

ADMINISTRATIVE PANEL DECISION

Domitys SAS v. Adrien Partigot
Case No. DEU2022-0010

1. The Parties

The Complainant is Domitys SAS, France, represented by PROMARK, France.

The Respondent is Adrien Partigot, France.

2. The Domain Names, Registry and Registrar

The Registry of the disputed domain names <domitys-invest.eu> and <domitysinvest.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain names is Namecheap, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2022. On April 1, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain names. On April 6, 2022, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2022, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 5, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 11, 2022. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 27, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on July 5, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant is a French company founded in 2006, which belongs to the AEGIDE group. AEGIDE owns and operates under the DOMITYS name about 150 senior assisted-living homes in France and several others in Belgium and Italy. It offers hotel services and other facilities to their residents. An affiliated company, DOMITYS INVEST, offers real estate investment services in the homes operated by AEGIDE.

The Respondent is apparently located in France.

The Complainant owns rights in two DOMITYS European Union trademarks, respectively registered under No. 011048791 on December 13, 2012 and under No. 016888596 on March 13, 2018, and in the DOMITYS INVEST L'AVENIR AU PRÉSENT French trademark No. 4421090 (where "l'avenir au present" is reproduced in lower letters), registered on May 11, 2018 (the latter hereinafter referred to as: "the Mark").

In addition, the Complainant has registered several domain names, including <domitys.fr>, registered on October 9, 2006, which resolves to its official website, as well as <domitys-invest.fr> and <domitys-invest.com>, both registered on November 30, 2016.

The disputed domain names <domitys-invest.eu> and <domitysinvest.eu> were registered on October 18, 2021.

The Complainant has submitted evidence that one of the disputed domain names, <domitysinvest.eu>, was used to send phishing emails.

At the time of this decision, the disputed domain names resolve to an error page.

5. Parties' Contentions

A. Complainant

(i) The Complainant submits that the disputed domain names reproduce the Mark, in which the Complainant has rights, and are nearly identical, and confusingly similar, to the Mark, insofar as the disputed domain names contains the Mark in its entirety.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain names in bad faith and is also using them in bad faith.

(iv) The Complainant requests that the disputed domain names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects: Admissibility of a request to transfer and failure to comply

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, as amended by Regulation (EU) No 2019/517, and thus that, pursuant to sub-paragraph B11(b) of the ADR Rules, the transfer of the disputed domain name is a remedy available to the Complainant.

Pursuant to sub-paragraph B11(a) of the ADR Rules, the Panel is empowered to decide a Complaint on the basis of the statements and documents submitted.

Under Paragraph B11(d) of the ADR Rules, it is the Complainant's burden to establish that all of the required criteria for granting the remedy sought have been met.

Under the ADR Rules, sub-paragraph B10(a), a failure by the Respondent to comply with any time period is a ground to accept the claims of the Complainant. As noted above, the Respondent has failed to respond within the time period provided.

Under sub-paragraph B10(b) of the ADR Rules, the Panel is empowered to draw from the Respondent's failure to comply such inferences as it considers appropriate, and under sub-paragraph B7(d) of the ADR Rules, the Panel is empowered to determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in sub-paragraph B11(e) of the ADR Rules or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain names, such as making legitimate noncommercial or fair use of the disputed domain names.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of sub-paragraph B11(d) of the ADR Rules

A. 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 European Union law

In comparing the Mark with the disputed domain names <domitys-invest.eu> and <domitysinvest.eu>, it is evident that they consist of the two dominant elements of the Mark, i.e. "Domitys" and "invest", these two elements being separated by a hyphen or not separated at all within the disputed domain names, and followed by the country code Top-Level Domain ("ccTLD") ".eu". If the disputed domain names are compared with the DOMITYS trademark, the Complainant's trademark is also confusingly similar.

It is well established that a ccTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the disputed domain names <domitys-invest.eu> and <domitysinvest.eu> are confusingly similar to the Mark, because the Mark is recognizable within the disputed domain names. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential

[Overview 3.0](#)”), sections 1.8 and 1.9.¹

Thus, the Complainant has satisfied the requirement of sub-paragraph B11(d)(1)(i) of the ADR Rules.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all required elements of sub-paragraph B11(d)(1) of the ADR Rules, with regard to sub-paragraph B11(d)(1)(ii) of the ADR Rules, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the Panel’s view is that sub-paragraph B11(d)(1)(ii) of the ADR Rules shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel finds the Complainant has made in this case, based on the facts and arguments set out above. See [WIPO Overview 3.0](#), section 2.1.

As previously noted, the Respondent offered no reason for selecting the disputed domain names. There is no evidence that the Respondent is known by the disputed domain names or uses (or has made *bona fide* preparations to use) the disputed domain names in a business or otherwise.

The nature of the disputed domain names is such that it carries a risk of implied affiliation with the Complainant, noting the composition of the disputed domain names and their similarity to the Mark.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain names.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain names.

In the circumstances, the Panel concludes that the Complainant has established the requirement of sub-paragraph B11(d)(1)(ii) of the ADR Rules with respect to the disputed domain names.

C. Registered or Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant’s arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant in registering domain names confusingly similar to the Mark.

It is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, given that the Respondent used one of the disputed domain names to send phishing emails, the Panel finds it impossible to believe that the Respondent chose to register the disputed domain names randomly with no knowledge of the Mark.

The Panel notes that the disputed domain names are nearly confusingly similar to the Complainant’s Mark, which, in the absence of any explanation of the reasons for the registration by the Respondent, and noting the use of the disputed domain name <domitysinvest.eu>, leads the Panel to infer that the disputed domain

¹ Noting the similarities between the Uniform Domain Name Dispute Resolution Policy (the “UDRP”) and the ADR Rules, the Panel has referred to prior UDRP cases and the [WIPO Overview 3.0](#), where appropriate.

names were registered to take advantage of the Complainant's goodwill in the Mark, for fraudulent purposes.

Prior UDRP panels have held that the passive holding of a domain name does not prevent a finding of bad faith, especially when its good faith use is in no way plausible, considering the specificity of the activity (see section 3.3 of the [WIPO Overview 3.0](#)). The Panel finds it is indeed not possible to imagine any plausible future active use of the disputed domain names that would not be illegitimate, considering the specificity of the Complainant's activity and the composition of the disputed domain names.

Moreover, it is well established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel concludes, notably in the light of the Respondent's electing not to provide any substantive defense of its position, that the Respondent's registration and use of the disputed domain names constitute bad faith, and that the requirement of sub-paragraph B11(d)(1)(iii) of the ADR Rules is also satisfied in this case.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain names <domitys-invest.eu> and <domitysinvest.eu> be transferred to the Complainant.

The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A1 of the ADR Rules.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: July 14, 2022