Panel Decision for dispute CAC-ADREU-007953

Case number	CAC-ADREU-007953
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Domain names	bdswiss.eu

Case administrator

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

Complainant

Organization	BDSwiss Holding Plc

Respondent

Name	Andrew Paterson

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

Keplero Holdings Ltd, 160 Arch. Makariou Ave., Floor 1, 3026 Limassol, CY, is the owner of the EUTM BDSwiss, registered on July 21, 2014 in the class 36 of the Nice Classification for “Traded options brokerage; Exchange services relating to the trading of options”, registration number 012708749.

The Complainant’s company name is BDSwiss Holding Plc; the Complainant uses the domain<bdswiss.com>.
The Respondent is the Registrant of the disputed domain name since March 14, 2019.

The Respondent has offered the disputed domain name for sale to the Complainant for EUR 25.000,00.

No evidence put forward by Complainant that the Respondent has rights in the EUTM BDSwiss.

A. COMPLAINANT

The Complainant is a Cyprus investment firm, incorporated under the laws of Cyprus with incorporation N° HE300153 and regulated by the Cyprus Securities and Exchange Commission (CySEC), under license 199/13, since May 31, 2013.
The Complainant belongs to a company group which is the owner of the EUTM "BDSwiss" registered since 21.07.2014 for brokerage service of negotiable option exchange services for options trading as per class 36 of the Nice Classification.
The BDSwiss trademark has international, European and national influence since the Complainant belongs to a group which has an international reach and offers its services under the domain name <eu.bdswiss.com>; moreover, the Complainant uses the domain <bdswiss.com> as e-mail address.
The BDSwiss trademark is well-known in the finance industry and also in the territories where the group is established.

The Respondent has acquired the disputed domain name on March 14, 2019; it is identical to the trademark BDSwiss as well to its company name and its domain name <bdswiss.com>.

Moreover, the disputed domain name has been registered by the Respondent without rights or legitimate interests in the name: The Respondent has not used the disputed domain name or a name corresponding to the disputed domain name in connection with the offering of goods or services.

Furthermore, the disputed domain name has been registered and used in bad faith since the Respondent is asking for a disproportionate

and an enormous amount of money (EUR 25.000,00) to resell the disputed domain name to the Complainant. The disputed domain name is used as a parking domain name but never actively for offering goods or services and only with the intention to tarnish the reputation of the Company and confuse internet users. Moreover, the Respondent harms the right and reputable brand name and reputation of the Complainant and its group of companies by publicly claiming that BDSwiss is a scam.

B. RESPONDENT

The Respondent acquired the disputed domain name on March 14, 2019.

The Respondent had no purpose of disrupting Complainant's business. The disputed domain name was actively used and it was the Respondent's intention to create an online shopping website under the disputed domain name where clients can buy branded Swiss watches (= "bdswiss").

The offered price for reselling the disputed domain name in the amount of EUR 25.000,00 is moreover not excessive but a compensation for loses because of not opening the shopping website in the case of selling the disputed domain name.

The accusation that the Respondent spread that the Complainant is a scammer is untrue and could be part of very well designed photoshop image.

DISCUSSION AND FINDINGS

Following paragraph B 11 (d) (1) of the ADR Rules it is necessary for a complainant for making out a successful case to prove that:
(i) The domain name 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) 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.

(i)
The Complainant has not put forward any evidence that it has rights in the EUTM BDSwiss since the trademark owner is Keplero Holdings Ltd.
However, this Panel follows the consensus view of other panels that also names are formally listed as relevant rights; panels have therefore already accepted company names as relevant rights in ADR procedures; even a part of a company name or an abbreviation of a company name is accepted as a relevant right because of the wide understanding of the term trade name in many European countries (Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition ("CAC .EU Overview 2.0"), 34).

The company name of the Complainant is BDSwiss Holding Plc with the characteristic part BDSwiss.

Moreover, the Complainant uses the domain name <bdswiss.com>. Although the ownership or usage of another domain name itself will be not sufficient as a relevant right, but together with another relevant prior right (e.g. a company name like in the present case) the ownership/usage of a domain may amplify the relevant right as it is in the present case since the Complainant's characteristic part of the company name is identical with the Complainant's domain (CAC .EU Overview 2.0, 33).

The Complainant therefore has rights in the name BDSwiss recognized or established by the national law of a Member State and/or Community law.

It is this Panels view that for assessing identity or confusing similarity the .eu suffix has to be disregarded. Therefore, the Panel compares the disputed domain name (without .eu suffix) and the name for which a right is recognized or established by national and/or community law in favor of the Complainant.
In the present case the Complainant has relevant rights in the name BDSwiss (characteristic part of the company name together with the domain <bdswiss.com>).

