Panel Decision for dispute CAC-ADREU-008447

Case number	CAC-ADREU-008447
Time of filing	2022-12-07 09:00:09
Domain names	stephaneplazaimmobilier.eu

Case administrator

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

Complainant

Organization	SP Holding

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Maryse Haggard

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

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a network of real estate agencies acting as STEPHANE PLAZA immobilier.

It results from the Complainant's undisputed evidence that it owns several trademarks, amongst others French verbal trademark STEPHANE PLAZA IMMOBILIER no. 4020283 registered since 08 July 2013 for goods and services in classes 16, 28, 35, 36, 38 and 41.

EURid confirmed that the disputed domain name was registered on 24 November 2022. It further results from the undisputed evidence provided by the Complainant that the disputed domain name currently resolves to a parking website showing pay-per-click links to third-party websites in French language, also in the real estate sector ("Acheter Maison" [In English: "Buy House"] and "Vente Immobiliere" [In English: "Real Estate Sale"]).

Finally, it is established by the undisputed evidence that the disputed domain name is offered for sale for an amount of 8500 USD.

A. COMPLAINANT

Firstly, the Complainant points out that the disputed domain name is identical to its trademark STEPHANE PLAZA IMMOBILIER. Indeed, the domain name includes the trademark in its entirety. The Complainant contends that addition of the ccTLD ".EU" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to its trademark.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not identified in the Whois database as "stephaneplazaimmobilier.eu" and, therefore, not commonly known by the disputed domain name. Furthermore, the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant. In addition, the disputed domain name resolves to a parking page with commercial links, which is not a bona fide offering of goods or services or legitimate non-commercial or fair use. Finally, the disputed domain name is offered for sale for 8500 USD, which, in the Complainant's view, evidences the

Respondent's lack of rights or legitimate interest.

Thirdly, the Respondent's registration and use of the disputed domain name constitutes – in the Complainant's view – bad faith under several aspects: The disputed domain name is advertised for sale to the general public at 8500 USD. Furthermore, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. Finally, the disputed domain name resolves to a parking page with commercial links which constitutes evidence of the Respondent's attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain.

B. RESPONDENT

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

DISCUSSION AND FINDINGS

A. Discussion and Findings

According to Recital 17 Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 ("the Regulation") an ADR procedure may be initiated by any party where the registration is speculative or abusive.. In the present case, the question is therefore, whether the registration is speculative or abusive. According to this disposition and Paragraph B 11(d)(1) of the ADR Rules the Complainant bears the burden of proving the following:

i. the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law; and either
ii. the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
iii. the domain name has been registered or is being used in bad faith.

Furthermore, Paragraph B(10) of ADR Rules provides that "[i]f a Party fails to comply with any of the time periods established by these ADR Rules or by the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party."

Given the similarities between the ADR Rules and the UDRP, the Panel will refer to UDRP jurisprudence where instructive.

B. 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

Pursuant to Paragraph B(11)(d)(1) of the ADR Rules, the Complainant must, first of all, establish that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

It results from the undisputed evidence before this Panel that the Complainant is the registered owner of French verbal trademark STEPHANE PLAZA IMMOBILIER no. 4020283 registered since 08 July 2013.

The disputed domain name consists of the STEPHANE PLAZA IMMOBILIER trademark in its entirety. With comparative reference to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7, in cases where a domain name incorporates - in particular - the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing.

Furthermore, it is the consensus view among the panels that the applicable Top-Level Domain ("TLD") may be disregarded in determining identity or confusing similarity, since it is viewed as a standard registration requirement (see section III.1 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")).

Hence, this Panel finds that the disputed domain name is identical or confusingly similar to a name in respect of which a right is established by Community law so that the Panel will proceed with the examination.

Pursuant to Paragraph B(11)(d)(1)(ii) of the ADR Rules, the Complainant must secondly establish either (i) that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or (ii) that the disputed domain name has been registered or is being used in bad faith.

C. Rights or Legitimate Interests

The Panel finds that there is no information to suggest rights or legitimate interests of the Respondent to use the Complainant's STEPHANE PLAZA IMMOBILIER trademark, pursuant to Paragraph B(11)(d)(1)(ii) of the ADR Rules.

