Panel Decision for dispute CAC-ADREU-008393

Case number	CAC-ADREU-008393
Time of filing	2022-08-30 10:20:21
Domain names	gevars.eu

Case administrator

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

Complainant

Name	R PORT

Respondent

Name	Pamela Mela

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 informed of any pending or decided legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the Belgian market leader in providing legal advice on intellectual property rights and related services. It is offering these services under its GEVERS trademark for over 120 years now because its activities under this trademark started back in 1898. The services of the Complainant consist, more specifically, of advising and assisting its customers with identifying, protecting, valorising and enforcing patents, trademarks, design rights, domain names, copyrights, trade secrets and other rights. The Complainant offers these services to customers from all around the world and it is therefore also present in over 180 countries worldwide, either via a local office or via local agents with whom it is working together consistently. Its main offices are located in Belgium.

The Complainant's GEVERS trademark enjoys a strong reputation in the sector of intellectual property advice.

As a specialist in the protection of intellectual property rights it is of course evident that the Complainant has invested in the protection of its GEVERS trademark. In this regard it is the owner of, among others, the following trademark registrations:

- Benelux word mark registration No. 155431 GEVERS, filed on November 27, 1987 and registered on July 1, 1988 for services in classes 35, 41, 42 and 45;
- EU word mark registration No. 000175323 GEVERS, filed on April 1, 1996 and registered on November 5, 1998 for goods in classes 9 and 16 and for services in classes 35, 41 and 42.

The disputed domain name was created on June 6, 2022 and is being used to create e-mail addresses as of June 8, 2022 and send scam emails impersonating the Complainant.

A. COMPLAINANT

A. The Disputed Domain Name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or European Union Law (Paragraph B1(b)(10)(i)(A) of the ADR Rules and article 21(1) of the Regulation (EC) 874/2004)

The Disputed domain name is nearly identical, or at least confusingly similar, with the Complainant's GEVERS trademark.

The top-level domain ".eu" should not be taken into account when assessing the identity or similarity between the disputed domain name and the trademark at stake, because it a necessary technical component for the registration and use of a domain name.

The only difference between this trademark and second level domain of the disputed domain name is situated in the penultimate letter. Where this is the letter "E" in the Complainant's GEVERS trademark, it's the letter "A" in the second level domain of the disputed domain name. The

disputed domain name is thus a clear case of typosquatting which is the baseline of confusion.

By registering a domain name which only differs in one letter from the Complainant's GEVERS trademark, the Respondent is guilty of practicing typosquatting. Domain names that are not identical, but very similar to an earlier right, and that are registered to benefit from typing errors or omissions on the part of the internet user, create confusing similarity between that right and those domain names (CAC ADR 06492 SANOFI, Carole Tricoire vs. Poussieres d'Etoiles).

It is thus clear that the disputed domain name is almost identical, and at least confusingly similar, to the Complainant's GEVERS trademark.

B. The disputed domain name has been registered by the Respondent without rights or legitimate interests in respect of the disputed domain name (Paragraph B1(b)(10)(i)(B) of the ADR Rules and Article 21(1)(a) of the Regulation (EC) 874/2004

It is clear that the disputed domain name was registered by the Respondent without having any rights or legitimate interests in respect of it.

Although the Complainant normally bears the overall burden of proof, Panels have already acknowledged before that the Complainant therefore has the impossible task of demonstrating the Respondent's lack of rights or legitimate interests, while the evidence to do so often lies exclusively within the Respondent's knowledge. It is therefore well established that the Complainant only has to prove the lack of rights or legitimate interests prima facie, after which the burden of proof shifts to the Respondent, who then has to prove that it can indeed claim rights or legitimate interests in the Disputed domain name (see e.g. CAC ADR 06328 Joachim Oldendörp v. Miguel Rebelo Silva).

