

The Panel concludes that Respondent did not file its Response to Complaint within due date i.e. within 30 working days from the Commencement of ADR Proceedings on January 6, 2020, or after that date, Respondent is completely passive and does not respond to notifications of the ADR Center. Therefore, pursuant to Paragraph B (10) of the ADR Rules the Panel shall proceed to issue a Decision based upon the facts and evidence provided by the Complainant.

SPECIFIC FINDINGS

Pursuant to Article 21, Speculative and abusive registrations of the Regulation (EC) No. 874/2004, for the Complainant in order to succeed it must prove that:

1. The disputed domain name is identical or confusingly similar to the name in respect of which a right is recognized or established by national/or Community law such as trademarks, trade names or service marks in which Complainant has rights; and

2. Respondent has no rights or legitimate interests in respect of the disputed domain name; or

3. The disputed domain name has been registered and is being use in bad faith.

The Panel will deal with each of these requirements in turn.

A. The disputed domain name is identical or confusingly similar to a trademark in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

Respondent’s <goldbeckgroup.eu> domain name is, obviously, confusingly similar to Complainant’s trademarks 'Goldback" and "GOLDBECK". As a matter of fact, the disputed domain name only differentiates itself from Complainant’s marks (a) for the format required of Internet domain names, i.e., the inclusion of the suffix .eu, and (b) for the descriptive component "group”.

In this regard, the terms “Goldbeck" and “goldbeckgroup” are phonetically, graphically and conceptually similar since Complainant’s mark

is entirely comprised in Respondent’s domain name as its initial part, and consumers tend to focus their attention on the initial part of a sign. In addition, “group” is a very common term which refers to a group legal structure, and the meaning of which is easily understood even by consumers whose primary language is not English. Of course, the semantic content of the term “group” is entirely non-distinctive, so that the differences between “Goldbeck" and "goldbeckgroup" are really negligible. Consequently, the addition of the suffix - group in the disputed domain name and the presence of the .eu suffix are obviously not sufficient to differentiate Respondent’s domain name from Complainant’s trademarks.

Accordingly, the Complainant has successfully established that the disputed domain name is identical or confusingly similar to the trademarks in respect of which it has rights.

B. Respondent has no rights or legitimate interests in respect of the disputed domain name.

Respondent is not affiliated in any way with Complainant and, to the best of our knowledge, does not own any trademark applications or registrations for “goldbeckgroup” or any similar marks in connection with any goods or services.

Complainant has not licensed or otherwise authorized Respondent to use its “Goldbeck" or "GOLDBECK" trademarks, or to apply for any domain name incorporating such mark.

Respondent is not commonly known by the disputed domain name and does not trade under the name “goldbeckgroup” and does not make any legitimate commercial or non-commercial use thereof.

Complainant has been using its “Goldbeck" and "GOLDBECK" trademarks in commerce since long ago, and, as such, Complainant has established rights throughout the world in those trademarks.

Respondent chose a domain name which consists of Complainant’s mark and of the descriptive term “group”, thereby intentionally violating Complainant’s rights.

Finally, Respondent did not reply to Complainant’s arguments and decided not to take part in the ADR proceedings. This is a further indication of the absence of rights or legitimate interests in the disputed domain name.

Accordingly, Complainant has successfully established that the disputed domain name has been registered by Respondent without rights or legitimate interests in the name.

C. The disputed domain name has been registered and is being used in bad faith.

Respondent’s bad faith in registering and using <goldbeckgroup.eu> is evident for several reasons.

Since the disputed domain name was created only less than a year ago, it is obvious that Respondent registered it with a view to take unfair advantage of the reputation of the Complainant’s mark “Goldbeck”. It is therefore evident that not only the use of the disputed domain name is blatantly in bad faith, but also its registration considering the reputation enjoyed by the mark “Goldbeck". In fact, when creating disputed domain name, Respondent knew or must have known that “Goldbeck” is a well-known brand in the construction business.

Respondent’s registration of <goldbeckgroup.eu> obviously confuses potential customers as to Respondent’s affiliation with Complainant since, it is absolutely plausible that the Complainant runs several branch operations for its products.

Respondent's criminal behaviour by its blunt pretending in e-mail correspondence that he is actually Goldbeck gives additional argument and proof of his extreme bad faith.

Furthermore, Respondent’s domain name discouraged Internet users from locating Complainant’s true website, thereby diluting the value of Complainant’s “Goldbeck" trademark.

Currently, the website www.goldbeckgroup.eu appears to be in a clear state of passive holding.

Accordingly, Complainant has successfully established that the disputed domain name has been registered or is being used in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 of the Rules, the Panel orders that

the domain name <GOLDBECKGROUP.EU> be transferred to the Complainant.

PANELISTS

Name	**Sylwester Pieckowski**

DATE OF PANEL DECISION 2020-04-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: GOLDBECKGROUP.EU

II. Country of the Complainant: Germany, country of the Respondent: UK.
III. Date of registration of the domain name: November 7, 2019.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

1) The Community Trademark Registration No. EM 005604723, "Goldbeck", dating back to December 20, 2006 (application date), received office number: F21554457, Nice class number: 6;
2) The Community Trademark Registration No. EM 015823917, "GOLDBECK", dating back to September 12, 2016 (application date), received office number: E63289200, Nice class number: 6;
3) The German word trademark DE 303075473, "Goldbeck", dating back to February 14, 2003 (application date), Nice class number: 0.

V. Response submitted: No

VI. The disputed domain name is identical or confusingly similar to the protected rights of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No.
2. Why:

Respondent does not provide any evidence of rights or legitimate interest in disputed domain name. Complainant has provided evidence of a prima facie lack of rights or legitimate interest on the part of Respondent who did not challenge any of the Complainant's claims.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why:

Since the disputed domain name was created only a less than year ago, it is obvious that Respondent registered it with a view to take unfair advantage of the reputation of the Complainant’s mark “Goldbeck". It is therefore evident that not only the use of the disputed domain name is blatantly in bad faith, but also its registration considering the reputation enjoyed by the mark “Goldbeck”. In fact, it is indisputable that the Respondent is or should be perfectly aware of the fact that “Goldbeck” is a well-known construction brand.

Respondent’s registration of <GOLDBECKGROUP.EU> obviously confuses potential customers as to Respondent’s affiliation with Complainant since, it is absolutely plausible that Complainant runs several branch facilities for its products.

Furthermore, Respondent’s domain name discouraged Internet users from locating Complainant’s true website, thereby diluting the value of Complainant’s “Goldbeck" and "GOLDBECK" trademarks.

Respondent's criminal behaviour by its blunt pretending in e-mail correspondence that he is actually Goldbeck gives additional argument and proof of his extreme bad faith.

Currently, the website www.goldbeckgroup.eu appears to be in a clear state of passive holding.

IX. Other substantial facts the Panel considers relevant: fraudulent, speculative, abusive, ill-motivated actions of Respondent.

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

XI. Procedural factors the Panel considers relevant: Expiration of the disputed domain name.

XII. Is transfer to Complainant eligible? Yes