Panel Decision for dispute CAC-ADREU-008066

Case number	CAC-ADREU-008066
Time of filing	2021-02-11 21:27:27
Domain names	phoneparts.eu

Case administrator

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

Complainant

Organization	Phoneparts Limited

Respondent

Name	Jaswant Takhar

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 Panel is not aware of any other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner of company name Phoneparts Limited, registered on March 23, 2017 in the European Union member state Republic of Malta.

The Respondent registered the disputed Domain name on September 13, 2015.

No specific information is provided about the Respondent's business activities (apart from what is mentioned below under "Parties' Contentions: Complainant).

The Complaint was filed on October 21, 2020.

The formal date of the Commencement of the ADR Proceeding was set to October 23, 2020.

The Respondent did not respond, and a Notification of the Respondent's Default was issued on January 6, 2021.

On January 13, 2021, Mr Petter Rindforth was appointed as the Panelist in this case. The Projected Decision Date was set to February 12, 2021.

A. COMPLAINANT

The Complainant states that Complainant operates the website <phoneparts.com.mt> since August 2017, which is known in its sector of activity in whole Europe, and process in excess of 1.000 orders per month.

Complainant has tried two times to find a friendly resolution with the Respondent, offering 100 EUR and then 200EUR for transfer of the disputed domain name, but these offers were refused.

The Respondent asked for 1200 EUR instead. The Respondent is not active in anything related to phones / parts of phones.

There are no DNS configured on the disputed domain name, and <phoneparts.eu> has never been used, and is not connected to any active web site.

B. RESPONDENT

The Respondent did not respond.

DISCUSSION AND FINDINGS

In order to render a decision, the Panel has to establish whether the conditions of Article 21(1) of Regulation (EC) No. 874/2004 (“the Regulation”) are satisfied:

“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 recognized 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.”

Article 10(1) describes such prior rights 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 Complainant has refereed to, and provided evidence in the form of the Certificate of Registration, its in Malta registered and thereby protected company name Phoneparts Limited.

Accordingly, the Panel finds that the Complainant has proved its rights to the company name Phoneparts Limited, and that this right is recognizable under the meaning of Article 10(1) of the Regulation.

The disputed domain name was registered on September 13, 2015, which is 18 months before Complainant’s company name registration.

However, it is further noted from the communication between the Complainant and the Respondent (copies from e-mail, provided by the Complainant), that the Respondent replied to the Complainant not using an e-mail address connected with the disputed domain name. In the said correspondence, the Respondent did not refer to any use or specific interests, other than answering the Complainant’s offer to buy the disputed domain name by claiming a rather high monetary compensation in order to accept transfer of <phoneparts.eu> to the Complainant. It is further noted that the Respondent has not replied to the Complaint, thereby missing the possibility to contradict the Complainant’s conclusion that Responent has no legitimate interest.

The question is, however, if this is enough to decide in favour of the Complainant?

There are some details in the dispute that speaks against such a decision:

Although the Complainant has a valid right, namely a company name registered within the European Union, the distinctiveness of the said company name is rather weak. In fact, the company name is a generic combination of words, describing the business of the Complainant: phone + parts.

As noted above, the Respondent registered the disputed domain name prior to the registration date of the Complainant’s company name. As <phoneparts.eu> is descriptive, and there is no details in the case indicating the the Respondent was aware of the Complainant’s plans to create a similar company name, the Panel cannot see that <phoneparts.eu> was registered in bad faith.

Only passive holding itself is not usually viewed as bad faith, nor lack of legitimate interest, especially when the later name rights are not clearly distinctive, or a complainant can show that the Respondent had prior knowledge of Complainant’s upcoming rights.

Owners of descriptive domain names, registererd prior to any other’s name rights, have the full right to claim a more market based price for that domain name in case someone express interest in buying that domain name. This is especially in cases where the later name right has low distinctiveness.

The Panel therefore concludes that there is at least possibilities that the Respondent has legitimate interest in the disputed domain name <phoneparts.eu>.

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 <PHONEPARTS.EU> shall not be transferred to the Complainant.

PANELISTS

Name	**Petter Rindforth, LL M**

DATE OF PANEL DECISION 2021-02-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: phoneparts.eu

II. Country of the Complainant: Malta, country of the Respondent: Ireland

III. Date of registration of the domain name: September 13, 2015

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: Phoneparts Limited

V. Response submitted: No

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. Yes
2. Domain name is descriptive, indicating specific services, and registered before the Complainant's company name rights.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. [Yes/No]
2. Why: Not considered, as Respondent has no rights or legitimate interests

IX. Other substantial facts the Panel considers relevant: No

X. Dispute Result: Transfer denied.

XI. Procedural factors the Panel considers relevant: No

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