Decision for dispute CAC-UDRP-102965

Case number	CAC-UDRP-102965
Time of filing	2020-03-24 08:48:43
Domain names	sos-avocats.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ORDRE DES BARREAUX FRANCOPHONES ET GERMANOPHONE (Avocats.be)

Complainant representative

Organization	Ulys

Respondent

Organization	SIBOZ GROUP SPRL

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the EU trademark AVOCATS.BE (figurative mark consisting of a combination of verbal and figurative elements) No. 011414604, which was filed on 11 December 2012 and registered on 13 May 2013 ("the Complainant's trademark").

The Complainant is also the holder of the domain names <avocats.be> and <avocat.be>.

FACTUAL BACKGROUND

The Complainant is the organisation representing the French and German-speaking bar associations of Belgium, taking into account that all lawyers ("avocats" in French) must be part of a bar association. The Complainant therefore represents all the French-speaking and German-speaking lawyers in Belgium.

The Complainant uses the domain names <avocats.be> and <avocat.be> and is the owner of the EU trademark AVOCATS.BE

(figurative mark consisting of a combination of verbal and figurative elements) No. 011414604, which was filed on 11 December 2012 and registered on 13 May 2013.

The Respondent runs a website under the domain name <sos-avocats.com> (the disputed domain name).

The Respondent provides a.o. the following content on the website under the disputed domain name (free translation of original content in French):

“SOS-Avocats and its team of professionals experienced in criminal law and criminal proceedings will be at your side to support you if you have any problem "with the law".

SOS-Avocats and its staff specialized in road traffic law will assist you in the event of problems arising from traffic accidents, and in all matters relating to traffic in general, so that our lawyers will be able to take charge of your files and advise you in the field of insurance and liability, which may have a bearing on any claims you may have to deal with.

Our collaborators will also support you throughout your real estate projects and guide you through the "meanders" of real estate legislation. They will also be excellent advisers for your questions of civil and private law (in marital, family and inheritance matters, in the broadest sense, in commercial and contractual matters, or in relation to your property). Any question related to taxation is obviously part of their area of expertise; administrative and constitutional questions are no exception (public law). Employment and social security aspects are also widely considered.”

The website is divided into “specialized legal areas” : Civil Lawyer ; Contract Lawyer ; Divorce Lawyer ; Private Lawyer ; Employment Lawyer ; Corporate Lawyer ; Sales and Purchase Lawyer ; Insurance Lawyer ; Traffic Lawyer ; Construction Lawyer ; Bankruptcy and Insolvency Lawyer ; Real Estate Lawyer ; Liability lawyer ; Estate Lawyer ; Administrative Lawyer; Commercial Lawyer ; Constitutional Lawyer ; Tax Lawyer ; Criminal Lawyer ; Lawyer pro bono ; Public Law.
In each of those sections, lawyers are listed as follows:

• Name/surname
• Address
• Phone number
• E-mail
• His/her area of specialisation."

Approximately 150 lawyers belonging to one of the French or German bar associations are listed.

In addition, a large number of “testimonials” appear on the website, among which the testimonials of a certain Jacques Delors and Sophie Livingstone. However, neither Jacques Delors nor Sophie Livingstone is registered as a lawyer at any Bar in Belgium.

The name, geographical address and phone number of the Respondent do not appear on the website under the disputed domain name. Also in the “privacy” section, the name of the Respondent does not appear. The disputed domain name was registered anonymously.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that:

I) The disputed domain name is confusingly similar to the Complainant's trademark.

The assessment must compare the disputed domain name <sos-avocats> excluding ".com" on the one hand, and the verbal and distinctive part of the Complainant's earlier trademark (and trade name) "avocats" excluding ".be" on the other hand.

The distinctive part of the Complainant's trademark is included entirely in the disputed domain name. The mere distinction between the two is the addition of the letters « sos » and a hyphen. As commonly known, SOS is an international signal meaning "I need help".

II) The Respondent does not have any rights or legitimate interests in respect of the disputed domain name

The Complainant contends that the lack of any rights or legitimate interests is shown by the following elements:

- The domain name holder does not hold in the EU any known trademark that corresponds with the disputed domain name;
- The Respondent is not known as a company or other organisation under the name "sos-avocats";
- The Complainant has never granted a licence to the domain name holder to use its trademark;
- The Complainant has no specific relationship with the domain name holder;
- The Respondent cannot claim that it was unaware of the existence of the Complainant since: (1) it is unlikely that a website offering a list of lawyers is not aware of the existence of an official body established by the law and (2) the news section of the Respondent's website contains news which mentioning the Complainant.

III) The disputed domain name has been registered and is being used in bad faith

The Complainant contends that the bad faith can be deduced from the fact that the purpose of the website under the disputed domain name is illegal, and the website is built on the violation of third party rights. The Complainant lists the following circumstances:

- The profiles are created without the consent (and knowledge) of listed lawyers;
- The profiles are not reliable and could be detrimental to the lawyers listed;
- Many messages and testimonials are made in order to falsely give the impression that listed lawyers are part of the Respondent's team or work in connection with the Respondent;
- An integrated "contact" system invites the visitor to get in touch with the lawyers, which reinforces the idea that the lawyers are linked to this website;
- Above the name of each lawyer, keywords appear that refer to preferred areas of practice, which, very often, have nothing to do with the actual activities of the lawyer in question.

