# Panel Decision for dispute CAC-ADREU-008106

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| Case number | **CAC-ADREU-008106** |
| Time of filing | **2021-04-30 11:09:19** |
| Domain names | **letsgetchecked.eu** |

## Case administrator

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| Organization | **Denisa Bilík (CAC) (Case admin)** |

## Complainant

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| Organization | **LetsGetChecked** |

## Respondent

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| Organization | **ITtrust Domain Services LTD** |

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

No legal proceedings are known to the Panel in connection with the disputed domain name.

FACTUAL BACKGROUND

The current Complaint has been filed by co-Complainants, LetsGetChecked ("First Complainant") and Hugh Guidera Guidera ("Second Complainant") (together referred as "Complainant" (as used in the Complaint) or as "Complainants").

The First Complainant is established and organized under the laws of Ireland. It is registered in the Irish Companies Registration Office under the Company Number 531029, the legal name of the company is Privapath Diagostics Limited (previously called "Paulus Northrop International Limited"). The First Complainant is and has been active in the medical diagnostics field, trading under the name "LetsGetChecked" since 2014 and operating under the domain name <letsgetchecked.com> (registered on August 15, 2013). It is also owner of the European Union trademark registration "LETSGETCHECKED.com (fig.)" (No. 013148705, Classes 5, 10, 42, 44, Application Date: August 6, 2014; Registration Date: December 5, 2014). The named trademark has been filed and registered before the registration of the disputed domain name. Although the trademark is registered in the name of Paulus Northrop International Limited, the Panel has been provided evidence about the company name change of Paulus Northrop International Limited to Privapath Diagostics Limited on December 2, 2015.

The Second Complainant is a natural person. The Panel lacks further information about the Second Complainant, including information on his interest and relationship to the First Complainant and/or to the current dispute, except the fact that the Complainants' contact email for the current proceedings seems to belong to the Second Complainant.

The Respondent has registered the disputed domain name <letsgetchecked.eu> on March 7, 2018. There is and has been no functional website under the disputed domain name <letsgetchecked.eu>.

On January 18, 2021 the Complainants filed the present Complaint. The Respondent has failed to file the Response to the Complaint, and accordingly, the CAC notified the Respondent's default on March 24, 2021. The Panel was appointed on March 30, 2021.

A. COMPLAINANT

The Complainant finds the disputed domain name being identical or confusingly similar, and is being used in bad faith.

In accordance with Paragraph B1(b)(11) of the ADR Rules, the Complainant submits that 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. The Complainant registered an EU Trademark No. 013148705 for letsgetchecked.com on 06/08/2014, more than three years prior

to the Respondent's registration of the disputed domain name. The Complainant has used the name 'LetsGetChecked' and 'Letsgetchecked.com' since that date to carry out its function as a medical diagnostics company. The Complainant is a business organisation established within the European Union.

Further, the Complainant submits that the domain name is being used in bad faith. In accordance with the definition of 'bad faith' in the ADR rules, "the domain name has not been used in a relevant way for at least two years from the date of registration". The disputed domain was registered more than 2 years prior to the submission of this Complaint, and the domain name is not currently in use as a functional website, nor is there any evidence of the domain having been in use by the Respondent.

The Complainant submits that these two grounds are sufficient for the Panel to grant the relief sought, in accordance with the ADR Rules. For these reasons the Complainant seeks the transfer, alternatively the revocation, of the disputed domain name.

B. RESPONDENT

The Respondent has failed to file the Response to the Complaint, despite timely reminders and official notification of default.

DISCUSSION AND FINDINGS

Article 21(1) of Regulation (EC) No. 874/2004 (hereinafter “Regulation”) states:
“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.”

Paragraph B11(a) of the ADR Rules states:
“A Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.”

The Panel has checked the existence of the trademark right on which the Complainants have based the current Complaint and confirms the existence of this right in the name of First Complainant. The trademark referred was validly effective also on the date of registration of the disputed domain name.

