

PANEL DECISION

GoliathTech Inc and GoliathTech Europe v. ITtrust Domain Services LTD Case No. DEU2024-0009

1. The Parties

The Complainants are GoliathTech Inc., Canada (“First Complainant”) and GoliathTech Europe, Belgium (“Second Complainant”), hereinafter referred to as “Complainants”, represented by Fiducial Legal By Lamy, France.

The Respondent is ITtrust Domain Services LTD, Ireland.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <goliathtechpiles.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is 1API GmbH.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2024. On April 25, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On April 26, 2024, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (not disclosed) and contact information in the Complaint.

The Center sent an email communication to the Complainant on April 29, 2024, 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 3, 2024.

The Center verified that the Complaint together with the amended 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 13, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 7, 2024. 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 First Complainant is a company organized under the laws of Canada, while the Second Complainant is a company organized under the laws of Belgium. Both are part of the GoliathTech Group that provides helical (screw) pile solutions to a wide range of customers in North America and Europe through physical stores and through the Internet.

The First Complainant owns a number of trademark registrations around the world consisting of or including the term Goliath Tech, e.g., the European Union Trademark Registration (“EUTM”) No. 012030839 for the word mark GOLIATHTECH registered since December 26, 2013, for screw and helical piles.

The First Complainant also owns a number of domain name registrations comprising the GOLIATHTECH mark, e.g., <goliathtechpiles.com> registered since March 26, 2013, which resolves to the Complainants’ corporate website.

The disputed domain name was registered on February 21, 2017, and it appears that it has not been used actively other than to redirect to a static web page of a company that provides various web hosting services.

5. Parties’ Contentions

A. Complainants

The Complainants contend that the disputed domain name that incorporates the GOLIATHTECH mark is confusingly similar to it since the addition of the term “piles” to the mark in the disputed domain name does not prevent a finding a confusing similarity between the disputed domain name and the mark.

The Complainants contend that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in Paragraph B(11)(e) of the ADR Rules.

The Complainants claim that the due to the composition of the disputed domain name and reputation of the GOLIATHTECH mark in the relevant business sector the Respondent registered the disputed domain name with the Complainants’ business and mark in mind intending to unlawfully profit from the reputation of their business and the mark which is evidence of bad faith.

The Complainants claim that the Respondent has also been involved in several .eu ADR proceedings decided against the Respondent, which is additional evidence of bad faith.

The Complainants request that the disputed domain name <goliathtechpiles.eu> be transferred to the Second Complainant.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

According to Paragraph B11(d)(1) of the ADR Rules “the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in an ADR Proceeding where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated, that:

- (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”.

The Panel notes that due to the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”) it will also refer to UDRP precedents, where appropriate.

6.1. Procedural Matter – Multiple Complainants

The ADR Rules do not expressly contemplate the possibility of a .eu ADR complaint filed by multiple complainants. However, prior domain name disputes decided pursuant to the UDRP have shown that under certain circumstances a single complaint filed by more than one complainant against a single respondent may be accepted.

According to section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “[when] assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation”.

The Complainants have established that they belong to the same group of companies and therefore have common interest in the disputed domain name and with that common grievance against the Respondent concerning the disputed domain name. Furthermore, the Panel accepts that it would be procedurally inefficient not to permit the consolidation in this matter. These facts and circumstances in view of the Panel warrant permitting consolidation in this proceeding.

6.2. Substantive Matters – Three Elements

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainants’ trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainants have shown rights in respect of a trademark protected in the territory of the European Union.

The disputed domain name is confusingly similar to the GOLIATHTECH mark, which is reproduced in the disputed domain name in its entirety. The addition of the term “piles” to the mark in the disputed domain name does not prevent and finding of confusing similarity between the disputed domain name and the mark. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The Panel finds that the requirements of Paragraph B11(d)(1)(i) of the ADR Rules are met.

B. Rights or Legitimate Interests

Paragraph B11(e) of the ADR Rules provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although pursuant to paragraph B11(d) of the ADR Rules the overall burden of proof that the Respondent has registered the disputed domain name without having rights or legitimate interests in the disputed domain name is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants’ prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the ADR Rules or otherwise.

It is evident that the Complainants have never authorized, licensed, or allowed the Respondent to use the GOLIATHTECH mark in the disputed domain name or in any other way that would confer validity or legitimacy upon such usage.

The Respondent’s redirection of the disputed domain name to a static web page of a company that provides various web hosting services can’t confer any rights or legitimate interests on the Respondent regarding the disputed domain name.

In addition, the inherently misleading composition of the disputed domain name, namely addition to the Complainants’ trademark in the disputed domain name a descriptive term describing the Complainants’ primary product carries a risk of implied affiliation with the Complainant and thus cannot confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the requirements of Paragraph B11(d)(1)(ii) of the ADR Rules are met.

C. Registered or Used in Bad Faith

The Complainant has met the criteria under the paragraph B(11)(d)(1)(ii) of the ADR Rules and thus it is not necessary for the Panel to examine the Complainants’ assertions on the Respondent’s bad faith registration and or use of the disputed domain name.

However, the Panel notes that the Complainants’ provided sufficient arguments and evidence which indicate the Respondent’s bad faith in registration or use of the disputed domain name.

The Complainants’ mark which the Respondent incorporated into the disputed domain name is inherently distinctive for the products at issue that is for screw and helical piles and predates the registration of the disputed domain name. Thus, in view of the Panel it is highly likely that the Respondent had in mind the Complainants’ business and trademark at the time of registration of the disputed domain name and registered it in order to target the Complainants and the GOLIATHTECH trademark within the meaning of paragraph B11(f)(4) of the ADR Rules, which is evidence of bad faith. The addition of the term “piles” to the mark in the disputed domain name further supports the Respondent’s targeting of the Complainants in the circumstances of this case, particularly noting that “piles” are the Complainants’ primary products.

The Complainants' have also evidenced the Respondent's history of registering trademark-abusive domain names. Prior UDRP panels have condemned the Respondent for misappropriation of third parties' trademarks as domain names, e.g. in *Gianluca Mech S.p.A. v. ITtrust Domain Services LTD*, WIPO Case No. [DEU2019-0015](#); *Alfa Gamma S.p.A. v. ITtrust Domain Services LTD*, WIPO Case No. [DEU2019-0019](#) and *BioNTech SE v. ITtrust Domain Services LTD*, WIPO Case No. [DEU2019-0015](#). Such conduct is further evidence of the Respondent's bad faith. Paragraph B11(f)(2)(i) and [WIPO Overview 3.0](#), section 3.1.2.

Accordingly, the criteria set out in paragraph B(11)(d)(1)(iii) of the ADR Rules is also satisfied.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name, <goliathtechpiles.eu>, be transferred to the Second Complainant having its registered office in Belgium, and thus, satisfying the general eligibility criteria for registration of a .eu domain name as set out in Article 3(c) of Regulation (EU) 2019/517.¹

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: June 21, 2024

¹ 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 A(1) of the ADR Rules.