Anonymized decision for dispute CAC-ADREU-006858

Case number	**CAC-ADREU-006858**
Time of filing	
Domain names	**miller.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name [redacted]

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

None

A. COMPLAINANT

The Complainant contends that the Respondent is a professional seller of domain names who had registered the disputed domain name for the purpose of renting or selling for profit. The Complainant refers to the Respondent's website at www.frankcom.it which states that the Respondent's company is merchandising domain names, mostly in the .EU directory. The Complainant contends that the content of the Respondent's website at the disputed domain name, in so far as it describes the job of a miller, amounts to a farce. The Complainant contends that the content has been quickly assembled with unimportant information as a cover for the real intention of selling the disputed domain name. Text has been copied from other websites such as that of the Swiss School of Milling. The Respondent had previously tried to sell the domain name STEINER.EU, which was ordered to be transferred to the relevant complainant by the Czech Arbitration Court. The Complainant contends that he has rights in the disputed domain name MILLER.EU in the terms of paragraph B11(d)(1)(i) of the Rules; that the Respondent does not have rights or legitimate interests in the disputed domain name MILLER.EU under paragraph B11(d)(1)(ii) of the Rules; and that the Respondent registered the disputed domain name in bad faith in terms of paragraph B11(d)(1)(iii) of the Rules.

B. RESPONDENT

The Respondent denies the Complaint. The Respondent contends that the term "miller" is descriptive or generic, describing the job of a miller, and that family names may also be the same as generic terms. The Respondent says that he has intentionally set up a website about the job of the miller and intends to seek promotional partners from the relevant industries, and other sources of advertising, in order to generate revenue. The Respondent says that he does not deny trading in domain names, and that such a business is legal provided third party rights are not infringed. He is also an official registrar for .eu domains and is accredited by Eurid. The Respondent states that he owns about 50 .EU domains, 95% of which he uses himself. The Respondent denies that the disputed domain name is held for the purpose of sale and says it was the Complainant who asked if it was available for purchase. In any case the sale of the disputed domain name, being generic, would be legal. The Respondent disputes the Complainant's assertion that the disputed domain name website contains unimportant information and says the quality of a website is not the criterion of its legality. The existing website is a beginning and an Internet presence, whereas further development has been shelved because of the instant proceeding. The Respondent's own grandfather was a miller. The Respondent denies the Complainant's assertion that the free email address #Data Redacted was registered to create an impression of having rights in the disputed domain name. The Respondent says in respect of the domain name STEINER.EU that he did not own it and acted as an IT service provider in the matter of its sale.

DISCUSSION AND FINDINGS

In accordance with Article 21(1) of the Commission Regulation (EC) No. 874/2004 (the "Regulation"), the Complainant, in order to succeed, is required to prove that: (i) The 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 Community law and; either (ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or (iii) The domain name has been registered or is being used in bad faith. WHETHER THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO A NAME IN WHICH THE COMPLAINANT HAS RIGHTS The Complainant claims a right in his family name,

