

Panel Decision for dispute CAC-ADREU-008668

Case number CAC-ADREU-008668

Time of filing 2024-11-16 11:17:31

Domain names toyoutome.eu

Case administrator

Olga Dvořáková (Case admin)

Complainant

Organization TOYOTOMI Co., Ltd.

Organization TOYOTOMI EUROPE SALES B.V.

Complainant representative

Organization HEUKING

Respondent

Organization TOYOUTOME Refrigeration Equipment OÜ

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 Panelist is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

TOYOTOMI Co., Ltd. (hereinafter, the "First Complainant") is a limited company registered in Japan operating inter alia in the air-cooling sector as a manufacturer and seller of air conditioning apparatuses bearing the trademark TOYOTOMI, mainly graphically represented in red block letters with a dot on the vowels. TOYOTOMI EUROPE SALES B.V. (hereinafter, the "Second Complainant") is the European subsidiary of the First Complainant with legal seat in The Netherlands.

The Respondent is an Estonian company incorporated on November 21, 2023, named TOYOUTOME Refrigeration Equipment OÜ. The disputed domain name, www.toyoutome.eu, was registered on November 29, 2023.

A. COMPLAINANT

According to the Complaint, the First Complainant and the Second Complainant are, respectively, the owner and the exclusive licensee of the following three European Union trademark registrations protecting the TOYOTOMI trademark (hereinafter, the TOYOTOMI Trademark" or the "Complainants' Trademark"):

- EUTM n. 12419602 (figurative mark in black) filed on December 11, 2013 for products in classes 4 and 11 and services in class 37
- EUTM n. 14023238 (word mark) filed on May 4, 2015 for products in classes 4 and 11 and services in classes 35 and 37
- EUTM n. 14023394 (figurative mark in grey) filed on May 4, 2015 for products in classes 4 and 11 and services in classes 35 and 37

The Complainants further state that they use the TOYOTOMI Trademark to distinguish inter alia air conditioning apparatuses not only in the word version, but also in a graphic version consisting in the word TOYOTOMI in block capital letters in red or green colour with a dot on the vowels. The First Complainant operates a website whose domain name is toyotomi.jp, whereas the Second Complainant is the owner of the domain name toyotomi.eu, registered since 26 April 2006. They both use their respective websites to offer inter alia air conditioning apparatuses for sale under the TOYOTOMI Trademark.

The Complainants state that the Respondent, which registered the domain name toyoutome.eu on November 29, 2023, operates a website under the URL corresponding to the disputed domain name where it offers inter alia air conditioning apparatuses for sale and uses in the website and on the advertised products a sign composed of the name TOYOUTOME in a graphic representation highly similar to that used by the Complainants for their trademark: the word TOYOUTOME represented in capital block letters in gree colour with a dot on the vowels (hereinafter, the "TOYOUTOME Sign").

The Complainants submitted a picture representing an air cooler bearing the TOYOUTOME Sign and four screenshots of the Respondent's website showing the use of the TOYOUTOME Sign in connection with the offering for sale of air conditioning apparatuses; none of the images, however, bear indications as to the date on which the picture and the screenshots were taken.

The Complainants allege that the disputed domain name is confusingly similar to the Complainants' Trademark in the light of a visual and aural comparison and considering that the Respondent's activities concern the same business sector where the Complainants operate, as it is indicated by the same Respondent upon registration of the company with the Company Register (Annex 5 to the Complaint) where under the section "Areas of activity" it is indicated "Steam and air conditioning supply". They also point out that the Eurid's who-is database lists the domain name toyotomi.eu owned by the Second Complainant under the heading "Similar Domain Names" of the disputed domain name.

