Panel Decision for dispute CAC-ADREU-008100

Case number	CAC-ADREU-008100
Time of filing	2021-03-22 17:56:08
Domain names	pcc-g.eu

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	PCC SE

Respondent

Organization	101domain DAS Limited

FACTUAL BACKGROUND

The Complainant, established within the EU in Germany carries on a business in the chemical and transport sector and is the owner and registrant of the German registered trade mark PCC (figurative), registration number 30576754, registered on 23 February 2006, for goods and services in classes 1, 3, 4, 17, 36, 39 and 40.

The disputed domain name was registered on 6 March 2020 and resolves to an inactive web page which displays an error 403 message. The uncontested evidence of the Complainant is that the disputed domain name is being used for an email account which has been used to send a message, described in more detail below, to an unsuspecting third party, impersonating one of the Complainant's employees.

In the absence of any timely Response, the only information available about the Respondent is that provided in the Complaint and the Registrar's WhoIs.

A. COMPLAINANT

The Complainant submits that the disputed domain name is identical or confusingly similar to the PCC mark in which the Complainant has the abovementioned registered trademark and service mark rights.
The Complainant asserts that its PCC trademark is used as a part of the name of almost all companies of the Complainant's group structure to ensure a high value of brand recognition. Potential customers, partners and investors associate the PCC trademark with the Complainant, its group of companies and its products and services, especially in the chemical and transport sector.

The Complainant submits that the disputed domain name <pcc-g.eu> is identical or at least confusingly similar to its PCC trademark, because an independent third party might think that the disputed domain name is the general domain name of the PCC group structure, especially if it is used for email messages. Unsuspecting third parties may be unaware that companies within the Complainant's group use the domain name <pcc.eu> for their email accounts and therefore may think that an email message from the account established using the disputed domain name <pcc-g.eu> is an original email from the Complainant and its group.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name arguing that any use of the Complainant's trademark could only be justified if used in a bona fide matter and contends that this is not the case.

The Complainant alleges that the Respondent is not using the disputed domain name for any website for its own business according to our research. The Complainant refers to a screenshot of the screen produced at the URL www.pcc-g.eu which shows only an error 403 message: “Forbidden You don't have permission to access this resource. Additionally, a 403 Forbidden error was encountered while trying to use an ErrorDocument (sic) to handle the request”.

The Complainant adds that according to the Complainant's research, there is no connection between the Respondent and the disputed domain name in any case and the Respondent is using the disputed domain name as an email address in bad faith, pretending being part of Complainant’s group of companies. In support of this allegation Complainant refers to a copy of email correspondence in which the disputed domain name has been used as an email address for a message purporting to impersonate a senior executive of the Complainant’s group in Poland.

The Complainant argues that there is no evidence of any fair or bona fide use of the disputed domain name, either for commercial nor non-commercial purposes and consequently, there is no evidence of any right or legitimate interest that the Respondent may have in the disputed domain name.

The Complainant further alleges that the disputed domain name was registered and is being used in bad faith, repeating its allegation that Respondent has made no bona fide use of the disputed domain name, but instead, as has been shown, uses the disputed domain name for sending an unknown number of emails and LinkedIn messages to unsuspecting third parties, pretending to offer work opportunities in the name of the Complainant’s group.

The Complainant asserts that such job offers have been reported to the Complainant by third parties, who were contacted by the Respondent. The latest report made to Complainant is from the 8 December 2020. An example has been submitted as evidence in an annex to this Complaint. The Complainant explains that the personal data of the third party reporting the pretended job offer has been redacted, to comply with legal obligations of the European Union’s General Data Protection Regulation.

The sample email shows that the Respondent is purporting to act as a member of the Complainant’s group by using the disputed domain as an email address while simultaneously using the postal address of certain PCC companies located at Brezg Dolny, Poland as a part of its signature block.

The signature block on the Respondent’s email included a link to one of Complainant’s websites: URL: https://www.products.pcc.eu/pl/. The Complainant contends that this use of a link to the Complainant’s official has been added to create the impression in the mind of the unsuspecting recipient of the Respondent’s email that the Respondent is a real member of the Complainant’s group.

Additionally, in the text of the email message, the Respondent has copied the group description from the English version of the Complainant’s product website, so an independent third party who looks on the real PCC group product website will have even more the impression, that Respondent is part of the PCC group. The copied description is the following citation: "PCC Group is an international capital structure consisting of several dozen companies operating in three important branches of the economy. They include chemistry, energy and logistics. Organisations within the PCC Group are both business units, conducting production activities, and service companies, operating simultaneously to meet the needs of the external market. The PCC Group is centrally managed by the German company PCC SE, which comprises 82 entities operating in 41 locations."

