Panel Decision for dispute CAC-ADREU-008476

Case number	CAC-ADREU-008476
Time of filing	2023-01-25 11:21:50
Domain names	violifefoods.eu

Case administrator

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

Complainant

Organization	ARIVIA S.A.
Organization	Upfield Europe B.V.

Complainant representative

Organization	Stobbs IP

Respondent

Organization	Bieze Food Groep

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 legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The first Complainant (ARIVIA S.A.)is a developer of plant-based dairy products and a wholly owned subsidiary of the second Complainant (Upfield Europe B.V.). As of 2022, the first Complainant employs over 500 people and operates a state of the art production plant in Northern Greece, with a production capacity of 2,500 tons per month, one of the largest in Europe. The first Complainant's products include the VIOLIFE vegan dairy range, advertised globally and sold in various food supermarkets in the United Kingdom and worldwide.

According to the information provided the second Complainant is a leader in the sourcing, production, and sale of plant-based consumer products, with a heritage stretching back to 1871 as an original dairy alternative company. The second Complainant's business can be traced back to 2018, when it spun off from Unilever, the Dutch-British multinational consumer goods company. The second Complainant currently employs more than 4,200 employees globally and has sold products through several brands, including VIOLIFE.

Complainants own numerous trademarks for VIOLIFE, including first Complainant's European Union Trademark VIOLIFE with No. 008181661 and registration date 3 December 2009.

EURid confirmed that the disputed domain name <violifefoods.eu> was registered by Respondent on 9 March 2018.

At the time of the decision there is no website associated with the disputed domain name.

Complainants request that the disputed domain name shall be transferred to Complainants.

A. COMPLAINANT

Complainants submit that the disputed domain name is confusingly similar to Complainants' trademark as it incorporates the VIOLIFE trademark in its entirety. The only differentiator between the disputed domain name and the trademark is the use of the descriptor "foods". This additional term does nothing to materially alter the impression of the disputed domain name in the eyes of an unsuspecting internet user and so the trademark VIOLIFE remains the dominant and distinctive element.

Complainants submit that Respondent does not have any rights or legitimate interests in the disputed domain name. The disputed domain name was acquired by Respondent in 2018. By this point, Complainants already had pre-existing registered trademark rights in the VIOLIFE mark pre-dating the disputed domain name by almost a decade. The disputed domain name has failed to resolve to any relevant website since its registration in 2018. This substantiates the fact that Respondent has not made any bona fide offering of goods and services. In addition, Complainants submit that to the best of their knowledge, Respondent has never been known as "Violife" at any point in time. Searches on Respondent's details reveal that Respondent is a food supplier based in the Netherlands. Respondent is in no way connected to, or has been licensed by Complainants to use the VIOLIFE mark in any way. The above findings lead Complainants to conclude that the only reason that Respondent registered the disputed domain name was to take advantage of Complainants' goodwill accrued in the VIOLIFE mark and use its reputation for Respondent's own commercial benefit as part of their own business.

According to Complainants Respondent's registration and use of the disputed domain name constitutes bad faith. It is evident that the disputed domain name was registered with the sole purpose of creating an association with Complainants. This is further reinforced by the fact that Respondent chose a .eu domain specifically. The very choice of the extension suggests the intention of Respondent of trying to create the impression of being "the" official VIOLIFE website serving internet users based in Europe, which is Complainants' core customer base. Complainants submit that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor. It is clear that Complainants were targeted by Respondent. Notably, the second Complainant is based in the Netherlands and Respondent is a food supplier operating out of the same territory and so would have undoubtedly been aware of the second Complainant. Respondent's decision to register a domain name comprising of Complainants' mark, shows a clear intention on part of Respondent to disrupt Complainants' business by piggybacking off the reputation which Complainants have accrued amongst consumers to date though the creation of an unauthorized online presence.

B. RESPONDENT

Respondent did not reply to Complainants' contentions.

DISCUSSION AND FINDINGS

According to Article 4 of 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") a domain name may be transferred to another party, following an appropriate ADR or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, 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.

According to Article B 11(d)(1) of the ADR Rules (the Alternative dispute resolution proceedings for the resolution of disputes under Article 11 of Commission Implementing Regulation (EU) 2020/857 of 17 June 2020 laying down the principles to be included in the contract between the European Commission and the .eu top-level domain Registry in accordance with Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019, the "Implementing Regulation") Complainant bears the burden of proving the following:
i. the 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 European Union 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.

