

Panel Decision for dispute CAC-ADREU-008331

Case number	CAC-ADREU-008331
Time of filing	2022-06-17 11:17:48
Domain names	kaufmanbroad-fr.eu

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	KAUFMAN & BROAD EUROPE ()
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Respondent

Name	paul lavachere
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FACTUAL BACKGROUND

Complainant owns rights in the “KAUFMAN BROAD” sign and shows valid trademark right as follows:

- International figurative trademark “KAUFMAN BROAD” No. 736440 dated March 24, 2000, duly renewed, that designates Switzerland and that is based on the French trademark No. 99816493.

Complainant also operates domain names including the distinctive wordings “KAUFMAN” and “BROAD”, namely <kaufmanbroad.com> registered on March 18, 2014 and <kaufmanbroad.fr>, registered on November 2, 2015.

Complainant is a real estate development and construction company.

Complainant’s activity began in 1968.

Complainant identifies itself as one of the first French developer-Builders by the combination of its size, profitability and the power of its brand.

Respondent is Paul Lavachere, located in Paris, France.

On February 28th, 2022, Respondent registered the disputed domain name <kaufmanbroad-fr.eu>, which resolves to a parking page with commercial links. In addition, MX servers are configured on this disputed domain name.

A. COMPLAINANT

- Complainant argues that the disputed name is confusingly similar to its trademark and its domain names associated.

Complainant considers that the disputed domain name is confusingly similar to its KAUFMAN BROAD registered trademark.

Indeed, the disputed domain name incorporates the registered trademark in its entirety. Complainant contends that the mere

addition of the letters “FR” does not change the overall impression of the designation as being connected to the Complainant’s trademark KAUFMAN BROAD.

In this respect, Complainant considers that the likelihood of confusion between the disputed domain name and its trademark is strong. Notably, previous Panels already asserted that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”, see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

Complainant states that the addition of the ccTLD “.EU” does not change the overall impression of the disputed domain name as being connected to Complainant’s trademark, see CAC Case No. 07950, TrueLayer Limited v. John Johnson.

- Complainant further asserts that Respondent does not have any rights nor legitimate interest in the disputed domain name.

First, Complainant asserts that Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. See for instance NAF Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>

Secondly, Complainant highlights that Respondent is not affiliated with nor authorized by the Complainant in any way. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant does not carry out any activity for, nor has any business with Respondent. Complainant asserts that he has granted neither license nor authorization to Respondent to make any use of Complainant’s trademark KAUFMAN BROAD, or apply for registration of the disputed domain name.

Finally, Complainant submits a screenshot demonstrating that the disputed domain name resolves to a parking page with commercial links. He recalls that Past panels have found that it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See NAF Case No. FA 970871, Vance Int’l, Inc. v. Abend, and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe. Therefore, Respondent has no right or legitimate interest in respect of the disputed domain name.

- Complainant finally comes down to the conclusion that Respondent’s registration and use of the disputed domain name amounts to bad faith.

Complainant asserts that the disputed domain name is confusingly similar to its trademark KAUFMAN BROAD. Complainant adds that by researching on Google the expression “KAUFMAN BROAD FR” all of the results being displayed are related to Complainant. Complainant therefore infers that Respondent registered the disputed domain name with full knowledge of Complainant’s trademark and therefore could not ignore Complainant.

Besides, Complainant contends that the fact that the disputed domain name resolves to a parking page with commercial links illustrates that Respondent attempted to attract Internet users for commercial gain to his own website thanks to Complainant’s trademarks for its own commercial gain, which is an evidence of bad faith, see WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

B. RESPONDENT

Respondent did not provide any response to the complaint, and is therefore in default.

DISCUSSION AND FINDINGS

Pursuant to article 21 (1) of the European Regulation n° 874/2004 relating to the Speculative and abusive registrations: “a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1), 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”

As a result, to dispute the registration of a Domain Name the Complainant has to demonstrate that:

- 1- The Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law.
- 2- The Domain Name is registered by the holder without rights or legitimate interest in the name; or
- 3- The Domain Name is registered or is being used in bad faith.

(i) Identical or confusingly similar

Complainant demonstrates it has valid trademark rights in the KAUFMAN BROAD sign.

The Panel recognizes that Complainant’s trademark rights in the KAUFMAN BROAD sign are established.