Miller. The Complainant has produced in evidence a monochrome image of two pages of a German identity document in the name Friedrich Miller, printed on security paper, showing a date and place of birth, the bearer's signature, a document expiry date of February 23, 2020, a serial number, a photograph and personal information. The authenticity of the copy of the document is not contested. The Respondent counters that the word "miller" is generic and descriptive of a trade or occupation. He implies that he may register and use it for a domain name, conditional on not infringing any third party rights. As summarised in the Overview of CAC panel views on several questions of the alternative dispute resolution for .eu domain name disputes, 2012, at paragraph II(9), "Family names are formally listed as relevant rights". Family names may commonly be derived historically from trades or occupations, among other things. The fact that a person's family name coincides with a generic word descriptive of a trade or occupation does not detract from any right that person has in their family name. The Panel is satisfied for the purposes of the present proceeding that the Complainant has a right in the name Miller. The Panel finds the disputed domain name to be confusingly similar and in fact identical to a name in which the Complainant has established a satisfactory right within the meaning of Article 21(1) of the Regulation. WHETHER THE RESPONDENT HAS RIGHTS IN THE DOMAIN NAME The Complainant has asserted that the disputed domain name has been registered without the Respondent having any rights or legitimate interest in it. Article 21(2) of the Regulation provides that a legitimate interest may include: (a) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; or (b) the holder of a domain name, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law; or (c) the holder of a domain name is making a legitimate and non-commercial or fair use of the 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 Community law. The Panel has viewed the screenshots of the website of the disputed domain name produced in evidence, and in accordance with the provisions of paragraph B7(a) of the Rules, has visited the website. The Panel does not find any evidence sufficient upon which to find that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with the offering of goods or services within the meaning of Article 21(2)(a) of the Regulation. The Respondent does not claim to have been commonly known by the disputed domain name in the terms of Article 21(2)(b) of the Regulation. The Respondent has stated an objective to gain revenue from the disputed domain name, to interest promotional partners in industry and to attract Google advertising. Thus the disputed domain name cannot be regarded as non-commercial. As discussed below in connection with bad faith, the Panel finds on the balance of probabilities that the corresponding website is provided with token content for the real purpose of sale or renting and such use is found in this case to be outside the meaning of fair use under Article 21(2)(c) of the Regulation. The Panel cannot find any other way in which the Respondent has established rights or legitimate interests in the disputed domain name and accordingly the Complainant is found to have satisfied Article 21(2) of the Regulation. WHETHER THE DOMAIN NAME HAS BEEN REGISTERED OR USED IN BAD FAITH For purposes of Article 21(1)(b) of the Regulation, the following circumstances as listed in Article 21(3) of the Regulation may be evidence of the registration or use of a domain name in bad faith: (a) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or (b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that: (i) a pattern of such conduct by the registrant can be demonstrated; or (ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or (iii) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated; (c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or (d) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or (e) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered. The Complainant submits in effect that the evidence points to the Respondent having acquired the disputed domain name in the furtherance of his business of trading in domain names and because the disputed domain name is tradable. The Respondent concedes that he does not deny trading in domain names and submits that his business is entirely legitimate. He also submits in effect that the content of the website of the disputed domain name, giving information about the training and occupation of a miller, is rudimentary in its state of construction but has and will have the legitimate purpose of attracting visitors interested in millers, and may attract advertising revenue. The Panel studied the content of the website and adjudged its content to be at a basic level, including an acknowledgement that Miller (or Muller) is one of the most famous names in English and German, having roots in the Middle Ages. Another page described the qualification of a miller. Significantly a page entitled "Legal" expressed a view concerning the legality of the registration of a generic word as a domain name and referred the reader to the Respondent's company Frankcom.it Service. The link did not work but a visit to www.frankcom.it/domainmarketing.html revealed a brief primer on domain names, their relative values and pricing, and the Respondent's interest in buying and selling domain names selectively. The Respondent expressed a particular focus on .EU domain names. Having regard to all the evidence, including the Respondent's denial that the disputed domain name is for sale, the Panel finds it more probable than not that the Respondent's primary purpose in acquiring the disputed domain name was to rent its use to one or more persons or entities having a recognized right in the name Miller. In the Panel's finding on the balance of probabilities, the content of the relevant website is perfunctory for the purpose of dressing up the disputed domain name in an attempt to create a veneer of authentic use. The fact that numerous persons may possess the family name Miller does not detract from the Complainant's right to bring this proceeding. The Panel finds the disputed domain name to have been registered and used by the Respondent in bad faith under Article 21(3)(a) of the Regulation. In terms of Article 21(3)(e) of the Regulation, the Panel finds the disputed domain name to be a personal name for which no sufficient demonstrable link exists with the Respondent, constituting registration and use by the Respondent in bad faith. The Panel notes specifically that the provision of paragraph B11(g) of the Rules, which in certain circumstances may grant a period in which a respondent may demonstrate relevant use, does not apply in this case, because inter alia: (a) the Complainant has proven the Respondent's lack of rights or legitimate interests in the disputed domain name; and (b) bad faith had been found on other grounds under paragraphs B11(d)(1)(iii)(1) and B11(d)(1)(iii)(5) of the Rules.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 of the Rules, the Panel orders that the domain name MILLER be transferred to the Complainant.

Panelists

Name

DATE OF PANEL DECISION 2014-12-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: miller.eu II. Country of the Complainant: Germany, country of the Respondent: Germany III. Date of registration of the domain name: 19 February 2014 IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: family name: Miller V. Response submitted: Yes VI. Domain name is identical 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. No 2. Why: Respondent has no connection with the family name Miller VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): 1. Yes 2. Why: intention to sell or rent for profit; personal name having no demonstrable link with Respondent 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