

Panel Decision for dispute CAC-ADREU-008430

Case number **CAC-ADREU-008430**

Time of filing **2022-11-09 09:30:46**

Domain names **groupe-emeria.eu**

Case administrator

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

Complainant

Organization **ELISABETH SILVESTRI (EMERIA)**

Respondent

Name **edmond pupil**

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 pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the company EMERIA, French leader in real estate services and also operating in Switzerland, Germany, Belgium and UK.

It owns trademark rights in the name EMERIA:

- France, wordmark EMERIA Reg. No.4802404 of September 23, 2021;
- WIPO, wordmark EMERIA Reg. No. 1677921 of March 3, 2022;
- France, device mark EMERIA Reg. 4832544 of January 10, 2022;
- WIPO, device mark EMERIA Reg. No. 1690470 of July 8, 2022.

The Respondent registered the disputed domain name on September 28, 2022.

The disputed domain name is routed to pay per click parking page and is also used as an e-mail address, formed with the name of the actual CFO of the Complainant.

The Complainant filed a Complaint on November 7, 2022, and amended the same on November 14, 2022.

A. COMPLAINANT

The Complainant claims that the disputed domain name violates its trademark rights, that the Respondent has no legitimate interest in the disputed domain name and that the same was filed and is used in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. RESPONDENT

The Respondent sent a first message to the Court on November 15, 2022 asking for information about the procedure in issue, then a second response on November 17, 2022, stating that he did not understand the purpose of the proceedings and claiming that he "wanted to create a blog speaking Emeria Group".

DISCUSSION AND FINDINGS

The Panel is to decide, in view of the facts and arguments of the parties, whether the conditions of article 21 of Reg. No. 874/2004 are satisfied to decide whether the disputed domain name should be transferred to the Complainant or not.

1) ON THE PRIOR RIGHTS

Pursuant to Article 21. Reg. No. 874/2004, "A registered domain name shall be subject to revocation [...] 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."

The Panel finds that the trademark rights vested in the name EMERIA claimed by the Complainant are substantiated.

The Complainant justifies that it owns several EMERIA formative trademarks:

- France, wordmark EMERIA Reg. No. 4802404 of September 23, 2021;
- WIPO, wordmark EMERIA Reg. No. 1677921 of March 3, 2022;
- France, device mark EMERIA Reg. 4832544 of January 10, 2022;
- WIPO, device mark EMERIA Reg. No. 1690470 of July 8, 2022.

Consequently, the Panel finds that the Complainant demonstrated it has prior rights.

2) ON THE IDENTITY OR CONFUSINGLY SIMILARITY OF THE DISPUTED DOMAIN NAME

The disputed domain name <groupe-emia.eu> reproduces the Complainant's registered trademark EMERIA.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the term "groupe" would not prevent a finding of confusing similarity.

Furthermore, the addition of the Top-Level Domain ("eu") ".com" does not prevent a finding of confusing similarity.

The Panel finds therefore that the disputed domain name is identical and confusingly similar to the Complainant's trademark and that the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 are satisfied.

3) ON THE LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

Article 21 (1) of the Regulation (EC) No. 874/2004: "A registered domain name shall be subject to revocation [...] where it (a) has been registered by its holder without rights or legitimate interest in the name".

Pursuant to Article 21 (2) of the Regulation (EC) No. 874/2004, the legitimate interest condition is considered as fulfilled when:

- a) prior to any notice of an alternative dispute resolution procedure, the respondent 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 respondent has been commonly known by the domain name;
- c) the respondent is making a legitimate and non-commercial or fair use of the domain name, without intend to mislead consumers or harm the reputation of the name on which a right is recognized.

It is the Panel's view that the overall burden of proof under the above provision rests with the Complainant, which is required to establish that the Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name, and that if the Respondent fails to answer such case, the Complainant is deemed to have satisfied its burden of proof.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further states that the Respondent has not acquired any trademark in the term "EMERIA", and does not make any bona fide use - neither commercial nor non-commercial, of the disputed domain name, other than routing the same to a parking page of pay-per-click sponsored links.