In summary, it is submitted what while it is not clear to Complainant, what Respondent's exact intention might be, whether this is a kind of phishing of personal and/or bank data, money laundering, or just damaging the PCC trademark PCC, Respondent is using the disputed domain name to pretend to be part of the Complainant’s group and making false offers of

work opportunities to third parties.

B. RESPONDENT

No timely Response was received from the Respondent.

DISCUSSION AND FINDINGS

Complainant has provided clear, uncontested evidence that it is established within in the EU in Germany and has rights in the PCC trademark which are recognised or established by the national law of a Member State, specifically Germany and European Union law, inter alia through its ownership of the German registered trade mark PCC (figurative), registration number 30576754, registered on 23 February 2006, for goods and services in classes 1, 3, 4, 17, 36, 39 and 40.

The disputed domain name <pcc-g.eu> consists of the Complainant's PCC mark in its entirety in combination with a hyphen and the letter "g" together with the ".eu" Top Level Domain extension.

The Complainant's PCC trademark is the dominant and only distinctive element of the disputed domain name. The hyphen, the letter "g" and the ".eu" Top Level Domain extension provide no distinguishing character.

This Panel finds therefore that the disputed domain name is confusingly similar to the PCC mark in which the Complainant has rights recognised or established by the national law of a Member State and/or European Union law for the purposes paragraph 11 (d)(ii) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules").

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name arguing that

• the Respondent is not using the disputed domain name as a website address for its own business;

• the screenshot of the screen produced at the URL www.pcc-g.eu shows that the disputed domain name resolves to an inactive web page showing only the 403 error message described above;

• the according to the Complainant's research, there is no connection between the Respondent and the disputed domain name;

• the Respondent has not used the disputed domain name for any bona fide purpose;

• instead, the Respondent is using the disputed domain name as an email address in bad faith, to impersonate one of the Complainant's senior executives in Poland fraudulently purporting to offer a business opportunity to an unsuspecting third-party recipient.

In such circumstances, this Panel is of the view that the burden of production shifts to the Respondent to prove that he has rights or legitimate interests. The Respondent has failed to discharge that burden and so applying the default provision in paragraph 10, this Panel must find that for the purposes paragraph 11 (d)(ii) of the ADR Rules.

The record shows that the disputed domain name was chosen and registered in bad faith at a time when the Complainant had established substantial rights and goodwill in the PCC mark. Because the disputed domain name consists of the Complainant's mark in its entirety, in combination with only minor non-distinctive elements, and it is implausible that the disputed domain name was chosen and registered for any reason other than to target and take predatory advantage of the Complainant's name, mark, reputation and goodwill as is shown by the manner in which it has been used since registration.

While the evidence of use has been redacted and the message is undated, it has not been contested, and so this Panel accepts that the Complainant has proven on the balance of probabilities that the disputed domain name has been used in bad faith as an email address to send a message purporting to impersonate an employee of Complainant in an attempt to

deceive an unsuspecting third party. The format of the email message incorporating both the physical address of one of the Complainant's group of companies and the link to one of the websites of the Complainant's group was clearly calculated to deceive and mislead the unsuspecting recipient in bad faith.

This Panel finds therefore that the disputed domain name was both registered and is being used in bad faith and the Complainant has also satisfied the test in paragraph 11 (d)(iii) of the ADR Rules and is entitled to the remedy sought.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name <PCC-G.EU> be transferred to the Complainant

PANELISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2021-03-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <pcc-g.eu>

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

III. Date of registration of the domain name: 6 March 2020

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. German registered trade mark PCC (figurative), registration number 30576754, registered on 23 February 2006, for goods and services in classes 1, 3, 4, 17, 36, 39 and 40.

V. Response submitted: No

VI. Domain name/s 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: The disputed domain name is not being used for any bona fide or non-commercial legitimate purpose, it resolves to an inactive website and is being used to send emails falsely impersonating the Complainant to unsuspecting third parties offering work opportunities.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1.Yes
2. Why: The disputed domain name was registered in bad faith to target and take predatory advantage of the Complainant's mark, reputation and goodwill. It has been used in bad faith to resolve to an inactive website and to send emails falsely impersonating the Complainant to unsuspecting third parties offering work opportunities.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: [Transfer of the disputed domain name/s/Revocation of the disputed domain name/s/Complaint denied]

XI. Procedural factors the Panel considers relevant:

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