Panel Decision for dispute CAC-ADREU-005299

Case number	CAC-ADREU-005299
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Domain names	saludmadrid.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	CONSEJERÍA DE SANIDAD DE LA COMUNIDAD DE MADRID

Respondent

Organization / Name	DOMAIN HANDLER

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 proceeding related to the disputed domain name.

FACTUAL BACKGROUND

1. History of the ADR Proceeding

On November 24, 2008 the Complainant filed before the Czech Arbitration Court (hereinafter, the “Court”) a complaint (hereinafter, the “Complaint”) in English and selected this language as the one applying to the present dispute-resolution proceeding.

On November 26, 2008 the Court verified the payment of the fees corresponding to this proceeding and issued an official acknowledgement of receipt of complaint as well as required EURid to confirm the exactness of the technical information provided in the Complaint.

After having reviewed the Complaint, the Court identified a number of administrative deficiencies. Hence, on December 9, 2008 the Court notified the Complainant the existence of the said deficiencies, granting it a seven-days period for amending the above-mentioned deficiencies. In the said communication, the Court warned the Complainant that should it be unable to file an amended version of the Complaint, the latest would be considered withdrawn.

The Complainant filed an amended version of the Complaint on December 10, 2008. On December 11, 2008 the Court verified that the amended version of the Complaint did not contain any administrative deficiency and therefore proceeded to notify the Respondent the formal commencement of the proceeding. In this notification, the Respondent was granted with a 30-working days period for filing its response to the Complaint (hereinafter, the “Response”).

The Respondent did not file any Response (neither any other type of communication or writ) before the Court. Consequently, on February 11, 2009 the Court formally issued a notification of Respondent’s default.

On February 17, 2009 the Court invited Mr. Albert Agustinoy Guilayn (hereinafter, the “Panel”) to serve as the panel charged with deciding on the dispute to which this proceeding is referred.

On February 18, 2009 the Panel filed before the Court his statement of acceptance and declaration of impartiality and independence in order to decide o the dispute linked to this proceeding. Thus, on the same date the Court notified the appointment of the Panel indicating that a decision should be provided by March 18, 2009.

On March 18, 2009 the Court notified the parties that, due to the illness of the Panel, the decision would be finally issued on March 31, 2009.

2. The Parties

2.1. The Complainant

The Complainant is a public body that depends on the Regional Government of Madrid ("Comunidad Autónoma de Madrid") and is charged with the management of the public health services in the said territory.

The Complainant was created by virtue of Regional Decree no. 14/2005, dated January 27 (recently substituted by Decree no. 24/2008, dated April 3) and it has always used the name and logos "Salud Madrid" for the provision of its services. At this respect, the Complainant has provided evidences of recurrent use of said name and logos, which clearly identify the Complainant and its services.

In this sense, the Complainant is the registrant of Spanish trademark no. 2794898 "Salud Madrid" in classes 3, 5, 9, 10, 16, 20, 24, 25, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45 of the International Trademark Classification.

2.2. The Respondent

The Respondent has not filed any Response, neither any type of communication during this proceeding. Therefore, the Panel has not been able to find its actual identity and circumstances surrounding the registration and use of the disputed domain name.

Such a lack of knowledge has been increased by the fact that the Respondent's contact information in the Whois database has been protected by means of a privacy services that impedes accessing to the actual contact data of the Respondent.

3. Communications between the parties

As shown in the Complaint, the Complainant has sent at least three communications to the Respondent in order to try to reach an amicable solution on this dispute, by transferring the disputed domain to it without the need of filing a formal ADR proceeding. The Respondent did never reply to such communications.

4. The Disputed Domain Name

The disputed domain name was registered on April 7, 2006 and up to date it has not been activated anyhow.

A. COMPLAINANT

In the Complaint, the Complainant contends that:

- It is the body charged with the management of the public health services within the territory of the Region of Madrid, Spain.

- In order to render its services, the Complainant has used the sign "Salud Madrid" since it was created on 2005 as a consequence o fan integration between the Public Health Service of Madrid and the Madrid Institute of Public Health. In this sense, the Complainant is the owner of the Spanish trademark registration no. 2794898 "Salud Madrid", which is registered under Classes 3, 5, 9, 10, 16, 20, 24, 25, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45 of the International Trademark Classification.

- The disputed domain name is identical to the trademark owned by the Complainant.