Identical or Confusingly Similar

The First Complainant owns the European Union trademark registration for the figurative mark “LETSGETCHECKED.com (fig.)”. The verbal element “LETSGETCHECKED” in this mark can be clearly separated and distinguished from the other elements (ie sign “.com” and a Boy/Girl and Speech Bubbles device) in this mark (see CAC Case No. 5208, haug.eu), thereby, the word “LETSGETCHECKED” may be considered decisive in this figurative mark.

In contrary, the disputed domain name “letsgetchecked.eu” incorporates the identical word element “letsgetchecked” of the trademark. The inclusion of the ccTLD denomination “.eu” shall be disregarded for the purposes of these proceedings.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark of First Complainant.

The identity or confusing similarity requirement in the Regulation, Article 21(1), is therefore fulfilled.

Registered or Used in Bad Faith

The Complainants assert that the disputed domain name is being used in bad faith by the Respondent, since it was registered more than two years prior to the submission of this Complaint, and the domain name is not currently in use as a functional website, nor is there any evidence of the domain having been in use by the Respondent.

Article 21(3) of the Regulation (corresponding Paragraph B11(f) of the ADR Rules) sets out, by way of example, a number of circumstances which may be taken as indicative of bad faith. One of such circumstances is the situation where the domain name has not been used in a relevant way for at least two years from the date of registration (Article 21(3)(b)(ii) of the Regulation, corresponding Paragraph B11(f)(2)(ii) of the ADR Rules). In the current case the disputed domain name was registered over 2 years ago by the date the current Complaint was filed.

The Panel has checked the matter and found no functional website under “letsgetchecked.eu”. No historical records have been also found in the Internet Archive WayBackMachine. The Respondent has failed to submit the response and counter-argue by proving the contrary, whereby the failure to submit the response may be considered as accepting the claims of the Complainant (Paragraph B10(a) of the ADR Rules).

Therefore, the Panel finds that the disputed domain name was registered or is being used in bad faith.

Considering all the facts, the Panel therefore finds that the requirement of the Regulation, Article 21(1)(b), is also fulfilled in this case.

The Complainants have asked the transfer of the disputed domain, alternatively the revocation of the disputed domain name. The Panel lacks relevant information regarding the Second Complainant (see above), only information and evidence on First Complainant. The First Complainant is the company entered into the Irish Companies Registration Office and having its principal place of business in Ireland, therefore and as far as known to the Panel, the First Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No. 733/2002 as amended by Articles 20 and 22 of the Regulation (EU) 2019/517.

For these reasons the Panel finds that the conditions are met for the transfer of the disputed domain name to the First Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name LETSGETCHECKED.EU be transferred to the First Complainant, LetsGetChecked (legal name: Privapath Diagnostics Limited).

This decision shall be implemented by the Registry within thirty (30) days after notification of this decision to the Parties unless the Respondent initiates court proceedings in a Mutual Jurisdiction (Paragraphs B12(a) and B14 of the Rules).

## PANELISTS

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| Name | **Riina Pärn** |

DATE OF PANEL DECISION 2021-04-30

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: LETSGETCHECKED.EU

II. Country of the Complainant: IRELAND, country of the Respondent: IRELAND

III. Date of registration of the domain name: 07 March 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Figurative EU trademark No. 013148705 for "LETSGETCHECKED.com (fig.)", filed on 06 August 2014, registered on 05 December 2014 in respect of goods and services in classes 5, 10, 42 and 44.

V. Response submitted: No

VI. Domain name 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): not determined.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The disputed domain name was registered over 2 years ago by the date the current Complaint was filed. There is no evidence about the use of the disputed domain name in a relevant way since its registration, e.g. there is and has been no functional website under "letsgetchecked.eu". Such circumstances indicate to the bad faith of the Respondent under Art. 21(3)(b)(ii) of Regulation (corresponding Paragraph B11(f)(2)(ii) of the Rules).

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: the Respondent failed to answer to the Complaint. Therefore, the Panel may consider the Respondent's failure to comply as grounds to accept the Complainants' claims.

XII. [If transfer to Complainant] Is Complainant eligible? Yes, the First Complainant is eligible.