Panel Decision for dispute CAC-ADREU-008175

Case number	**CAC-ADREU-008175**
Time of filing	**2021-10-06 18:05:22**
Domain names	**intervest.eu**

Case administrator

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

Complainant

Organization	

Respondent

Name	**DMP Engwirda**

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

According to the Complainant, no other proceedings have been commenced or decided in relation to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Intervest Offices & Warehouses NV, is a Belgian real estate company listed on the Brussels Stock Exchange since 1999.

The Complainant's legal company name has been 'Intervest Offices & Warehouses' as from October 27, 2011, but several name changes have taken place. The Complainant has included the term 'intervest' in its legal company name as from 2001.

The Complainant holds trademark registrations consisting of or including the term 'INTERVEST', such as the following:

- INTERVEST, Benelux word mark No. 1402641 registered on January 14, 2020 in classes 36, 37, 43 and 45.

The disputed domain name <intervest.eu> has been registered on January 30, 2018. According to the Complainant, no functional website has been linked to the disputed domain name and the disputed domain name is listed for sale.

The Complainant sent e-mails to the Respondent on April 23 and April 28, 2021, and claims it did not receive any response.

A. COMPLAINANT

The Complainant considers the disputed domain name to be confusingly similar to a name in respect of which a right is recognised or established by a national and/or Community law in accordance with article 21 (1) of the Regulation (EC) No. 874/2004. The Complainant's legal company name has been registered before the registration of the disputed domain name. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the disputed domain name. Finally, the Complainant considers that the disputed domain name is being used in bad faith as:
- it has not been used in a relevant way for at least two years from the date of registration;
- the disputed domain name has been and still is for sale;
- several other domain names that consist of or contain third party trademarks and common words are linked to the Respondent's email address. According to the Complainant, this clearly shows that the Respondent is a domain squatter.

B. RESPONDENT

The Respondent did not reply to the Complainant's contentions.

DISCUSSION AND FINDINGS

Preliminary procedural issue: name of the Complainant

The Panel observes that the Complaint mentions Mr. Peter Luyten under the Complainant's name. However, it appears that Mr. Peter Luyten is an employee of Intervest Offices & Warehouses NV, mentioned under 'Address 1'. The Complainant's address referenced in the Complaint also corresponds to the registered office of Intervest Offices & Warehouses NV. Finally, Intervest Offices & Warehouses NV is referenced as the Complainant in the 'Factual and Legal Grounds' section of the Complaint.

In view of the above, the Panel considers Intervest Offices & Warehouses NV to be the Complainant in this case.

Substantive elements of the ADR Rules

For the Complainants to succeed in their Complaint, it is required to demonstrate the following under Paragraph B(11)(d)(1) of the ADR Rules:

1. The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a Member State and/or Community law; and either

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; or

3. The disputed domain name has been registered or is being used in bad faith.

The Panel will deal with each of these requirements in turn.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or Community law

Article 10(1) of the Commission Regulation No 874/2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration specifically provides that prior rights shall be understood to include, inter alia, registered national and community (now EU) 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.

Company names are formally listed as relevant rights. Panels have therefore accepted company names as relevant rights in ADR procedures (see Question 8, Section II of the 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")). The Complainant has established that its company name is 'Intervest Offices & Warehouses' since October 27, 2011, and that the term 'intervest' has been included in its company name in 2001.

The Complainant has also established that there is a trademark in which the Complainant has rights. The Complainant's INTERVEST mark has been registered and used in connection to its real estate services.

Therefore, the Complainant has established that there is a name in respect of which it has rights recognized or established by national law of a Member State and/or Community law.

The disputed domain name incorporates the Complainant's INTERVEST trademark in its entirety, which is also the distinctive part of the Complainant's company name.

It is well established that the applicable .eu country-code Top Level Domain ("TLD") suffix in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see Question 1, Section III of the CAC .EU Overview 2.0).

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's registered INTERVEST trademark and confusingly similar to the Complainant's company name in respect of which it has rights recognized or established by national law of a Member State and/or Community law. Accordingly, the Complainant has made out the first element that it must establish.

B. Rights or Legitimate Interests

Under Paragraph B(11)(d)(1)(ii) of the ADR Rules, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is an established consensus view of previous panels that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see Question 5, Section IV of the CAC .EU Overview 2.0).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or other relevant rights. The Whois records relating to the disputed domain name indicate that the Respondent is known as "DMP Engwirda". There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, according to the Complainant, the Respondent has not been making any use of the disputed domain name. The Complainant provides evidence of the fact that the disputed domain name is listed for sale on a third party website.

The Respondent has been given the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under Paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

Under Article 21(1) of the Regulation and Paragraph of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are considered alternative requirements.

As the Panel has found that the Respondent lacks rights or legitimate interests in the disputed domain name for the reasons explained under 6.B. above, no further discussion on bad faith registration or use is necessary (see Question 7, Section V of the CAC .EU Overview 2.0). Nevertheless, the Panel will briefly address this third element.

Paragraph B(11)(f) of the ADR Rules provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration or use is the registration of a domain name in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or European Union law,
or a public body, from reflecting this name in a corresponding domain name, provided that:
(…)
(ii) the domain name has not been used in a relevant way for at least two years from
the date of registration;
(…)

The Panel observes that the disputed domain name has been registered on January 30, 2018, more than 2 years ago. According to the Complainant's unrebutted claim, the disputed domain name "is not currently in use as a functional website, nor is there any evidence of the domain name having been in use by the Respondent".

The Panel finds that this absence of use, combined with the fact that the disputed domain name is listed for sale, indicates bad faith.

In the absence of a Response by the Respondent, the above indications of bad faith have not been challenged.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered or is being used in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name INTERVEST.EU be transferred to the Complainant.

PANELISTS

Name	**PETILLION, Flip Petillion**

DATE OF PANEL DECISION 2021-09-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: intervest.eu

II. Country of the Complainant: Belgium, country of the Respondent: Netherlands

III. Date of registration of the domain name: 30 January 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in the Benelux, reg. No. 1402641, for the term INTERVEST, filed on 21 September 2019, registered on 14 January 2020 in respect of goods and services in classes 36, 37, 43 and 45.
2. company name: Intervest Offices & Warehouses NV

V. Response submitted: No

VI. Domain name is identical/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: No evidence of rights nor use of the disputed domain name

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: disputed domain name has not been used in a relevant way for at least two years from the date of registration

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: N/A

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