The Panel also agrees that the disputed domain name is confusingly similar to Complainant’s KAUFMAN BROAD trademark, the suffix “.FR” making no difference. The mere addition of the geographical suffix “fr” – referring to France – does not prevent the confusing similarity between Complainant’s trademark and the disputed domain name (WIPO Case No. D2018-1878, Robertet SA v. Marie Claude Holler, WIPO Case No. D2018-1645, Accor v. Pierre Masson, WIPO Case No. D2016-1984, JD Sports Fashion (France) S.A.S. v. Li Dong, and WIPO Case No. D2021-2753, Sodexo v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf/ Name Redacted).

In addition, the disputed domain name <kaufmanbroad-fr.eu> incorporates Complainant’s Registered Trademarks “KAUFMAN BROAD” in its entirety. In several decisions, Panels considered that the incorporation of a trademark in its entirety may be sufficient to establish that the domain name is identical or confusingly similar to Complainant’s trademark (WIPO Case No. D2021-2689, Virgin Enterprises Limited v. Guman Sulaen, Sulaen Company / Ivan Petrenkos / Leonid Duhar / Josh White, Build LMTD / Name Redacted ; WIPO Case No. D2011-1627, L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang, WIPO Case No. D2010-1059, Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin, WIPO Case No. D2007 1629, F. Hoffmann-La Roche AG v. Relish Entreprises, and WIPO Case No. D2000-0113, The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc. and WIPO Overview 3.0 , section 1.7). This happens to be the case here.

Accordingly, by registering said domain name, Respondent has created a likelihood of confusion with Complainant’s trademark. It is likely that the domain name could mislead Internet users into thinking that it is, in some way, associated with Complainant.

As a result, the Panel finds that the domain name is identical or at least confusingly similar to the trademark “KAUFMAN BROAD” owned by Complainant.

(ii) No rights nor legitimate interests

Complainant shall provide a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name. The burden of proof thereto shifts to Respondent.

This standard has been recognized throughout continuous case law, see WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., where it was established that a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

Complainant asserts that Respondent is not identified in the Whois database as the disputed domain name and therefore was not commonly known by the disputed domain name, In addition, Complainant never granted any authorization to Respondent to use its trademark nor to register the disputed domain name.

Furthermore, Respondent did not provide a reply to the Complaint. Previous Panels have held that such mutism from the Respondent's part was proof that Complainant and Respondent had no relation and that Respondent is not commonly known under the disputed domain name (see FILEHIPPO S.R.O. v. whois agent, Case No. 102279 (CAC January 31st, 2019), "In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.").

Respondent failed to answer the allegations discussed in the Complaint. Therefore, the contentions in the Complaint are presumed correct.

Because there is an absence of an apparent right or legitimate interest and the failure of the Respondent to provide evidence illustrating that they have a legal right or legitimate interest, the Panel determines that Respondent has no rights or legitimate interests regarding the disputed domain name.

(iii) Registration or Use in Bad Faith

To comply with article 21 (1) of the European Regulation n° 874/2004, Complainant must demonstrate that the disputed domain name is registered or is being used in bad faith. It is then not necessary to prove both registration and use in bad faith but rather it is sufficient if evidence illustrates one of the two elements discussed is met in order to comply with article 21 (1) of the European Regulation n 874/2004.

It is established that the disputed domain name directed to a parking page with commercial links. In this regards, Past Panels have repeatedly held that such may constitute an attempt from Respondents to attract Internet users for commercial gain and that it causes confusion thanks to the fact that the domain names are identical or confusingly similar to Complainant's rights. that the holding of a domain name without an active site corresponding to it could, in some cases, be considered a bad faith use of the domain name (see WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC).).

The Panel thus considers that the disputed domain name is being used in bad faith by Respondent and that the third element is fulfilled.

DECISION

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

the Complaint is Accepted

the domain name KAUFMANBROAD-FR.EU be transferred to the Complainant

PANELISTS

Name	Nathalie Dreyfus
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DATE OF PANEL DECISION	2022-06-13
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Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: kaufmanbroad-fr.eu

II. Country of the Complainant: France, country of the Respondent: France

III. Date of registration of the domain name: 28 February 2022

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

1. Figurative International trademark registered in Switzerland, reg. No. 736440, for the term "KAUFMAN BROAD", filed on March 24 2000, registered on March 24 2000 in respect of goods and services in classes 19, 35, 36 and 37.

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 (Art. 21 (2) Regulation (EC) No 874/2004):

1. No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Yes

2. Parking page

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. [If transfer to Complainant] Is Complainant eligible? Yes