Paragraph B(11)(e) of the ADR Rules contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

Firstly, it results from the Complainant's uncontested evidence that the disputed domain name resolves to a website containing pay-per-click links to websites related to real estate and is publicly offered for sale at 8500 USD. It is consensus view among the panels, that such use does not of itself confer rights or legitimate interests, especially if links lead to websites of the right holder's competitors as it is the case here (see section IV.11 of the CAC .EU Overview 2.0). In this Panel's view such use rather appears intended to capitalize on the reputation and goodwill of

the Complainant's mark. In addition, the Complainant's uncontested allegations demonstrate that it has not authorized the Respondent's use of the STEPHANE PLAZA IMMOBILIER trademark for registering the disputed domain name, which is confusingly similar.

Secondly, the Panel notes that there is no evidence either showing that the Respondent might be commonly known by the disputed domain name pursuant to Paragraph B(11)(e)(2) of the ADR Rules.

Finally, the Respondent is not making any legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law, pursuant to Paragraph B(11)(e)(3) of the ADR Rules. In the absence of any explanations by the Respondent it is indeed difficult for the Panel to imagine a legitimate use of the disputed domain name which identically consists of the Complainant's trademark. Finally, the fact that the Respondent offers the disputed domain name for sale at a price of 8500 USD underlines that the Respondent did not intend to proceed to any legitimate and noncommercial use thereof.

The Panel therefore finds such prima facie case is made so that the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied Paragraph B(11)(d)(1)(ii) of the ADR Rules.

D. Registered or Used in Bad Faith

Under Paragraph B(11)(d)(1) of the ADR Rules, lack of rights or legitimate interests and registration or use in bad faith are considered alternative requirements for a successful complaint, as explained above. Taking into account that the Panel has already found that the Respondent lacks rights or legitimate interests in the disputed domain name, there is no need for the Panel to discuss in depth the third element (bad faith).

Nevertheless, it results from the undisputed evidence before the Panel that the Respondent registered or uses the disputed domain name in bad faith, pursuant to Paragraph B(11)(d)(1)(iii) of the ADR Rules: In fact, the Respondent offered the disputed domain name for public sale at a price of 8500 USD. This undisputed evidence is sufficient for the Panel to hold that there are circumstances indicating that the disputed domain name was registered primarily for the purpose of selling the disputed domain name to a public body pursuant to Paragraph B(11)(f)(1) of the ADR Rules.

In the light of the above, the Complainant is therefore deemed to also have satisfied Paragraph B(11)(d)(1)(iii) of the ADR Rules.

E. Eligibility

The Complainant has requested the transfer of the disputed domain name to itself. The requested transfer of the disputed domain name to a Complainant can only be granted in case the Complainant is eligible to register .eu domain names according to Article 3 of the Regulation , see also Paragraph B(11)(b) of the ADR Rules. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

It is undisputed that the Complainant is registered and based in France. In the light of the above, the Panel holds that the Complainant meets the general eligibility criteria within the meaning of Article 3 of the Regulation and is therefore entitled to obtain transfer of the disputed domain name.

DECISION

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

PANELISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2023-02-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: stephaneplazaimmobilier.eu

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

III. Date of registration of the domain name: 24 November 2022

IV. Rights relied on by the Complainant (Paragraph B(1)(b)(9) of the ADR Rules) on which the Panel based its decision:

Word trademark STEPHANE PLAZA IMMOBILIER registered in France reg. No. 4020283 registered since 08.07.2013 for goods and services in classes 16, 28, 35, 36, 38 and 41.

V. Response submitted: No

VI. Domain name is identical or confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Paragraph B(11)(e) of the ADR Rules):
1. No
2. Why: Disputed domain name resolves to a website containing pay-per-click links to websites related to real estate and is publicly offered for sale at 8500 USD. In addition, the Panel notes that there is no evidence either showing that the Respondent might be commonly known by the disputed domain name.

VIII. Bad faith of the Respondent (Paragraph B(11)(f) of the ADR Rules):
1. No
2. Why: The Respondent is offering the disputed domain name for public sale at a price of 8500 USD. This evidence is sufficient for the Panel to hold that there are circumstances indicating that the disputed domain name was registered primarily for the purpose of selling the disputed domain name to a public body pursuant to Paragraph B(11)(f)(1) of the ADR 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: None

XII. Is Complainant eligible? Yes