Article 9.2 of the Implementing Regulation and Article B 1(b)(9) of the ADR Rules recognize trademarks in respect of which a right is recognized or established.

With reference to the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Names, 2nd Edition ("CAC .EU Overview 2.0"), section I.13 a complaint can be filed by related co-complainants. In the present case the first Complainant holds the VIOLIFE trademark and is a subsidiary of the second Complainant while the second Complainant has most of the commercial interest.

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 Article B (11)(d)(1) of the ADR Rules, 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 Complainants are the owner of multiple trademarks for VIOLIFE including:
- European Union Trademark No. 008181661 with a registered date of 3 December 2009 owned by the first Complainant.

The disputed domain name <violifefoods.eu> consists of the VIOLIFE trademark in its entirety. The addition of the descriptive term "foods" can be disregarded. Furthermore, it is the consensus view among panels that the applicable Top-Level Domain ("TLD") .eu suffix may also 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 .EU Overview 2.0).

The Panel thus finds that the disputed domain name is confusingly similar to a name in respect of which a right is recognized or established by Community law.

Rights or Legitimate Interests

Article 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 Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the undisputed circumstances stated above, Complainants have made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds that there is no evidence showing that Respondent might be commonly known by the disputed domain name. In addition, as there is no website to which the disputed domain name resolves, Respondent has not used and is not currently using the disputed domain name in connection with the offering of goods or services. Based on the undisputed submission of Complainants it does not appear that Respondent is making a legitimate and non-commercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in respect of which a right is recognized or established by national law and/or European Union law.

This Panel thus finds that Respondent has no rights or legitimate interests in the disputed domain name.

Registered or Used in Bad Faith

It results from the undisputed evidence before the Panel that Respondent registered and uses the disputed domain name in bad faith, pursuant to Article B (11)(d)(1)(iii) of the ADR Rules. According to Article B (11)(f)(2)(ii) of the ADR Rules there is evidence of bad faith if the disputed domain name domain name has been registered in order to prevent the holder of a name in respect of which a right is recognized or established by national and/or European Union law from reflecting this name in a corresponding domain name, provided that the domain name has not been used in a relevant way for at least two years from the date of registration, as in the present case. In addition it appears not unlikely that the disputed domain name was registered by Respondent primarily for the purpose of disrupting the professional activities of a competitor and to intentionally use the disputed domain name to attract Internet users for commercial gain to Respondent's website or other online location, by creating a likelihood of confusion with a name in respect of which a right is recognized or established by national and/or European Union law with 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 Respondent.
The Panel adds that under the doctrine of passive holding (see CAC .EU Overview 2.0, section IV, 3) lack of an active website is further evidence of bad faith registration and use.

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

Eligibility

Complainants have requested the transfer of the disputed domain name to Complainants. The requested transfer of the disputed domain name to a Complainant can only be granted in case a Complainant is eligible to register .eu domain names according to Article 3 of the Regulation; see also Article B (11)(b) of the ADR Rules.

It is undisputed that Complainants are undertakings established in the Union. The Panel holds that Complainants meet the general eligibility criteria within the meaning of Article 3 of the Regulation and are 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 <violifefoods.eu> be transferred to Complainants.

The decision shall be implemented by the Registry within thirty (30) days of the Parties being notified of the decision, unless Respondent initiates court proceedings in a Mutual Jurisdiction (see Articles B12(a) and B14 of the ADR Rules) and informs the Registry thereof in due time.

PANELISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2023-04-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <violifefoods.eu>

II. Country of the Complainant: Greece and the Netherlands, country of the Respondent: the Netherlands

III. Date of registration of the domain name: 3 December 2009

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
European Union Trademark VIOLIFE No. 008181661 and registration date 3 December 2009.

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 (B(11)(f) ADR Rules):
1. No
2. Why: there is no evidence showing that Respondent might be commonly known by the disputed domain name. There is no website to which the disputed domain name resolves,

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: the disputed domain name has not been used in a relevant way for at least two years from the date of registration (Article B (11)(f)(2)(ii) 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