Panel Decision for dispute CAC-ADREU-008015

Case number	CAC-ADREU-008015
Time of filing	2020-11-20 05:40:07
Domain names	efsma-scientific.eu

Case administrator

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

Complainant

Organization	EUROPEAN FEDERATION OF SPORTS MEDICINE ASSOCIATIONS

Respondent

Name	Maxim Filippov

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, the European Federation of Sports Medicine Associations (EFSMA), conducts official anti-doping activities in connection with European professional sports. The disputed domain name <efsma-scientific.eu> is one through which it has conducted scientific e-mail communications and other business.

The disputed domain name was inadvertently allowed to expire, past the time during which it could have been recovered, and passed into the possession of the Respondent on or about July 19, 2020. The Complainant did not discover this until notified by its Provider on July 23, 2020. EFSMA is inconvenienced by the loss of e-mail and other official services conducted through the disputed domain name.

The Web Consultant of EFSMA attempted to contact the new owner of the disputed domain name through the cryptic e-mail address provided in the WhoIs data, which led to a privacy service, but did not receive a reply, and accordingly this Complaint was filed.

After receipt of the Complaint, the Respondent emailed the Complainant directly, outside of the ADR procedure. The Respondent expressed a willingness to transfer the disputed domain name and for the Complaint to be terminated. This was accepted by the Complainant, and the Respondent supplied the transfer authorisation code by return. Unfortunately the code did not work as the ADR process had commenced and a formal termination would require both Parties to take action. EURid advised that, for certainty, it would be preferable for the Complainant not to terminate the ADR procedure unilaterally and the Complainant has therefore opted to await a formal decision on the Complaint.

A. COMPLAINANT

The Complaint is structured somewhat informally. The Complainant states or implies that as the European Federation of Sports Medicine Associations, it has rights in that name and in the abbreviation EFSMA that features in the disputed domain name. The disputed domain name had been in continuous use by the Complainant in connection with its official anti-doping activities until the time when its registration in the name of the Complainant was inadvertently lost.

The disputed domain name was initially registered by the Complainant on June 15, 2015, and had been in continuous use by the Complainant in connection with its official anti-doping activities. The Respondent acquired the registration, as having been allowed to expire, on or about July 19, 2020. The disputed domain name in the hands of the Respondent is confusingly similar to the Complainant's name and acronym.

The Complainant contends or implies that, prima facie, the Respondent does not have rights or a legitimate interest in the name.

The Complainant does not contend that the disputed domain name has been registered or is being used in bad faith by the Respondent.

B. RESPONDENT

The Respondent has not submitted a formal Response, but has communicated with the Complainant as outlined below.

DISCUSSION AND FINDINGS

In accordance with Article 21(1) of the Commission Regulation (EC) No. 874/2004 (the "Regulation") and paragraph B11(d)(1) of the Rules, the Complainant, in order to succeed, is required to prove that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union 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.

WHETHER THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO A NAME IN WHICH THE COMPLAINANT HAS RIGHTS

The European Federation of Sports Medicine Associations (the "Federation"), as the Complainant states, "carries out the very important official anti-doping activity in the European professional sports". Insofar as the Panel is enabled to conduct "independent investigations limited in scope to assess whether or not the Respondent has any rights or legitimate interests" (paragraph IV(8) of the Czech Arbitration Court .EU Overview 2.0), a brief Google search for the string EFSMA yielded solely the Complainant in the first three pages of results.

The Complainant does not assert a registered trademark for EFSMA. An institution of such critical importance has, however, at the very least the right to protection against impersonation and passing off. Given the high, European-wide profile of the Federation, and the duration and extent of its activities since 1998, both its full name and the acronym EFSMA project key qualities of an unregistered trademark with its attendant rights. In the absence of any contest of the point by the Respondent, the Panel accepts that the Complainant is much in the public eye and is well known by, and has the requisite rights in, the acronym EFSMA to the extent required under the Rules.

The disputed domain name, which was in fact chosen by the Complainant for its scientific business, is <efsma-scientific.eu>, of which the directory suffix ".eu" may be disregarded in the determination of confusing similarity. What remains features the Complainant's acronym EFSMA, typographical case being of no consequence, and is to that extent confusing similar to the Complainant's name. The additional descriptive term "scientific" is found not to be distinguishing in the context. Accordingly, the disputed domain name is found to be confusingly similar to a name in which the Complainant has rights.

WHETHER THE RESPONDENT HAS RIGHTS IN THE DISPUTED DOMAIN NAME

By way of stating that the disputed domain has been the "property" of the Federation since it was registered on June 15, 2015, the Complainant implies prima facie that it has rights in the disputed domain name that the Respondent does not have.

Under Article 21(2) of the Regulation and paragraph B11(e) of the Rules, the Respondent may demonstrate a legitimate interest in a disputed domain name by showing any of:

(1) prior to any notice of the dispute, the Respondent has used the disputed domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organisation or natural person, has been commonly known by the disputed domain name, even in the absence of a right recognised or established by national and/or European Union law;

(3) the Respondent is making a legitimate and non-commercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national law and/or European Union law.

The above provisions are without limitation.

The Respondent has not responded formally, however the burden of proof remains with the Complainant.

As discussed under paragraph IV(8) of the CAC .EU Overview 2.0, “In the absence of the response of the Respondent the Panels often regard factual allegations which are not inherently implausible as being true and consider the default of the respondent as an indication of the lack of rights and legitimate interests (...) of the respondent. The Panelists still decide on whether or not the Complainant has relevant rights or legitimate interests”.

Furthermore, certain e-mail communications with the Respondent have been produced in evidence by the Complainant. The sequence of e-mails shows the Respondent, on September 14, 2020, after having received the Complaint, suggesting options, including giving the Complainant the necessary authorisation code to transfer the disputed domain name and the Complaint being terminated. The code was duly sent to the Complainant the next day. It did not work because the ADR proceeding was already underway and it became clear that termination of the Complaint and transfer of the disputed domain name at that stage was more complicated, for security reasons, than the Parties had expected. The Complainant was advised that the tidiest way forward was to await the outcome of the Complaint.

Having regard to all the circumstances, the Panel finds that the Respondent has made no claim of rights in the disputed domain name and accordingly the Panel formally records that the Respondent does not have any such rights in the terms of Article 21(1)(a) of the Regulation and paragraph B11(d)(1)(ii) of the Rules.

WHETHER THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED OR USED IN BAD FAITH

There is no evidence or suggestion that the Respondent has acted other than in good 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 <EFSMA-SCIENTIFIC.EU> be transferred to the Complainant.

PANELISTS

Name	**Dispute Science Ltd, Dr. Clive Trotman**

DATE OF PANEL DECISION 2020-11-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: EFSMA-SCIENTIFIC.EU

II. Country of the Complainant: Italy, country of the Respondent: Norway

III. Date of registration of the domain name: 19 July, 2020

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

12. other: EFSMA, acronym of the European Federation of Sports Medicine Associations

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. No
2. Why: None claimed by the Respondent

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: Respondent was always willing to concede to transfer of disputed domain name

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. [If transfer to Complainant] Is Complainant eligible? Yes