Furthermore, and in as far as the Complainant knows, the Respondent does not own any trademark rights for the sign "GEVARS" which forms the second level domain of the disputed domain name. In this regard, the Complainant performed a thorough trademark search for the sign "GEVARS" in the online trademark database of Fovea IP and an applicant search on the Respondent's name in that same database. These searches did not reveal any results.

The Respondent does also not have any connection or affiliation with the Complainant whatsoever nor has it received any license or consent, express or implied, to use a sign that is almost identical to the Complainant's GEVERS trademark in a domain name or in any other manner.

The absence of such license or consent constitutes prima facie proof for the Complainant that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Respondent is also not generally known by the disputed domain name.

The Respondent does furthermore not appear to be using the disputed domain name in connection with a bona fide offering of products and/or services, nor does it have the intention to do so. To the contrary, the Respondent is using the disputed domain name to send out fraudulent e-mails. Indeed, customers of the Complainant have reported having received fraudulent e-mails coming from the e-mail address biling.gevers.ores@gevars.eu. An example of such fraudulent e-mail chain, received by one of the Complainant's customers, is produced.

This e-mail also includes a signature with the Complainant's GEVERS logo and the address of the Complainant's office in Paris, France.

By using this address, and the Complainant's GEVERS logo, the Respondent is trying to convince the recipients of the fraudulent e-mails that these emails originate from the Complainant while this is of course not the case.

Chances are high that these recipients will consider these e-mails as genuine e-mails from the Complainant because of the use of the GEVERS logo and the correct address, but also because the "GEVARS" sign appearing in the e-mail address is almost identical to the Complainant's GEVERS trademark meaning that the small difference with this trademark will go unnoticed by them. In a further e-mail, the Respondent is asking the recipients of the fraudulent e-mails for payment on a bank account which does not belong to the Complainant:

The Respondent is thus trying to trick customers of the Complainant into paying an invoice by impersonating the Complainant. This is a very dangerous course of actions for the Complainant, but of course also for the recipients of the fraudulent e-mails.

The fact that using a domain name for setting up a phishing scheme cannot be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair usage of a domain name.

Given the above considerations, and despite possible arguments from the Respondent to the contrary, there are no indications whatsoever that the Respondent would have any right or legitimate interest in the disputed domain name.

C. The disputed domain name was registered, or is being used, in bad faith (Paragraph B1(b)(10)(i)(C) of the ADR Rules and Article 21(1)(b) of the Regulation (EC) 874/2004)

It is not necessary for the Complainant to demonstrate bad faith if it has already proven that the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant nevertheless addresses the bad faith aspect.

It would first of all be completely unreasonable for the Respondent to claim that it was not aware of the existence of the Complainant, its activities and its trademarks composed of the fanciful name GEVERS, at the time of registering the disputed domain name.

The Complainant's Benelux and EU word mark registrations for GEVERS predate the registration of the disputed domain name date by many years. Besides, the Respondent has its address in Paris while the Complainant is operating an office in that same city, which makes it even more likely that the Respondent was well aware of the Complainant and its GEVERS trademark when registering the disputed domain name.

The distinctive character of the GEVERS trademark makes it impossible for the Respondent to have by accident come up with registering the

disputed domain name. This provides further confirmation of the fact that the Respondent had active knowledge of the Complainant, its GEVERS trademark and its business when registering the disputed domain name.

It is thus evident that the Respondent was aware of the Complainant's GEVERS trademark at the registration of the disputed domain name and sought to take advantage of that trademark.

According to Article 21(3)(d) of the Regulation (EC) 874/2004 bad faith can be demonstrated whenever "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 recognized 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".

The current use of the disputed domain name completely falls within the scope of the aforementioned article.

In any event, the whole of the modus operandi of the Respondent was fraudulent, showing that the registration and use of the domain name were in bad faith. It can thus be concluded that the disputed domain name has been registered and is being used in bad faith.