RESPONDENT:

The Respondent contends that:

I) The disputed domain name is not confusingly similar to the Complainant's trademark

The Respondent contends that:

- The disputed domain name (sos-avocats.com) does not actually contain the Complainant's trademark "avocats.be";
- The disputed domain name does not contain a typographical variation of the Complainant's trademark;
- The disputed domain name does not have any similar graphic representation as the Complainant's trademark;
- The registered trade name of the Complainant is "ORDRE DES BARREAUX FRANCOPHONES ET GERMANOPHONE DE BELGIQUE".

II) The Respondent does have rights or legitimate interests in respect of the disputed domain name

The Respondent contends that:

- The term “AVOCATS” is a generic French term, which simply means “LAWYERS” or ‘ATTORNEYS’;
- The Respondent is also the owner of other domain names containing the word "avocats", such as <avocats-maroc.com>;
- "SOS" has an instantly recognisable symmetry: it is not only a palindrome, but also an ambigram;
- The combination of "SOS+AVOCATS" means “I need the help of a lawyer” and is used worldwide because it’s understandable by anyone;
- The Complainant cannot claim a monopoly on representing everyone needing lawyer assistance;
- “SOS AVOCATS” is also used as generic term for lawyer assistance in Belgium and even in other countries;
- The Respondent is the owner of several domain names starting with "SOS" for several kinds of services;
- The services page on the website under the disputed domain name is also for other countries (France and Morocco) and not only Belgium.

III) The Respondent has registered and is using the domain name in good faith

To prove that it has registered and is using the disputed domain name in good faith, the Respondent has submitted many screenshots, indicating inter alia that some of the lawyers listed on the website under the disputed domain name are also listed as lawyers in Google search results.

The Respondent also argues that a Belgian court decision invoked by the Complainant was a default decision.

The Respondent finally submits some Belgian news articles relating to "avocats.be" and "SOS avocats", and provides a screenshot from the website http://web.archive.org/ indicating that the website www.sos-avocats.com has been used for a long time already.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I) The disputed domain name is confusingly similar to the Complainant's trademark

Where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for

purposes of UDRP standing (see WIPO Cases No. D2003-0251, D2004-0206, D2004-0962, D2005-0649, D2017-0138, D2017-0156, D2017-0209).

The disputed domain name <sos-avocats> incorporates the entire dominant (word) feature of the Complainant's trademark, i.e. "avocats", with the addition of "SOS", which means "I/We need help".

Accordingly, the Panel finds that the disputed domain name is at least to a minimum extend confusingly similar to the Complainant's trademark.

The question whether the "trade name" of the Complainant is "avocats.be" (as asserted by the Complainant) or "ORDRE DES BARREAUX FRANCOPHONES ET GERMANOPHONE DE BELGIQUE" (as asserted by the Respondent), is not relevant. Indeed, for the purpose of the present proceedings, only the invoked Complainant's trademark shall be examined.

Similarly, the (dis)similarity of the graphical representation of the Complainant's trademark is not relevant in the context of the present proceedings.

II) The Respondent does not have any rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the following circumstances show that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name:

- The domain name holder does not have in the EU any known trademark that corresponds with the disputed domain name;
- The Respondent is not known as a company or other organisation under the name "sos-avocats";
- The Complainant has never granted a licence to the domain name holder to use its trademark;
- The Complainant has no specific relationship with the domain name holder;
- The Respondent must reasonably have been aware of the existence of the Complainant since: (1) it is unlikely that a website offering a list of Belgian lawyers is not aware of the Belgian bar associations; and (2) the news section of the Respondent's website contains a news article that explicitly mentions the Complainant.

The Panel finds that the Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests. Accordingly, the burden of proof on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element.

To demonstrate rights or legitimate interests in a domain name, non-exclusive defenses include the following:

(i) before any notice of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the Respondent does not fall under any of the above defenses and does not come forward with other relevant evidence demonstrating rights of legitimate interests.

The mere assertions by the Respondent that:

- The term "AVOCATS" is a generic French term, which simply means "LAWYERS" or 'ATTORNEYS';

- The letters "SOS" have an instantly recognisable symmetry;
- The combination of "SOS+AVOCATS" means “I need the help of a lawyer” and is used worldwide because it’s understandable by anyone;
- The Complainant cannot claim a monopoly on representing everyone needing lawyer assistance;
- “SOS AVOCATS” is also used as generic term for lawyer assistance in Belgium and even in other countries;
- The Respondent is the owner of several domain names starting with "SOS" for several kinds of services; and
- The services page on the website under the disputed domain name is also for other countries (France and Morocco) and not only Belgium.

These are not sufficient to find that the Respondent has rights or legitimate interests in the disputed domain name.

III) The disputed domain name has been registered and is being used in bad faith

The Complainant has demonstrated that the content of the website shows that the disputed domain name has been registered and is being used in bad faith. This is proven by following factual circumstances:

- The profiles are created without the consent and knowledge of the listed lawyers;
- The profiles contain wrong information;
- Many messages and testimonials are made in order to falsely give the impression that listed lawyers are part of the Respondent's team or work in connection with the Respondent;
- An integrated “contact” system invites the visitor to get in touch with the lawyers, which reinforces the idea that the lawyers are linked to this website; and
- On top of the name of each lawyer, keywords appear that refer to preferred areas of practice, which, very often, have nothing to do with the actual activities of the lawyer in question.

The Respondent fails to successfully rebut these factual circumstances. Mostly, the Respondent argues that the facts and circumstances as set out by the Complainant are taken out of context. However, the contextualisation given by the Respondent merely demonstrates that the factual circumstances as set out by the Complainant are in essence correct.

Accordingly, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **SOS-AVOCATS.COM**: Transferred

PANELLISTS

Name	**Tom Joris Heremans**

DATE OF PANEL DECISION 2020-05-05

Publish the Decision