

ADMINISTRATIVE PANEL DECISION

AFS Wealth Management and Insurance Advisers Limited v. Gemini Case No. DEU2022-0007

1. The Parties

Complainant is AFS Wealth Management and Insurance Advisers Limited, Ireland, represented by Intangibles Legal, S.L.P., Spain.

Respondent is Gemini, Spain.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <abbeywealth.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 8, 2022. On March 8, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On March 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on March 23, 2022, providing the registrant and contact information disclosed by the Registry, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 28, 2022.

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 Respondent of the Complaint, and the proceedings commenced on March 31, 2022. In accordance with the ADR Rules, Paragraph B(3)(a), the due date for Response was May 16, 2022. Respondent sent an informal email to the Center on March 31, 2022. The Center notified Respondent on April 13, 2022, that the Response was administratively deficient. As Respondent made no other submission, the Center notified Respondent's default on May 22, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on May 24, 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

Complainant is a company organized under the laws of Ireland that is active in the financial services industry, trading as “Abbey Wealth”.

Complainant has provided evidence that it is the registered owner of the following trademark relating to its company name and brand ABBEY WEALTH:

- Word mark ABBEY WEALTH, European Union Intellectual Property Office (EUIPO), registration number: 018232487, registration date: September 18, 2020, status: active.

Moreover, Complainant has demonstrated to own numerous domain names including Complainant’s ABBEY WEALTH trademark, e.g since August 2010 the domain name <abbeywealth.com>, which redirects to Complainant’s official website at “www.abbeywealth.com”, where Complainant promotes and offers its services in the financial industry.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Spain and has registered the latter on March 7, 2021. By the time of the rendering of this decision, the disputed domain name does not resolve to any content on the Internet. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at “www.abbeywealth.eu”, made up of copies of substantial parts of Complainant’s official website (including images, call to action buttons and logos), and thereby displaying contact information which directly linked to Respondent, e.g. the email address registered in the Whois information for the disputed domain name.

When Complainant became aware of Respondent’s copied website under the disputed domain name, it filed a trademark infringement claim with the Registrar, as a consequence of which Respondent’s copied website was (and still is) suspended. Also, the Central Bank of Ireland issued a press release on February 10, 2022, warning the public of illegal financial activities on Respondent’s copied website under the disputed domain name.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it was established back in 2007 and currently operates in more than 100 countries worldwide, including in Spain where Respondent is located.

Complainant submits that the disputed domain name is identical or confusingly similar to Complainant’s ABBEY WEALTH trademark as it fully incorporates the latter. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has neither authorized Respondent to register or use the disputed domain name nor have the Parties any contractual relationship with each other, (2) according to online searches undertaken by Complainant, Respondent does not hold any type of trademark rights over the sign “ABBEAY WEALTH”, and (3) the way in which the disputed domain name is being used by Respondent creates a risk of confusion amongst Internet users and, therefore, cannot be regarded as fair. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent’s

copied website was using images, call to action buttons and logos which were taken directly from Complainant's website, while the website's footer included Complainant's company details and trading name, and (2) Respondent made use of a logo sign which fully reproduced and incorporated the term "Abbey" and which was very similar to Complainant's official ABBEY WEALTH logo.

B. Respondent

Respondent did not formally respond to the Complaint, but sent an email communication to the Center on March 31, 2022, in which it stated: "This website is nothing to do with me, I have tried to raise disputes myself as this was never supposed to be published! It was made as a mock up design for future website builds and has never been in use. It has now been deactivated and is no longer live."

6. Discussion and Findings

Pursuant to Article 21(1) of EU Regulation 874/2004 as well as Paragraph B11(d)(1) of the ADR Rules, it is for Complainant to establish that:

- (i) The disputed 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 disputed domain name has been registered by Respondent without rights or legitimate interests in the name; or
- (iii) The disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right is recognized or established by national law of a Member State and/or European Union law

The Panel concludes that the disputed domain name is identical with the ABBEY WEALTH trademark, of which Complainant has proven to be the registered owner, which enjoys protection for the territory of the European Union, and which was well registered before the disputed domain name.

