Panel Decision for dispute CAC-ADREU-007889

Case number	**CAC-ADREU-007889**
Time of filing	**2020-05-25 16:44:49**
Domain names	**regtify.eu**

Case administrator

Lenka Náhlovská (Case admin)

Complainant

Organization	**Regtify Limited**

Respondent

Name	**Fred Janssens**

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 ADR Panel is not aware of any other pending legal proceedings.

FACTUAL BACKGROUND

On 11 February 2020 Complainant filed a complaint against Respondent (hereinafter: the “Complaint”) on the basis of the “.eu” Dispute Resolution Rules (hereinafter: the “ADR Rules”).

On 12 February 2020 a Notification of Deficiencies in Complaint was issued. Complainant was invited to correct the following information, within seven (7) days of receiving this Notification: (i) the contact information of the Registrar; (ii) the specification of the remedies sought; (iii) providing the factual and legal grounds of the Complaint; and (iv) adding evidence to the Complaint.

On 13 February 2020 the Complainant amended the Complaint and provided the requested information. Complainant i.a. clarified that it requests to transfer the domain name <regtify.eu> (hereinafter the “Domain Name”).

On 14 February 2020 the ADR Proceedings commenced.

On 21 February 2020 a Nonstandard Communication on the basis of § A2 (k) of the ADR Rules was issued stating that (i) Respondent had not confirmed receiving the notice of the ADR Proceeding by accessing the online platform within 5 days of its sending by e-mail, and, (ii) the notice of the ADR Proceeding had been sent to Respondent by post on 21 February 2020.

In application of the ADR Rules, Respondent thus had to file its Response by 16 April 2020.

On 17 April 2020 a Notification of Respondent’s Default was issued.

On 23 April 2020 a Nonstandard Communication on the basis of § A2 (k) of the ADR Rules was issued stating that the written notice of the present ADR Proceeding addressed to Respondent was returned undelivered to the Czech Arbitration Court on 28 February 2020.

On 27 April 2020 the ADR Panel was appointed.

A. COMPLAINANT

Complainant is a company incorporated under the laws of Cyprus on 19 March 2016 under the company name “REGTIFY” (hereinafter: the “Company Name”).

Complainant is the holder of i.a. an EU figurative trademark “REGTIFY”, applied for on 27 September 2018 and registered on 23 January 2019 in classes 36 and 42, with registration number 017962153 (hereinafter: the “EUTM”).

Complainant contends that it is holder of several domain names containing the sign “regtify” (hereinafter the: “Other Domain Names”), including the first registered domain name <regtify.com>, registered on 30 March 2016 (hereinafter: the “First Registered Domain Name”).

Complainant further contends that it has requested Respondent at several occasions to transfer the Domain Name to Complainant, but never got a reply.

Finally Complainant contends that the Domain Name (i) is identical to the Company Name and Other Domain Names; (ii) appears to have been registered without any rights in the Domain Name and that there is currently no legitimate interest from Respondent in the Domain Name since the Domain Name is parked and not used at all; and (iii) appears to have been registered after Complainant was incorporated and after registration of the First Registered Domain Name.

B. RESPONDENT

Respondent did not file any response to the Complaint.

DISCUSSION AND FINDINGS

Pursuant to Paragraph B. 11 (d) (1) of the ADR Rules, the ADR Panel can only decide to transfer the Domain Name to Complainant if Complainant proves that the 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 Respondent without rights or legitimate interest in the name; or

(iii) has been registered or is being used in bad faith.

(i) Is the Domain Name identical or confusingly similar to a name in respect of which Complainant has a right that is recognized or established by the national law of a Member State and/or Community law?

Complainant bases its Complaint on the following rights: (i) the Company Name and (ii) Other Domain Names, and particularly the First Registered Domain Name.

The ADR Panel finds that Complainant does not explain on which legal grounds and to what extent the Company Name would be protected under national law (See also: ADR Decision 06987 (<hjt.eu>).

As regards the Other Domain Names, including the First Registered Domain Name, it should be noted they cannot, as such, grant a right to the Domain Name (See also: ADR Decision 06295 <benefitcosmetics.eu>; ADR Decision 06734 <swing4ireland.eu>).

However, it results from the Case File that Complainant is also holder of the EUTM. For the purpose of ADR Dispute Proceedings, such as current proceedings, it is not required that the trademark invoked has been registered before the domain name registration at stake. It is sufficient that the trademark mark is in full effect at the time of the complaint (See e.g.: ADR Decision 5379 (<nordicnaturals.eu>); ADR Decision 5969 (<ngm.eu>); ADR Decision 5996 (<arcabit.eu>); ADR Decision 6049 (<topreality.eu>)). In the present case the EUTM, however registered after the Domain Name, is in full effect until 27 September 2028 and can consequently be considered as a relevant right. It is also generally found by ADR Panels that a domain name is confusingly similar to trademark if its word element is predominant, and, can be clearly separated from the device element, which in the case for the EUTM (See: ADR Decision 4863 <babywell.eu>, referring to previous ADR Decisions on this aspect).

On the basis of the foregoing, the ADR Panel decides that the Domain Name is confusingly similar to the EUTM.

(ii) Has the Domain Name been registered by Respondent without rights or legitimate interest in the Domain Name?

The ADR Panel finds that (i) the Domain Name has not been used since it has been registered, and, (ii) Respondent failed to reply to Complainant's request to transfer the Domain Name to Complainant. It results from the Case file that Respondent did not reply to the Complaint and that the notification of the Complaint by post has been sent back to the Czech Arbitration Court.

The ADR Panel concludes form the above that it is not established that Respondent has rights or legitimate interests in the Domain Name.

(iii) Has the Domain Name been registered or is being used in bad faith by Respondent?

Complainant contends that the Domain Name appears to have been registered after (i) Complainant was incorporated, and, (ii) the registration of the First Registered Domain Name.

The ADR Panel finds that these mere facts do not constitute proof of Respondent's bad faith.

DECISION

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

PANELISTS

Name	**Gunther Meyer**

DATE OF PANEL DECISION 2020-05-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: REGTIFY.EU

II. Country of the Complainant: Cyprus, country of the Respondent: Belgium

III. Date of registration of the domain name: 6 September 2017

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. figurative trademark registered in the EU, reg. No. 017962153, for the term 27 September 2028, filed on 27 September 2018, registered on 23 January 2019 in respect of goods and services in classes 36 and 42
2. company name "egtify
3. other: other prior domain names containing the sign regtify

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Is was not established that Respondent had rights or legitimate interests in the disputed domain name

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

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. Is Complainant eligible? Yes