B. RESPONDENT

The Respondent did not reply to the complaint

DISCUSSION AND FINDINGS

According to Article 21 (1) of the Regulation (EC) No 874/2004 on « Speculative and abusive registrations »:

« 1. 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 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".

The Complainant is required to satisfy with these provisions.

1. **Confusing similarity. EC N°874/2004 Art 21 (1)**

Article 10.1 of the same regulation states that: "Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts.

'Prior rights' shall be understood to include, inter alia, registered national and community 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".

The first question to answer is to decide if the Complainant has a right in the meaning of Article 10.1 of the EU Regulation 874/2004 and the answer is affirmative.

The Complainant filed the Complainant in its quality of owner of the registered GEVERS trademarks:

- Benelux word mark registration No. 155431 GEVERS, filed on November 27, 1987 and registered on July 1, 1988 for services in classes 35, 41, 42 and 45;

- EU word mark registration No. 000175323 GEVERS, filed on April 1, 1996 and registered on November 5, 1998 for goods in classes 9 and 16 and for services in classes 35, 41 and 42.

Complainant asserts that is confusingly similar to its GEVERS prior trademarks.

The Respondent has engaged in typosquatting, a practice by which a registrant deliberately introduces slight deviations into a third party's trademark, to register a domain name.

Because Respondent's registration of the disputed domain name constitutes typosquatting, the domain at issue is, by definition, confusingly similar to Complainant's trademarks.

1. **Right or legitimate interest. EC N°874/2004 Art 21 (2)**

According to Article 21 (2) of the Regulation (EC) No 874 :2004 on « Speculative and abusive registrations »:

« 2. 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 ».

When it is considered that the criteria provided by Article 21 (1) and (2) are met, there is no need to further analyse the case under the aspect of bad faith.

The Respondent did not use the possibility to contest the complaint to rebut the Complainant's position.

The searches that were conducted prove that the Respondent does not own any GEVARS registered trademark.

The Complainant asserts that it does not know the Respondent who is domiciled in France, where it has an office, the address of which is used in the scam e-mails sent by the Respondent for fraudulent purposes.

It obviously appears from the use of the disputed domain name that the Respondent targeted the Complainant when registering and using the disputed domain name, since it used it only two days as of its registration in order to create e-mail addresses and use them to send scam e-mails impersonating the Complainant.

This fraudulent practice was made to mislead the Complainant's clients who received these e-mails, with the goal to fraudulently receive payments. Such a practice does as well harm the reputation of the Complainant.

Where a complainant makes out a prima facie case that the respondent lacks a right or legitimate interest, the burden of proof on this element shifts to the respondent. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Under these circumstances, the Panel is of the opinion that the disputed domain name was registered without any right or legitimate interest in the meaning of Article 21 (1) of the Regulation (EC) No 874:2004.

Since the criteria set by this regulation are alternative, there is no need to further discuss the bad faith registration or use.

For all the foregoing reasons, in accordance with Paragraph B 12 of the Rules, the Panel orders that the complaint is satisfied.

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 be transferred to the Complainant.

PANELISTS

Name	**Marie Haas**

DATE OF PANEL DECISION 2022-12-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name:

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

III. Date of registration of the domain name: June 6, 2022

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

- Benelux word mark registration No. 155431 GEVERS, filed on November 27, 1987 and registered on July 1, 1988 for services in classes 35, 41,

42 and 45;
- EU word mark registration No. 000175323 GEVERS, filed on April 1, 1996 and registered on November 5, 1998 for goods in classes 9 and 16 and for services in classes 35, 41 and 42.

V. Response submitted: No

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: typosquatting and use of the disputed domain name to send scam e-mails impersonating the Complainant

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. [Yes/No]
2. Why: no need to discuss it

IX. Other substantial facts the Panel considers relevant: -

X. Dispute Result: Transfer

XI. Procedural factors the Panel considers relevant: -

XII. If transfer to Complainant - Is Complainant eligible? Yes