- The Respondent does not hold any right or legitimate interest in the disputed domain name, since the Complainant has not licensed or otherwise authorized the Respondent to use its "Salud Madrid" trademark or to apply for any domain name including such a trademark. The Complainant does also consider that there is no holder of rights to the name "Salud Madrid" other than itself and, therefore, the Respondent has never been entitled to register and use the disputed domain name.

- It has recurrently tried to contact the Respondent in order to reach an amicable solution to the dispute on the domain name, but it has

obtained not actual response from the Respondent. Such a lack of response has been due, at a great extent, to the use by the Respondent of a Whois privacy service that does not allow clearly identifying the Respondent.

- Taking into account the circumstances surrounding this case, the Complainant considers that it is obvious that the Respondent registered and has used the disputed domain name in bad faith. The fact that it has not been activated anyhow does not avoid this conclusion since, according to the Complainant, the obvious connection existing between the disputed domain name and the Complainant's trademark as well as the evasive attitude of the Respondent constitute clear evidences of a bad faith will.

- Considering the above, the disputed domain name should be transferred to the Complainant.

B. RESPONDENT

The Respondent has not filed any type of response to the Complaint.

DISCUSSION AND FINDINGS

In accordance with Article 21.1 of Commission Regulation (EC) No 874/2004, dated April 28, 2004, laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter, Regulation 874/2004), a registered domain name shall be subject to revocation where the following three circumstances are given:

(A) that the disputed domain name is identical or confusingly similar to a name in respect of which a right of the Complainant is recognised or established by national and/or Community law;

(B) that the Respondent has registered such a domain name without holding rights or legitimate interests in respect of the disputed domain name;

(C) that the disputed domain name has been registered or is being used by the Respondent in bad faith.

Under Regulation 874/2004 and the ADR Rules, the Complainant must prove the existence of each of the above-mentioned circumstances for the Complaint to be upheld. Therefore, further each one of the said circumstances Hill be analyzed in connection with this proceeding in order to find out if such circumstances are given or not.

(A) The disputed domain name is identical or confusingly similar to a name in respect of which a right of the Complainant is recognised or established by national and/or Community law;

Pursuant to the first element foreseen by Article 21.1 of Regulation 874/2004 the Complainant must fulfill the following two conditions: (i) to hold a name in respect of which a right of the Complainant is recognised or established by national and/or Community law, and (ii) show evidences that the said name is identical or confusingly similar to the disputed domain name.
In connection with the first of the above-mentioned conditions, the Respondent has provided the Panel with documentary evidences showing that it has used the name "Salud Madrid" for years and that it owns a Spanish trademark registration exclusively based in the said name. Therefore, the Complainant has fulfilled the first one of the conditions established by the first element foreseen by Article 21.1 of Regulation 874/2004.

The second condition is also given in the present case. Indeed, the only difference existing between the disputed domain name and the "Salud Madrid" trademark owned by the Complainant is the lack of space existing in the words composing the disputed domain name as well the inclusion of the ".EU" suffix.Nevertheless, such differences are derived from the current technical structure of the Domain Names System (DNS) and, consequently, they should not be considered as relevant differences between the disputed domain name and the Complainant's trademark. Consequently, the Panel considers that the Complainant has also fulfilled the second one of the conditions established by the first element foreseen by Article 21.1 of Regulation 874/2004 and, consequently, that the Complainant has met the first requirement foreseen by Article 21.1 of Regulation 874/2004.

(B) The Respondent has registered the disputed domain name without holding rights or legitimate interests in respect of the disputed domain name

In order to find out if this second element foreseen by Article 21.1 of Regulation 874/2004, Article 21.2 of the said regulation must be specially taken into account as it defines a number of behaviours which are presumed to imply the existence of a legitimate interest by the Respondent in connection with the disputed domain name. In this sense, the following possibilities are foreseen:

(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 the 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; and

(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.

Taking into account the evidences provided during this proceeding, the Panel considers that the no circumstance is given for considering that the Respondent holds a right or legitimate interest on the disputed domain name. In order to reach such a conclusion, the following issues have taken into account:

- As indicated in the factual background, the Respondent has not proved that it was aiming at using the disputed domain name in connection with an offering of goods or services or a legitimate and non-commercial or fair use. As a matter of fact, absent any argument in contrary from the Respondent, it is hard for the Panel to consider that any such potential use could be given since the disputed domain name has been disconnected since its registration (this is to say, more than two years ago).