The Complainants further deny rights or a legitimate interest of the Respondent in the disputed domain name according to Paragraph B11(d)(1) (ii) of the ADR Rules, alleging that none of the circumstances listed in Paragraph B11(e) of the ADR Rules can be affirmed. With specific reference to the circumstance under Paragraph B11(e)(1), the Complainants point out that the website associated with the disputed domain name is displaying content that impersonated Complainants' official website, not only for the general look-and-feel which has been allegedly copied from the Complainant's website, but also for the use of a sign nearly identical to the Complainants' Trademark in a prominent position. The Claimants deny that the Respondent has been commonly known by the disputed domain name within the meaning of Paragraph B11(e)(2) since the Respondent was incorporated only few days before registration of the disputed domain name (November 21, 2023 as opposed to November 29, 2023). With regard to the circumstance under Paragraph B11(e)(3), the Complainants allege that the Respondent is not making legitimate and non-commercial or fair use of the Disputed Domain Name, highlighting in particular that (i) by searching the words "TOYOUTOME air conditioning" through the Google search engine, two of the first results were pointing to the Second Complainant's website (i.e. toyotomi.eu) (ii) the TOYOUTOME Sign is so highly similar to the Complainants' Trademark. In the light of such circumstances, in the view of the Complainants, the Respondent knew about the Complainants and their trademark when it registered the disputed domain name and by choosing to register and use the disputed domain name, the Respondent has been trying to mislead Internet users into believing that its website was authorized by or associated with the Complainants.

Complaints also state that the Respondent has registered and is using the disputed domain name in bad faith according to Paragraph B11(d)(1) (iii) of the ADR Rules, claiming the presence of circumstances 3) and 4) of Paragraph B11(f). According to the Complainants, the dispute domain name was solely registered by the Respondent to disrupt the Complainants' professional activities by confusing potential customers, namely since the disputed domain name contains an obvious misspelling of the Complainants' name, with the differences being limited to two different vowels. Moreover, according to the Complainants, the Respondent intentionally used the disputed domain name to lead Internet users to its website for commercial gain.

B. RESPONDENT

On October 24, 2024, the Respondent, the Estonian company TOYOUTOME Refrigeration Equipment OÜ, filed a Response claiming that through the website corresponding to the disputed domain name, it is offering for sale "F-GAS quota product" [\[1\]](#). Some screenshots of the website showing content consistent with activities related to F-Gas are submitted in attachment; none of the images, however, bear the date on which such screenshots have been taken, apart from the indication "2024" beside the copyright symbol on the bottom left of picture on page 5 of the Response. The Respondent does not explicitly challenge the allegations and related evidence of the Complaint regarding the different content of the website to which the disputed domain name resolves, apart from declaring that "Complainant can't find one pcs "TOYOUTOME" brand air conditioner in reality. Complainant can't find any "TOYOUTOME" brand air conditioner selling invoice/transportation details". It also further clarifies that the indication of "Steam and air conditioning supply" as the area of activity of the company upon registration with the Company Register was due to the lack of the category within which the specific allegedly activity carried out by the Respondent would have better fitted in.

The Respondent denies confusingly similarity between the disputed domain name and the Complainants' Trademark on the ground that TOYOUTOME is a dictionary word composed of the two words TOYOU and TOME; as it is explained in the website, by using this sign the Respondent "want[s] to create value to our clients and realize our value to ourself". According to the Respondent, the word TOYOTOMI is instead a personal name allegedly copied from the Japanese famous car brand TOYOTA. The Respondent further states that the Complainants' and the Respondent are running different businesses: the former sell heater equipment whereas the latter is engaged in the "F-Gas quota business" [\[2\]](#).

The Respondent further claims that it has a legitimate interest over the disputed domain name since all the circumstances listed in paragraph B11(e) of the ADR Rules are met. In particular, as to the circumstance under Paragraph B11(e)(1), the Respondent claims that it is selling "F-Gas quota" using the email address toni.verge@toyoutome.eu. To prove the circumstance, the Respondent submits:

- few screenshots showing some details of e-mail messages sent or received by the e-mail address toni.verge@toyoutome.eu and allegedly referring to "F-Gas quota" issues. The screen shot is not dated though it appears that the e-mail messages were sent or received on various dates, including December 2023, January and February 2024;
- the screen shot of a mail allegedly sent on July 25, 2024 by the email address associated to the Disputed domain name regarding the transfer of "delegation quotas" and other documentation allegedly proving the transfer.

According to the Respondent, the email address associated with the Disputed domain name is also used for logging in to an EU climate control website which, according to the documents represented in the Response, appears to be the F-Gas Portal of the European Commission.

As regards circumstance under Paragraph B11(e)(2), the Respondent states that it has been commonly known by the domain name because in 2024 it sold 36.639 tons of "F-Gas quota".

The Respondent also claims the occurrence of circumstance under Paragraph B11(e)(3).