The disputed domain name incorporates the ABBEY WEALTH trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety is normally sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see WIPO Overview on WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).¹ Moreover, noting that the applicable country-code Top Level Domain ("ccTLD"), here ".eu", as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1), and given that there are no alterations or additions to Complainant's ABBEY WEALTH trademark in the disputed domain name, it is reasonable to even find for identity between those two.

Therefore, the Panel holds that the requirements of Paragraph B11(d)(1)(i) of the ADR Rules are met.

B. No Rights or Legitimate Interests

The Panel is further convinced, on the basis of Complainant's undisputed contentions, that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

¹ Due to the numerous parallels between the UDRP and the ADR rules, the Panel can also draw on the established award practice in UDRP proceedings in relevant cases.

Pursuant to the ADR Rules, Paragraph B11(d)(1)(ii), it is up to Complainant to plead and prove accordingly that the disputed domain name has been registered by Respondent without rights or legitimate interests therein. The ADR Rules contain in Paragraph B11(e) a non-exhaustive list of case scenarios suitable to prove rights or legitimate interests of a respondent. Inasmuch as it is typically difficult to prove a negative fact (here the absence of rights or legitimate interests), it is in line with the majority view of UDRP panels as well as in .eu ADR proceedings that it is sufficient if Complainant establishes a so-called *prima facie* case. This results in a shifting of the burden of production and it is then up to Respondent to present and prove that there are corresponding rights or legitimate interests in the disputed domain name (see for example *Lidl-Stiftung & Coupon KG v. Name Redacted*, WIPO Case No. [DEU2018-0012](#)).

Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its ABBEY WEALTH trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "Abbey Wealth" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, obviously ran a website under the disputed domain name which copied substantial parts of Complainant's official website (including images, call to action buttons and logos), and thereby displayed contact information which directly linked to Respondent, e.g. the email address registered in the Whois information for the disputed domain name. Such making use of the disputed domain name obviously neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the ADR Rules.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has not submitted a formal Response and basically has only put forward that it had nothing to do with the disputed domain name, it has not met that burden.

Therefore, the Panel finds that the disputed domain name was registered by Respondent without any rights or legitimate interests therein, which is why the requirements of Paragraph B11(d)(1)(ii) of the ADR Rules are met, too.

C. Registered or Used in Bad Faith

For the sake of completeness, the Panel, in addition, holds that the disputed domain name also has been registered or is being used in bad faith.

As described above, Respondent at some point used the disputed domain name, which is identical to Complainant's ABBEY WEALTH trademark, to resolve to a website made up of copies of substantial parts of Complainant's official website (including images, call to action buttons and logos), and thereby displaying contact information which directly linked to Respondent, e.g. the email address registered in the Whois information for the disputed domain name. Doing so, allows no other conclusion but that the disputed domain name was intentionally used by Respondent to attract Internet users, for commercial gain, to Respondent's own website, by creating a likelihood of confusion with Complainant's ABBEY WEALTH trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website, which is a clear indication of bad faith within the meaning of Paragraph B11(f)(2)(iii) of the ADR Rules. Respondent's explanation given in its email communication to the Center of March 31, 2022, that the copied website under the disputed domain name "was made as a mock up design for future website builds and has never been in use" cannot be qualified other than as a pretext for not having used the disputed domain name in bad faith, given that the disputed domain name is even identical with Complainant's ABBEY WEALTH trademark and that the content of Respondent's copied website was clearly of such nature as to somehow take unfair advantage of or otherwise abuse Complainant's trademark, which exactly is understood to be the broader meaning of bad faith (see [WIPO Overview 3.0](#), section 3.1).

Accordingly, the Panel finds that the requirements of Paragraph B11(d)(1)(iii) of the ADR Rules are met, too.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <abbeywealth.eu> be transferred to Complainant, having its registered office within Ireland, and, thus, satisfies the general eligibility criteria for registration of a .eu domain name as set out in Article 4(2)(b)(i) of Regulation (EC) No. 733/2002 as amended by Regulation (EU) 2019/517.²

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: June 2, 2022

² The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.