

PANEL DECISION

Leaf Systems GmbH v. Monty Python

Case No. DEU2023-0019

1. The Parties

The Complainant is Leaf Systems GmbH, Germany, represented by SONN Patentanwälte, Austria.

The Respondent is Monty Python, Estonia.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <leafsystems.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is EURid vzw.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 6, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On June 7, 2023, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 14, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was July 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 6, 2023. Due to an apparent issue with the notification, on July 12, 2023, the Center granted the Respondent until July 17, 2023, to indicate whether the Respondent would like to participate to this proceeding. The Respondent did not submit any communication. Accordingly, the Center notified the Respondent’s default on July 24, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on July 26, 2023. 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).

The language of the proceeding is English, being the language of the Registration Agreement, as per Paragraph A(3)(a) of the ADR Rules.

4. Factual Background

The Complainant is Leaf Systems GmbH, a German company operating in the field of selling payment terminals and software for payment terminals and owning the following trademark registrations:

- German Trademark Registration No. 302014038574 for LEAF SYSTEMS, registered on February 20, 2015;
- European Union Trade Mark Registration No. 018460246 for LEAF, registered on November 15, 2021.

The Complainant operates also on the Internet, being “www.leaf-systems.eu” its official website.

The Complainant provided evidence in support of the above.

The disputed domain name was registered by the Respondent on January 27, 2022, and its subdomains, such as “ondemand.leafsystems.eu” and “test.leafsystems.eu”, redirect Internet users to the website “www.orderbird.com”, belonging to a Complainant’s competitor.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its trademark LEAF SYSTEMS, as the disputed domain name entirely incorporates the Complainant’s trademark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant’s trademark LEAF SYSTEMS is distinctive and known in the field of selling payment terminals and software for payment terminals. Therefore, the Respondent targeted the Complainant’s trademark at the time of registration of the disputed domain name and it is using its subdomains, such as “ondemand.leafsystems.eu” and “test.leafsystems.eu”, to redirect Internet users to a website, belonging to a Complainant’s competitor. The Complainant assumes that the owner of the website, which the disputed domain name resolves to, is not related to the Respondent, and contends that the use of the disputed domain name by the Respondent is very likely to damage the Complainant’s business and qualifies as bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

As stated in paragraph A(1) of the ADR Rules “[the] ADR Rules are applicable to domain name disputes where the domain name has been registered under the .eu Top Level Domain”.

In order to succeed in its Complaint, the Complainant is required under Paragraph B(11)(d)(1) of the ADR Rules to demonstrate the following:

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

(i) 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

The Panel finds that the Complainant is the owner of the German Trademark LEAF SYSTEMS and that the disputed domain name is identical to the trademark LEAF SYSTEMS.

It is well established in decisions under the ADR Rules that the country-code Top-Level Domain (“ccTLD”) “.eu” is typically ignored when assessing the similarity between a trademark and a domain name.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant’s trademark, pursuant to Paragraph B(11)(d)(1)(i) of the ADR Rules.

(ii) Rights or Legitimate Interests

The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that it has no relationship or association with the Respondent, and has not authorized the Respondent to use or register in a domain name the LEAF SYSTEMS trademark. The disputed domain name is used, via subdomains, to redirect Internet users to a website, belonging to a Complainant’s competitor.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The Panel could not find any evidence by referring to the examples listed in Paragraph B(11)(e) of the ADR Rules that:

- (i) prior to commencing this proceeding the Respondent has used the disputed domain name in connection with the offering of goods or services or has made demonstrable preparations to do so; or that
- (ii) the Respondent as an undertaking, organization or natural person has been commonly known by the disputed domain name; or that
- (iii) the Respondent is making a legitimate and noncommercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

On the contrary, the use of the subdomains of the disputed domain name, such as “ondemand.leafsystems.eu” and “test.leafsystems.eu”, to redirect Internet users to a website, belonging to a Complainant’s competitor, is very likely to damage the Complainant’s business.

The Panel therefore finds that Paragraph B(11)(d)(1)(ii) of the ADR Rules has been satisfied.

(iii) Registered or Used in Bad Faith

According to Article 21(1) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are alternative requirements. The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and therefore there is no need to consider also the bad faith element.

In any case, the Panel finds that the use of the disputed domain name as described above is an evidence of bad faith registration and use, pursuant to Paragraph B(11)(d)(1)(iii) of the ADR Rules.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <leafsystems.eu> be transferred to the Complainant..¹

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: August 3, 2023

¹ As the Complainant is located in Germany, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.

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.