Panel Decision for dispute CAC-ADREU-006624

Case number	CAC-ADREU-006624
Time of filing	2014-04-03 11:57:21
Domain names	Rainbow-Medical.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Rainbow Medical Engineering Ltd

Respondent

Organization	Eklectica Media Consultants Ld

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

Proceedings have been foreshadowed by Mr. Kett to have the Complainant placed into liquidation for failure to recompense him for domain registration fees he claims to have paid personally with respect to the domain name.

FACTUAL BACKGROUND

Neither party has provided any evidence to support its assertions. In this case the Panel has considered it appropriate to make its own investigations pursuant to paragraph 7(a) of the ADR Rules.

According to the Eurid WHOIS database, the domain name was registered to the Respondent, Eklectica Media Consultants Ltd, on June 21, 2006 and remains registered in the name of that company. The domain name resolves to the Complainant's website, some pages of which bear the Complainant's name together with copyright notices dated 2006.

UK Companies House searches reveal that the Complainant was incorporated on February 6, 2006 and that the Respondent company has been dissolved.

A Google search reveals that Professor Luigi Martini is a director of the Complainant.

A. COMPLAINANT

The domain name was registered by the Respondent without rights or legitimate interest in the name.

The Respondent did this registration on behalf of the Complainant many years ago, acting as agent for the Complainant, which has been using the domain name for its website for the last 7 years. As a media company the Respondent has no interest in medical applications. However, since that company is now dissolved and does not exist, the Complainant would like Network Solutions to re-assign the domain name to Rainbow Medical Engineering Ltd, the rightful owner and user of this name.

B. RESPONDENT

Responding to the Complaint, Mr. Kett says he registered and paid for the domain name on behalf of Rainbow Medical Ltd [sic], having been contracted with a colleague to design and develop the Complainant's website and supply hosting.

Rainbow Medical Ltd has not paid any fees whatsoever for this service. In early 2013 a discounted set of fees was agreed and Rainbow Medical offered a staged payment plan to resolve this outstanding issue. To date no payments have been received while Mr. Kett continued to pay domain registration fees to Network Solutions and hosting charges on their behalf. There has been no correspondence from Dr Martini or Rainbow Medical Ltd. as to why they have not kept to the agreed resolution of this account. Mr. Kett is now issuing

legal proceedings in the UK as he has been informed by Dr Martini that Rainbow Medical Ltd is unable financially to pay the outstanding debt. With this in mind Mr. Kett believes that Rainbow Medical Ltd is trading insolvently and will be looking for the UK Court to have the company placed into liquidation.

Mr. Kett says he is the registered owner of the domain name, for which he has paid in full all domain registration fees since it was first registered from his personal UK bank account. Dr Luigi Martini has no legal claim to this domain name as he has not respected the law of contract, having never made any financial recompense for Mr. Kett's ongoing expenses or honoured the business agreements made in early 2013.

DISCUSSION AND FINDINGS

The Complaint filed with the Czech Arbitration Court on November 29, 2013 sought transfer of the domain name solely because the Respondent has been dissolved and no longer exists. On December 4, 2013 the Czech Arbitration Court drew the Complainant's attention to the failure of the Complaint to describe, in accordance with Article B(10) of the ADR Rules, the grounds upon which the Complaint is made.

The Amended Complaint filed on December 18, 2013 seeks transfer to the Complainant on the basis that the domain name was registered by the Respondent without rights or legitimate interest in the name, since the Respondent acted as agent for the Complainant in doing so and now no longer exists.

Article 19(2) of Commission Regulation (EC) No 874/2004 (“the Regulation”) provides a procedure whereby a domain name may be transferred where a corporate registrant is wound up or ceases to trade. However, that procedure does not make provision for transfer to a principal where the defunct registrant acted as agent in registering the domain name. No doubt that lies behind the Complainant's decision to seek transfer to it under Article 21 of the Regulation, which applies to speculative and abusive registrations, as there defined.

Under Article 21 the Complainant must prove that the challenged domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law and that either (a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or (b) the domain name has been registered or is being used in bad faith.

The Panel is satisfied that the domain name <rainbow-medical.eu> is confusingly similar to the Complainant's corporate name, Rainbow Medical Engineering Ltd, in which the Complainant has rights recognised by the law of the United Kingdom by virtue of its registration as a company under that name.

The Complainant makes no assertion of bad faith. Accordingly the issue to be determined is whether the domain name has been registered by its holder without rights or legitimate interests in the name. The holder is the Respondent, a company that has been dissolved and no longer exists. The Panel does not accept that Mr. Kett is the registered owner of the domain name, since it remains registered in the name of the (now dissolved) Respondent company.

Since Mr. Kett refers to Dr. Martini, a director of the Complainant, in relation to "Rainbow Medical Ltd", the Panel regards his use of that company name as a mistaken reference to the Complainant, Rainbow Medical Engineering Ltd. On that basis, it is common ground between the Complainant and Mr. Kett that the domain name was registered by the Respondent as agent for and on behalf of the Complainant, and that it has been used ever since by the Complainant for its website.

The onus is on the Complainant to establish a prima facie case of absence of rights or legitimate interest in the domain name on the part of the Respondent at the time of registration of the domain name. If such a case is established, the onus shifts to the Respondent to demonstrate that it has rights or a legitimate interest in the domain name, which it may do by showing any of the circumstances enumerated in Article 21(2) of the Regulation. Those circumstances are not exhaustive.

The Panel considers that, unless done for no charge, where a domain name is registered by an agent on behalf of its client, the agent has an interest in the domain name by virtue of the agent's right to be recompensed for its services. Accordingly, the Panel is not satisfied that the Complainant has established that the domain name has been registered by its holder without rights or legitimate interest in the domain name.

In reaching this conclusion, the Panel makes no finding as to whether or not the Respondent has been paid nor as to whether any costs of registration incurred personally by Mr. Kett are recoverable by him from the Complainant.

DECISION

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

PANELISTS

Name	**Mr Alan Lawrence Limbury**

DATE OF PANEL DECISION 2014-03-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: rainbow-medical.eu.

II. Country of the Complainant: United Kingdom. Country of the Respondent: United Kingdom.

III. Date of registration of the domain name: 21 June, 2006.

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

V. Response submitted: Yes.

VI. Domain name is confusingly similar to the protected right of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes
2. Why: Domain name was registered by Respondent as agent for Complainant, giving rise to a legitimate interest in the Respondent being recompensed for its services.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Not necessary to decide.
2. Why: Not asserted by Complainant.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: Complaint denied.

XI. Procedural factors the Panel considers relevant: Neither party provided any evidence to support its assertions. The Panel made its own investigations pursuant to paragraph 7(a) of the ADR Rules.