# Panel Decision for dispute CAC-ADREU-008543

| | |
|---|---|
| Case number | CAC-ADREU-008543 |
| Time of filing | 2023-11-16 13:32:02 |
| Domain names | nootopia.eu |

## Case administrator

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

## Complainant

| | |
|---|---|
| Organization | BIOptimizers USA, inc. |

## Respondent

| | |
|---|---|
| Name | Philip Moore |

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 BIOptimizers USA Inc., a US based corporation.

The Complainant is the owner of a WIPO Registration No. 1711710 “NOOTOPIA” registered on January 8, 2023, that has been extended and registered in the European Union, as per a Statement of Grant of protection dated June 28, 2023.

The Complainant also mentions that it owns a US Corporation named NOOTOPIA, and supplies a certificate of Good Standing for the said corporation, reflecting that the same is incorporated and domiciled in the State of Nevada.

The disputed domain name is <nootopia.eu> and was registered on June 10, 2019.

The Complainant filed a Complaint on September 7, 2023, and amended the same on September 19, 2023.

A. COMPLAINANT

The Complainant simply states: "We own the EU trademark for Nootopia", and requests the transfer of the disputed domain name.

B. RESPONDENT

The Respondent did not file any response to the complaint and was found in default on October 31, 2023.

DISCUSSION AND FINDINGS

The Panel is to decide, in view of the facts and arguments of the parties, whether the conditions of article Article 4.4 of Reg. (EU) 2019/517 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 4.4 of Reg. (EU) 2019/517, “A domain name may also be revoked, and where necessary subsequently 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”.

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

The Complainant justifies that it owns a WIPO Registration No. 1711710 "NOOTOPIA", registered on January 8, 2023, that has been extended and registered in the European Union, as per a Statement of Grant of Protection dated June 28, 2023.

But it is observed that the disputed domain name was registered on June 10, 2019.

The said disputed domain name does predate the Complainant's trademark, and the Complainant has failed to demonstrate to what extent it considers that it owns earlier rights.

Consequently, the Panel finds that the Complainant has not demonstrated its prior rights.

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

The disputed domain name <nootopia.eu> reproduces the Complainant's registered trademark NOOTOPIA.

The addition of the Top-Level Domain ".eu" does not prevent a finding of identity or 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 4.4 of Reg. (EU) 2019/517 are satisfied.

3) ON THE LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

Article 4.4 of Reg. (EU) 2019/517: "A domain name may also be revoked, and where necessarily subsequently transferred to another party, following an appropriate ADR or judicial procedure […] where it (a) has been registered by its holder without rights or legitimate interest in the name".

Pursuant to Article 4.4 of Reg. (EU) 2019/517, 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 has not developed any argument nor produced any evidence that the Respondent would be deprived of any legitimate interest in the disputed domain name.

The conditions of article Article 4.4 of Reg. (EU) 2019/517 are therefore not satisfied.

4) ON THE RESPONDENT'S BAD FAITH

Article 4.4 of Reg. (EU) 2019/517: "A domain name may also be revoked, and where necessarily subsequently transferred to another party, following an appropriate ADR or judicial procedure where it:

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

The Complainant has not substantiated any argument nor produced any evidence in this respect.

It is not claimed nor evident that Respondent may have registered or used the disputed domain name in bad faith.

The Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules (Art 11 ADR Rules).

Although, the Panel, in accordance with Art 7 of the ADR Rules may at its sole discretion conduct its own investigations on the circumstances of the case, he is not obliged to, and can in no event build the entire case for the Complainant, in particular since the Panel must ensure that the Parties are treated fairly and equally.

The conditions of article Article 4.4 b) of Reg. (EU) 2019/517 are not therefore not satisfied.

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

The Complainant is a US corporation having its domicile / place of business in the United States of America, thus outside of the European Union.

The Complainant mentions that its subsidiary is a US Corporation named "Nootopia", and files a certificate of good standing for the said company, but which reflects that the place of business of the same is also in the United States of America.

In its amended complaint, the Complainant provides a postal address in Portugal, but without any explanation nor official document showing that

either the Complainant itself or its subsidiary would have a genuine place of business in Portugal, or anywhere else in the European Union.

The Panel finds that the Complainant does not satisfy the general eligibility criteria for registration set out in Article 3 of Reg. (EU) 2019/517.

Therefore, the requirements for the requested transfer of the disputed domain name to the Complainant are not satisfied (Section B No.1 (b) (12) of the ADR Rules).

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is denied.

## PANELISTS

| Name | William Lobelson |
|---|---|

DATE OF PANEL DECISION 2023-11-16

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: nootopia.eu

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

III. Date of registration of the domain name: 10 June 2019

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:

1. [word] trademark registered in [WIPO / EU], reg. No. [1711710], for the term [term], filed on [8 January 2023], registered on [8 January 2023] in respect of goods and services in classe [05]

V. Response submitted: No

VI. Domain name/s is/are [identical/confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. not substantiated by Complainant

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. not substantiated by Complainant

IX. Other substantial facts the Panel considers relevant:

1. Disputed domain name predates Complainant's trademark

2. Complainant based in US: not eligible to seek transfer of domain name

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: -

XII. [If transfer to Complainant] Is Complainant eligible? No