The Panel therefore finds that the disputed domain name is identical to the Complainant's rights in the name/mark "BDSwiss"; the Complainant therefore has satisfied Paragraph B 11 (d) (1) (i) of the ADR Rules.

(ii)

The Complainant asserts that there has been no good faith business contact between Complainant and Respondent – in fact, the converse was the case: The Respondent acquired the disputed domain name on March 14, 2019 and offered the domain to the Complainant for EUR 25.000,00 for sale. The Respondent did not contest this assertion; however, the Respondent asserted that it intended to set up a shopping website under the disputed domain name and the selling price is necessary to cover the expenses for not opening the shopping website in case of selling the disputed domain name.

Concerning the burden of proof regarding a lack of legitimate rights or interests, in contrast to the exact wording of Paragraph B 11 (d) (1) of the ADR rules and in analogy to the rules developed by UDRP panels, the complainant only needs to establish a prima facie case. Then, the onus shifts to the respondent to rebut the assertion that the respondent lacks legitimate rights or interests. If the respondent fails to show evidence of rights or legitimate interests it is deemed to have none. If the respondent demonstrates evidence of rights or legitimate interests the panel weights all the evidence. The consensus view of panels regarding standard proof almost unanimously require that the assertion be proved on the balance of probabilities; this means that the asserted facts must be more likely to be true than to be false.

Although the Respondent filed a response and asserted its rights and legitimate interests in the disputed domain name as well as the fact that the general burden of proof always remains with the complainant, the facts of the present case, the evidence put forward by the Complainant in the Complaint in contrast to the unsubstantiated allegations of the Respondent, lead this Panel to the conclusion that the Respondent has no rights or legitimate interests in the disputed domain name, has no good faith connection or affiliation with the Complainant, has not used the disputed domain name or a name corresponding to the disputed domain name in connection with the offering of goods or services or has made demonstrable preparation to do so, has not been commonly known by the disputed domain name, is not making a legitimate and non-commercial or fair use of the disputed domain name or does not use the disputed domain name legitimately in any other manner.
It is therefore this Panel's conviction that the Complainant made out a successful prima facie case since the Respondent failed to show evidence of rights or legitimate interests to the disputed domain name so that the conditions set out in Paragraph B 11 (d) (1) (ii) of the ADR Rules have been met by the Complainant.

(iii)
Although there is no need to show bad faith if there is no legitimate interest to make out a successful case for the Complainant (CAC .EU Overview 2.0, 56) this Panel wants to point out that this case also shows bad faith: It is not necessary to prove both registration and use in bad faith (CAC .EU Overview 2.0, 50); it is sufficient if evidence illustrates one of the two elements discussed in order to comply with article 21 (1) of the PPR.

The disputed domain name does not resolve to any website - most panels think of nonuse is a proof of bad faith (CAC .EU Overview 2.0, 51); however, whether nonuse alone is enough to prove bad faith or not, it at least indicates bad faith. Together with the fact that Respondent offers to sell the disputed domain name to the Complainant for EUR 25.000,00 together with the fact that the behavior of the Respondent is seen by this Panel as domain trading, shows bad faith without any doubt under Paragraph B 11 (d) (1) (iii) (CAC .EU Overview 2.0, 55; see also Jager & Polacek GmbH v. Redtube, CAC 5891, <redtube.eu>, Transfer). Circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who has rights in the domain name in dispute, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name constitutes evidence of a respondent's bad faith in the view of this Panel.

The mere statement by the Respondent that it is not using the disputed domain name in bad faith lacks any substance and is therefore not a decisive argument for this Panel in favor to the Respondent.

It is therefore the Panels conviction that the disputed domain name is also registered or/and used in bad faith by the Respondent (Paragraph B 11 (d) (1) (iii)).

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 <BDSWISS.EU> be transferred to the Complainant

PANELISTS

Name	**Peter Burgstaller**

DATE OF PANEL DECISION 2020-07-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: bdswiss.eu

II. Country of the Complainant: Cyprus; country of the Respondent: Great Britain

III. Date of registration of the domain name: March 14, 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. company name: BDSwiss Holding Plc
2. domain name: bdswiss.com

V. Response submitted: Yes

VI. Domain name is identical 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: Assertions without showing appropriate evidence for rights or legitimate interests in the domain name in dispute

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: nonuse; offer for sale for; domain trading; domain selling for valuable consideration in excess of the Respondent's out-of pocket costs

IX. Other substantial facts the Panel considers relevant: No

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: No

XII. [If transfer to Complainant] Is Complainant eligible? No