Panel Decision for dispute CAC-ADREU-007950

Case number	CAC-ADREU-007950
Time of filing	2020-08-25 08:47:47
Domain names	truelayer.eu

Case administrator

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

Complainant

Organization	TrueLayer Limited

Respondent

Name	John Johnson

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 Complainant is the company TrueLayer Limited ("TrueLayer"). The Complainant is a British stat-up company founded in 2016, and quickly became the European leader in financial and banking APIs.
The disputed domain name resolves, to the date of filing of original complaint, to a parking page of pay-per-click commercial links, indicating that the domain name is offered for sale at 4999 €. The domain name is also offered for sale at this same price on the Sedo website.

The Complainant is the holder of the following rights:

- Legal company name TRUELAYER, registered on 14 July 2016 in the United Kingdom; and
- European trademark TRUELAYER n° 16890402 registered on 18 October 2017 and designating goods and services in international classes 09, 36, and 42.

A. COMPLAINANT

The disputed domain name has been registered by its holder without rights or legitimate interest in the name.
The Complainant stated that the Respondent should be considered as having no right or legitimate interests with respect of the disputed domain name. Furthermore, the Complainant stated that the disputed domain name has been registered or is being used in bad faith as at the time of registration of the disputed domain name, the Respondent was not in a position to ignore the prior rights of the Complainant on the term in question.

B. RESPONDENT

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

DISCUSSION AND FINDINGS

Paragraph 21.1 of the European Regulation n°874/2004 states that "a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:
(a) has been registered by its holder without rights or legitimate interest in the name; or

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

1/ The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law.

By virtue of paragraph 10.1 2) of the Regulation, "'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works."

The disputed domain name is <truelayer.eu>. The disputed domain name is identical to the earlier trademark and legal company name of the Complainant, without any addition of letter or word. In addition, the addition of the top-level domain .eu does not change the overall impression that the disputed domain name is identical to the rights of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names.

Consequently, the disputed domain name is identical to those rights, per paragraphs 10.1 and 21.1 of the Regulation.

2/ The disputed domain name has been registered by its holder without rights or legitimate interest in the name. The Respondent should be considered as having no right or legitimate interests with respect of the disputed domain name.

Firstly, the Respondent is not known, as a private individual or company, by the term "TrueLayer".
Secondly, the Complainant is not linked to the Respondent in any way. The Respondent has received no authorization, license or right from the Complainant to register the term "TrueLayer" as a domain name. The Respondent is not a reseller, distributor or contractor of the Complainant and is not commercially linked to the Complainant.

Thirdly, the Respondent has not, to the date of filing of the complaint, used or made preparations to use the domain name in relation with a bona fide offering of goods or services. Indeed, the disputed domain name resolves, to the date of filing of original complaint, to a parking page of pay-per-click commercial links, indicating that the disputed domain name is offered for sale at 4999 €. The disputed domain name is also offered for sale at this same price on the Sedo website.

That amount far exceeds the usual costs a company has to bear when registering a .eu domain name, and clearly show that the Respondent intended to benefit from its knowledge of the Complainant to sell the disputed domain name at a price largely exceeding the normal costs of a domain name. This also shows that the Respondent has not made use of the disputed domain name in relation with a bona fide offering of goods or services.

None of the circumstances under which a Respondent may prove rights or legitimate interests on the disputed domain name are present in this case. In light of the above elements, the Respondent should be considered as having registered the disputed domain name without rights or legitimate interest, by virtue of paragraphs 21.1 and 21.2 of the Regulation.

3/ Although it is not mandatory to check the existence of bad faith in the light of the considerations above, the disputed domain name has been registered or is being used in bad faith.

Paragraph 21.1 of the Regulation states that the Complainant should for forward evidence that the disputed domain name has been registered or is being use in bad faith. The Complainant in this case intends to prove that the disputed domain name has been registered AND is being used in bad faith.

Firstly, the Complainant states that, at the time of registration of the disputed domain name, the Respondent was not in a position to ignore the prior rights of the Complainant on the term TRUELAYER. Indeed, a simple search on an Internet search engine shows numerous results related to the Complainant. Consequently, the Respondent cannot argue that they had no knowledge of the use of the TRUELAYER term by the Complainant to the day of the registration of the disputed domain name. At the very least, the Respondent knew or should have known that, by registering the disputed domain name, they would do so in violation of the Complainant's earlier rights.

Secondly, the registration of the disputed domain name prevents the Complainant from reflecting its rights in the correspondent domain name. The fact for the Respondent, to put itself in a situation to unduly benefit from the Complainant's fame in its field, is clearly a factor of bad faith registration of the disputed domain name.

Thirdly, the Complainant states that it is very likely that the Respondent chose the disputed domain name precisely due to its identity to

the earlier trademarks of the Complainant, in an attempt to defraud the internet users of average attention. The disputed domain name resolves to a pay-per-click page, generating revenue for the Respondent. Consequently, the Complainant states that the Respondent is benefitting from the earlier rights of the Complainant for financial gain. Such use of the disputed domain name is necessarily a bad faith use.

Fourthly, the fast that the Respondent placed the domain for sale at a high price, attempting to unduly benefit from the fame of the Complainant's prior marks is necessarily a bad faith use of the disputed domain name and reinforces the statement that the Respondent intends to financially gain from the Complainant's rights.

Therefore, the disputed domain name was registered and is being used in bad faith.

DECISION

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

PANELISTS

Name	Thomas Johann Hoeren

DATE OF PANEL DECISION 2020-08-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: truelayer.eu
II. Country of the Complainant: Great Britain, country of the Respondent: Cyprus
III. Date of registration of the domain name: 18 July 2018
IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
V. Response submitted: No
VI. Domain name is confusingly similar to the protected rights of the Complainant:
- Legal company name TRUELAYER, registered on 14 July 2016 in the United Kingdom
- European trademark TRUELAYER n° 16890402 registered on 18 October 2017 and designating goods and services in international classes 09, 36, and 42.
VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No: the disputed domain name is offered for sale at 4999 €. The domain name is also offered for sale at this same price on the Sedo website
2. Why:
VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. yes
2. Why: the disputed domain name is offered for sale at 4999 €. The domain name is also offered for sale at this same price on the Sedo website and Respondent chose the domain name precisely due to its identity to the earlier trademarks of the Complainant, in an attempt to defraud the internet users of average attention.
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/No]