Lastly, the Respondent denies that the Disputed domain name was registered primarily for the purpose of disrupting the professional activities of

a competitor (Paragraph B11(f)(3)), on the ground that there is no competition between the Complainants, which are selling heater equipment, and the Respondent, which is instead selling "F-GAS quota product". It also denies the occurrence of the circumstance under Paragraph B11(f)(4) highlighting that TOYOU and TOME are dictionary words.

[1] The Respondent does not explain what "F-Gas quota product" is and what is the activity carried out through the website. However, as a result of autonomous searches carried out by the Panelist, it emerged the following:

- F-Gas stands for fluorinated greenhouse gas. According to the Glossary for F-gas policy of the European Commission (https://climate.ec.europa.eu/eu-action/fluorinated-greenhouse-gases/glossary-f-gas-policy_en), F-Gases are human-made gases which highly contribute to global warming. "F-gases are used in industrial processes for everyday products, equipment such as refrigeration, air conditioning, heat pumps, insulation, fire protection, power lines, and aerosol propellants";
- with the aim of lowering the emissions of hydrofluorocarbons (HFCs), the most common F-Gases, in 2015 the European Union adopted a quota system. The maximum amount of HFCs that can be placed on the market is set per calendar year and is gradually reduced over time, ending at zero in 2050. The Commission is dividing the maximum amount into individual quotas allocated to importers and EU producers based on a method prescribed in Regulation n. 2024/573 of the European Parliament and of the Council of 7 February 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014. Importers and producers that place HFCs on the EU market must hold sufficient quotas to do so. By 31 December each year, the European Commission allocates quotas to companies for the subsequent year.

[2] The Respondent does not explain what the "F-Gas quota business" is; though according to an autonomous search carried out by the Panelist, it seems that F-Gas quotas allocated to importers and EU producers can be transferred and or delegated.

DISCUSSION AND FINDINGS

According to Article 4(4) of the Regulation (EU) 2019/ 517 (hereinafter the "Regulation") and Paragraph B11(d)(1) of the ADR Rules, the Complainants bear the burden of proving the following:

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

1. Identity or confusing similarity

The Complainants have provided uncontested evidence of their rights over the TOYOTOMI Trademark in the EU as a result of being the owner (the First Complainant) and the exclusive licensee (the Second Complainant) of the trademark registrations mentioned above and that such rights have been acquired prior to the registration date of the disputed domain name. Though the Complainants failed to submit the excerpts from the EUIPO's on-line database of the third trademark registration mentioned above, having instead submitted twice the excerpt of the second trademark registration, the existence and scope of protection of the trademark registration at issue has been verified by the Panelist through an autonomous search on the EUIPO's on-line database.

In addition, the Complainants' have also proved rights over the TOYOTOMI Trademark by means of registration and use of their respective websites: toyotomi.jp and toyotomi.eu.

The Panelist agrees with the view of the Complainants according to which the domain name toyoutome.eu is very similar to the TOYOTOMI Trademark. Even without considering the other arguments laid down by the Complainants, a visual comparison shows that the two words only differ by two letters: the final letter, which in the domain name is an E and in the trademark is an I, and the presence in the domain name of a U between the second O and the second T. As a matter of fact, the first four letters of the two names are the same (TOYO and TOYO) whereas the last part of the two words only differs for the last letter (TOME in the domain name and TOMI in the trademark). The two words are also very similar in sound: they share the same number of syllables whereas the vowels and the consonants have an almost identical aural perception.

It is well accepted by .eu ADR and UDRP panels that a generic Top-Level Domains, such as .eu, does not create any distinctiveness of the disputed domain names and is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark.

The argument of the Respondent aimed at excluding similarity in the light of the fact that the word TOYOUTOME is a dictionary word is incorrect and irrelevant. The word TOYOUTOME is not a dictionary word and in any case the mere fact that the domain name is composed of a dictionary word would not exclude identity or similarity with a name in respect of which a right is established.

Therefore, the first condition set forth under Article 4(4) of the Regulation and Paragraph B11(d)(1)(i) of the ADR Rules is fulfilled.

2. Rights or legitimate interests

Complainants deny rights or a legitimate interest of the Respondent in the disputed domain name according to Paragraph B11(d)(1)(ii) of the ADR Rules, alleging that the Complainants and the Respondent have never had any previous relationships, nor have the Complainants ever granted the Respondent with any authorization to use their trademark, and that none of the circumstances listed in Paragraph B11(e) of the ADR Rules can be affirmed.