In addition, the disputed domain name is being used for sending fraudulent e-mails.

The Panel notes that the Respondent has not denied the Complainant's assertions, nor brought any persuasive information or evidence for demonstrating any rights or legitimate interests.

The Respondent, in his only substantial response, claims that he intended to use the disputed domain name in relation with a "blog" dedicated to the Complainant. It is observed that the Respondent does not substantiate this assertion with any evidence.

The facts of the case reflect that no such blog was ever developed, and that the Respondent is in fact making use of the disputed domain name as a misleading e-mail address for phishing purposes.

Such use is neither a bona fide use of the disputed domain name nor a legitimate non-commercial or fair use of the disputed domain name pursuant to the ADR Rules.

In view of the factual situation exposed by the Complainant, the Panel is to accept the Complainant's contentions and finds that the Respondent does not justify any rights or legitimate interests in the disputed domain name.

The conditions of article 21 of Reg. No. 874/2004 are therefore satisfied, nevertheless the Panel will assess the bad faith registration and use as well.

4) ON THE RESPONDENT'S BAD FAITH

Article 21 (3) of the Regulation (EC) No. 874/2004: "A registered domain name shall be subject to revocation where it:

(b) has been registered or is being used in bad faith.”

The Complainant has substantiated the fact that its trademark EMERIA benefits from public’s awareness, particularly in France.

When the identity of the Respondent was disclosed by the Registrar, it was found that the said Respondent had declared a place of residence in France. Due to the longstanding use of the Complainant’s mark in France, the Respondent could not reasonably be unaware of the Complainant’s rights when it registered the disputed domain name.

The Respondent himself states in his response that he intended to develop a blog dedicated to the Emeria Group, thus admitting that he was aware of the Complainant’s rights in the name EMERIA at the time when the domain name was registered.

Besides, the evidence supplied in support of the Complainant’s contentions shows that the Respondent is making use of the disputed domain name as an e-mail address “xxxx.xxxx@groupe-emia.eu”, and does impersonate the actual Complainant’s CFO, using the latter’s real name, with a view to extorting funds from the Complainant’s business partners by pretending to be the CFO of EMERIA.

This is a fraudulent impersonation of the Complainant that characterizes a use in bad faith of the disputed the domain name.

The Panel is thus satisfied that the disputed domain name was registered and is used in bad faith in the meaning of Article 21 (3).

5) TRANSFER OF THE DISPUTED DOMAIN NAME / ELIGIBILITY OF COMPLAINANT

The Complainant is a French company and having its domicile / place of business within the European Community. Therefore, the requirements for the requested transfer of the disputed domain name to the Complainant are satisfied (Section B No.1 (b) (12) of the ADR Rules).

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

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 <GROUPE-EMERIA.EU> be transferred to the Complainant.

PANELISTS

Name	William Lobelson
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DATE OF PANEL DECISION 2022-12-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: groupe-emia.eu

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

III. Date of registration of the domain name: 28 SEPTEMBER 2022

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

1. Trademarks

France, TM Reg. No.4802404 of September 23, 2021

WIPO TM Reg. No. 1677921 of March 3, 2022

France, TM Reg. 4832544 of January 10, 2022

WIPO TM Reg. No. 1690470 of July 8, 2022

2. Company name: EMERIA

V. Response submitted: Yes

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):

1. No

2. Why: Respondent claims that domain name intended to a blog page, but infact directed to a parking page of pay per click links and used a fraudulent e-mail address, impersonating the Complainant’s CFO

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Yes

2. Why: Domain name used a fraudulent e-mail address, impersonating the Complainant’s CFO, in order to extort funds from third parties (phishing practice).

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

Procedural factors the Panel considers relevant: Nonstandard communications from Respondent taken into account by Panel, as being relevant in determining

the issues of legitimate interest and bad faith.

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