- The Panel is not aware of the actual name of the Respondent. Nonetheless, it seems unlikely that such a name could be “Salud Madrid” since this would suppose an obvious conflict with the Complainant. Again, the lack of explanations from the Respondent lead the Panel to believe that the most likely possibility is that it is not known at all by the name “Salud Madrid”, a name that is totally connected with the Complainant.

- The Respondent has been given numerous chances to explain its rights on the disputed domain name both before this proceeding was launched (by replying to the communications sent by the Complainant) and once it was started (by filing a Response to the Complaint). Nonetheless, it has not made any effort to defend its rights on the domain name. Such a passive attitude has been complemented with a clear will to avoid being identified, given the use of the privacy service in connection with the Whois information relating to the disputed domain name.

Taking into account all the above, the Panel considers that the Complainant has proved that the Respondent does not hold any legitimate right or interest on the disputed domain name and, consequently, that the Complainant has met the second requirement foreseen by Article 21.1 of Regulation 874/2004.

(C) The disputed domain name has been registered or is being used by the Respondent in bad faith

Article 21.3 of Regulation 874/2004 establishes a number of cases where bad faith, within the meaning given by Article 21.1 of the said Regulation, is considered to be given in connection with the registration and/or use of a given domain name. Among such cases, Paragraph (b) if the Article considers that there is bad faith in those cases where “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 conduct by the registrant can be demonstrated…”.

In the present case, the registration of the disputed domain name seems to be clearly linked to a pattern of conduct based on bad faith purposes. In order to reach this conclusion, the Panel has jointly taken into account the following circumstances:

- As indicated in the previous section of this decision, under the Panel’s opinion, the Respondent does not hold a genuine legitimate right or interest on the disputed domain name;

- The disputed domain name is so obviously referred to the Complainant and to its “Salud Madrid” trademark that it is impossible for the Panel to consider that the Respondent was not aware of the infringement of the Complainant’s rights when it registered the disputed domain name. In the same sense, any potential use of such domain name could only imply a violation of said rights;

- Passively holding a domain name for more than two years constitutes a behaviour that is difficult to understand, unless that behaviour is based on bad faith. In addition, if such a domain name clearly corresponds to a third-party’s name and trademark, then there is little room to consider that the registration and passive use of such domain name is not being made in bad faith; and

- The use by the Respondent of a Whois privacy service for hiding its identity added to the fact that it has not filed any argument for defending its registration and use of the disputed domain name appear to be evidences of a behaviour that is far from any good faith standard. Certainly, the Panel considers that anyone reasonably considering that has behaved in good faith would respond to any communication threatening the registration of use of a domain name and, afterwards, would file its arguments in an ADR proceding.

Taking into account the above-mentioned circumstances, the Panel considers that the only likely explanation for the registration of the disputed domain name is that it was aimed at unfairly impeding the Complainant to register and use it.
Considering all the above, the Panel estimates that the third element required by Article 21.1 of Regulation 874/2004 is given in the present case.

DECISION

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

PANELISTS

Name	**Albert Agustinoy**

DATE OF PANEL DECISION 2009-03-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The disputed domain name is based on the name “Salud Madrid” which corresponds to a Spanish trademark owned by the Complainant, having been used by the later since its creation in 2005 for the provision of its public-health services in the region of Madrid (Spain).

According to the elements foreseen in Article 21.1 of Regulation 874/2004 and Article 11(d)(1) of the Rules, the analysis of the panel in this proceeding has been based in the following elements:

- The Panel has considered that since the Complainant holds a Spanish trademark based on the name “Salud Madrid” it is entitled to file the complaint. Moreover, the Panel considers that the disputed domain name is identical to the Complainant’s “Salud Madrid” trademark as the only differences existing between them are that the domain name does not include a space between each one of the words composing it and that it is accompanied by the suffix “.EU”. These differences are irrelevant since they are due to the technical features applying to the Domain Names System.

- The Panel has considered that the Respondent does not hold a legitimate right or interest on the domain name. Indeed, the Respondent has not proved that it was aiming at using the disputed domain name in connection with an offering of goods or services or a legitimate and non-commercial or fair use or that it is commonly known by the name “Salud Madrid”.

- Finally, the has considered that, taking into account the behaviour of the Respondent, the only likely explanation of the purposes of registering the disputed domain name is that such a registration responds to a bad-faith pattern of conduct.

Taking into account the above and according to Paragraphs B12 (b) and (c) of the Rules, the Panel has decided that the domain name “saludmadrid.eu” be transferred to the Complainant.