In particular, the Complainants allege that the Respondent is not using the disputed domain name in connection with the bona fide offering of goods or services, as stipulated in Paragraph B11(e)(1) of the ADR Rules, since the website toyoutome.eu displays a content that impersonated Complainants' official website toyotomi.eu. Though the evidence submitted by the Complainants actually confirm the allegations of the Complainants showing (i) a website with a look-and-feel similar to the official websites of the Complainants, (ii) the offering for sale of air conditioning apparatuses and (iii) the use in a prominent position of the TOYOUTOME Sign, i.e. a sign nearly identical to the Complainants' Trademark, the Respondent furnished a different version as to the use of the domain name, maintaining that the website toyoutome.eu is used for a different purpose, namely for transferring "F-Gas quota" and submitting screen shots according to which such circumstance seems to be proven.

Both parties did not provide any indication as to when the screenshots submitted were taken inducing the Panelist to carry out autonomous searches. Though the attempt made by the Panelist to verify the circumstances alleged by the parties through the Wayback Machine was of no help since the Wayback Machine has not archived the URL of the Disputed domain name, it appears that the website toyoutome.eu is currently having the content shown in the screenshots submitted by the Respondent. However, since there are no elements that bring to think that the screenshots submitted by the parties are not genuine, nor the Respondent has challenged the allegations and the evidence contained in the Complaints as to the content of the website at the time of filing of the Complaint nor proved that the website had the content shown in the screenshots submitted with the Response since before the time of filing of the Complaint, it can be stated, on the balance of probabilities, that the content of the website has been changed by the Respondent after the filing of the Complaint.

For the sake of completeness, it should be pointed out that the Respondent proved that it made use of the email address associated to the disputed domain name (toni.verge@toyoutome.eu) in connection with activities related to "F-Gas quota" even before the filing of the Complaint since, according to the screen shots submitted, email messages from and to the above mentioned email address were exchanged in December 2023, January, February, March and July 2024.

Having said that, it is preliminary crucial to verify which is the time reference for assessing whether the Respondent has rights or legitimate interests in the name according to Paragraph B11(d)(1)(ii). In this regard, though the Panelist did not find case law on the specific issue, in the light of the wording of both Paragraph B11(d)(1)(ii) (according to which the complainant has to prove that "The domain name has been registered by the Respondent without rights or legitimate interest in the name") and Paragraph B11(e)(1), it can be said that the time reference is the time of registration or at the latest the time of filing of the Complaint and that therefore the changes in the circumstances occurring after this time reference are not to be taken into account. The principle has been applied in similar cases and it is reported in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview - <https://www.wipo.int/amc/en/domains/search/overview3.0/#item2a>") according to which "Panels tend to assess claimed respondent rights or legitimate interests in the present, i.e., with a view to the circumstances prevailing at the time of the filing of the complaint."

In this regard, as said before, the screen shots submitted by the Complainants show that at the time of the filing of the Complaint the website to which the disputed domain name resolves (i) had a look-and-feel similar to the official websites of the Complainants, (ii) was offering for sale air conditioning apparatuses and (iii) was displaying in a prominent position the TOYOUTOME Sign, i.e. a sign nearly identical to the Complainants' Trademark. In the light of the above, though the Respondent at that time seems to have also been using the email address including the Disputed domain name (toni.verge@toyoutome.eu) in connection with activities related to "F-Gas quota", on the base of an overall evaluation of the evidence presented and considering the high level of similarity of the TOYOUTOME Sign with the Complainants' Trademark and the affinity between the sectors at issue, the Panelist finds that this use of the domain name does not account for a bona fide offering of goods or services under the meaning of Paragraph B11(e)1.

With regard to the circumstance under Paragraph B11(e)(3), the Panelist agrees with the view of the Complainants according to which the setting up of the company only few days before the registration of the disputed domain name prevents the finding that the Respondent has been commonly known by the domain name. The considerations made with reference to the circumstance under Paragraph B11(e)(1) lead to the conclusion that the Respondent also failed to prove that at the time of filing of the Complaint it was making legitimate and non-commercial or fair use of the domain name as stated in Paragraph B11(e)(3).

