Panel Decision for dispute CAC-ADREU-008312

Case number	CAC-ADREU-008312
Time of filing	2022-02-21 09:18:51
Domain names	sofidy.eu

Case administrator

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

Complainant

Organization	Sofidy

Respondent

Name	Patrick Godard

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 aware of the following proceedings which are pending and which relate to the disputed domain name:

- Sofidy filed a request before the President of the Paris Judicial Court to be authorized to serve writ of summons on emergency summary proceedings against the Respondent. On 16 February 2022, the President of the Paris Judicial Court granted Sofidy's request and authorized Sofidy to summon the Respondent to a hearing to be held on 28 February 2022; and

- Sofidy filed a criminal complaint with the public prosecutor at the Evry-Courcouronnes criminal court for the violation of Article 226-4-1 of the French Criminal code on usurpation of identity, Article 441-1 of the French Criminal code on forgery and Articles 313-1 and 121-5 of the French Criminal code on attempted fraud.

FACTUAL BACKGROUND

Created in 1986, Sofidy is a French company with main focus on commercial and office real estate, which is accredited by the Autorité des marchés financiers (the French securities regulator).

Sofidy owns several trademarks as well as the domain name <sofidy.com>, used to operate its commercial website.

Sofidy claims that it is the victim of an attempted swindle by a third party whose identity is uncertain.

This/ese person(s) pretend(s) to be a Sofidy employee using an e-mail address with the domain name <sofidy.eu> (hereinafter the "Disputed Domain Name").

A. COMPLAINANT

The Complainant contends as follows:

i) It owns the EU word trademark "SOFIDY" No 013173943 registered on February 26 2015 in classes 35, 36 and 45 (hereinafter the "Trademark").

ii) The Disputed Domain Name is identical or confusingly similar with the Trademark.

iii) Sofidy is currently victim of a scam operation performed by unidentified person(s), which started in early 2022, hence, approximately around the time of registration of the Disputed Domain Name on 19 January 2022. These unidentified person(s) is/are approaching potential victims, in particular vulnerable persons in EHPAD (residential facilities for dependent elderly people), in order to sell them false

financial investments under the name of Sofidy. This/ese person(s) pretend(s) to be an employee of Sofidy and communicate through false email addresses generated through the Disputed Domain Name, such as <[__o__]@sofidy.eu>.

iv) The Respondent, a natural person with no connection to the Complainant, has failed to respond to the Complainant's enquiries on the registration of the Disputed Domain Name and has failed to provide any evidence of rights or legitimate interests in the name "Sofidy". In addition, the Respondent has not made any actual legitimate use of the Disputed Domain Name, the website for the Disputed Domain Name not being active and being marked as being up for sale.

B. RESPONDENT

The Respondent did not submit a response by the required deadline.

DISCUSSION AND FINDINGS

In consideration of the Factual Background, the Parties' Contentions stated above and its own web searches, the Panel comes to the following conclusions:

Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004 (hereafter "the Regulation") states that "a registered domain name shall be subject to revocation [...] where the name is identical or confusingly similar to a name in respect of which a right is recognised 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".

I. RELEVANT RIGHT OF THE COMPLAINANT AND IDENTITY OR CONFUSING SIMILARITY BETWEEN THE SIGNS

The Complainant is the owner of the EU Trademark "SOFIDY", No 013173943 registered on February 26 2015 in classes 35, 36 and 45.

As a consequence, this Panel is of the view that:

(i) The documentary evidence provided by the Complainant shows this latter owns a company name in respect of which a right is recognised by French national law, as required by Article 10(1) of the Regulation.

(ii) The domain name <sofidy.eu> is identical to the Trademark of the Complainant.

The remaining issue is then to decide whether the domain name <sofidy.eu> has been registered by the Respondent without rights or legitimate interest or whether it has been registered or used in bad faith by the Respondent.

II. LEGITIMATE INTEREST

According to Article 21(2) of the Regulation, "a legitimate interest within the meaning of point (a) of paragraph 1 may be demonstrated where:

(a) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the 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;

(b) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;

(c) the holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

In the case at hand, the Respondent:

- has no registered rights in the domain name <sofidy.eu> and has no contractual authorization to do so;

- does not exploit any web site in connection of goods or services linked with the "sofidy" name, neither using the <sofidy.eu> domain name.

As a consequence, there is no evidence that the Respondent has any right to use the Disputed Domain Name.

III. BAD FAITH

According to Article 21(3) of the Regulation, "Bad faith, within the meaning of point (b) of paragraph 1 may be demonstrated, where:

(a) circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law or to a public body; or

(b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) a pattern of such conduct by the registrant can be demonstrated; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated;

(c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(d) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or

(e) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.

In the case at hand, it appears that the Disputed Domain Name was intentionally used to attract Internet users, for commercial gain, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law.

Moreover, considering all the above elements in the present case and Paragraph B10 of the ADR Rules, the Panel considers the failure of the Respondent to comply with its obligation and time periods under the ADR Rules as grounds to accept the claims of the Complainant.

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As a consequence, it is the view of this Panel that the Disputed Domain Name has been registered by the Respondent without rights or legitimate interest and been registered and used in bad faith by the Respondent.

As the Complainant, a French registered company, satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) n° 733/2002, the domain name <sofidy.eu> can be transferred to the Complainant.

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 <SOFIDY.EU> be transferred to the Complainant.

PANELISTS

Name	**Frédéric Sardain**

DATE OF PANEL DECISION 2022-05-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <sofidy.eu>

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

III. Date of registration of the domain name: 19 January 2022

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: EU work trademark “SOFIDY” No 013173943 registered on February 26th 2015 in classes 35, 36 and 45.

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. No
2. Why: The Respondent (i) did not provide the Panel with any rights or legitimate interests evidences and (ii) does not exploit any web site in connection of goods or services linked with the "sofidy" name, neither using the <sofidy.eu> domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the disputed domain name was intentionally used to attract Internet users, for commercial gain, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law.

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