In the light of the above, this Panelist finds that the Complainants have made out a prima facie case that the Respondent at the time of filing of the Complaint had no rights or legitimate interests in the disputed domain name and that the Respondent failed to rebut the showing.

3. Bad Faith

Since the Complainants have also claimed bad faith, though the second and the third requirements are alternative, it is appropriate to evaluate also whether, according to Paragraph B11(d)(iii), the Complainants proved that the domain name was registered or used in bad faith. The temporal reference of the assessment is the time of registration of the disputed domain name, as far as bad faith in registration is concerned, or the time of filing of the Complaint, as far as bad faith in the use is concerned.

The allegations of the Complainants regarding bad faith focus on the occurrence of circumstances under Paragraph B11(f)(3) and (4). In this regard, the Complainants maintain that the disputed domain name includes an obvious misspelling of the Complainants' Trademark and that therefore the domain name registration at issue is falling within the category of a typo squatting case. Moreover, the Complainants allege that, in the light of the high resemblance of the disputed domain name and the Complainants' Trademark and of the TOYOUTOME Sign with the graphic representations of the Complainants' Trademark, and also due to the identity of goods distinguished by the signs, it derives that the Respondent intentionally uses the disputed domain name to lead Internet users to its website for commercial gain.

With reference to such allegations, the Respondent points out that whereas the Complainants sell heater equipment, it sells "F-GAS quota product", without taking a specific position as to the allegation and use of the domain name at the time of filing of the Complaint, apart from declaring that Complainants can't find any evidence of sale of air conditioner distinguished by the TOYOUTOME Sign.

The Panelist disagrees with the Complainants' view that the disputed domain name is a typo squatting case. However, for the reasons set forth above, the Panelist finds that the allegations and evidence submitted by Respondent are not enough to rebut the showing made by the Complainants that the disputed domain name was registered and used (at least up to the filing of the Complaint) with the Complainants' trademark in mind, with the intention of taking predatory advantage of their goodwill and reputation and to attract Internet users by creating a likelihood of confusion with the Complainants' trademark.

Therefore, the Panel finds that the disputed domain name was registered and being used, at least up to the filing of the Complaint, in bad faith under Article 4(b) of the Regulation and Paragraph 11(d)(1)(iii) of the ADR Rules.

Eligibility Criteria

The Complaints request the transfer of the disputed domain name to the Second Complainant. As the latter is established in The Netherlands, the general eligibility criteria for registration of the disputed domain name set out in Article 3 of the Regulation is met. Therefore, the Second Complainant is entitled to request the transfer of the disputed domain name.

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

PANELISTS

Name **Ilaria Carli**

DATE OF PANEL DECISION **2024-11-16**

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: toyoutome.eu

II. Country of the First Complainant: Japan, country of the Second Complainant: The Netherlands, country of the Respondent: Estonia

III. Date of registration of the domain name: 29 November 2023

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

1. figurative trademark registered in the EU, reg. No. 12419602 for the term TOYOTOMI in a graphic representation, filed on 11 December 2013 in respect of goods in classes 4 and 11 and services in class 37
2. word trademark registered in the EU, reg. No. 14023238 for the term TOYOTOMI, filed on 4 May 2015 in respect of goods in classes 4 and 11 and services in class 35 and 37
3. figurative word trademark registered in the EU, reg. No. 14023394 for the term TOYOTOMI in a graphic representation, filed on 4 May 2015 in respect of goods in classes 4 and 11 and services in class 35 and 37

V. Response submitted: Yes

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: the Complainants proved that at the time of filing of the Complaint the Respondent was using the disputed domain name to operate a website whose content was impersonating the Complainants' official website and to offer for sale the same products sold by the Complainants' under a trademark highly similar to the Complainants' trademark.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):

1. Yes
2. Why: the Complainants proved that at the time of filing of the Complaint the Respondent was using the disputed domain name to operate a website whose content was impersonating the Complainants' official website and to offer for sale the same products sold by the Complainants' under a trademark highly similar to the Complainants' trademark.

IX. Other substantial facts the Panel considers relevant: both parties submitted evidence of the use of the disputed domain name lacking of references on time; however, on the balance of evidence submitted, the Panelist found that the content of the website to which the disputed domain name resolves has been changed after the filing of the Complaint.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: see under point IX. above.

XII. Is Complainant eligible? Second Complainant Yes
