Panel Decision for dispute CAC-ADREU-006998

Case number	CAC-ADREU-006998
Time of filing	2015-09-17 10:19:10
Domain names	melnichenko.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Manvel Dann

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

N/A

FACTUAL BACKGROUND

The Respondent registered the domain name MELNICHENKO.EU.

The disputed domain name was registered on May 19, 2015 in the name of Manvel Dann, having an address in Hamburg, Germany.

According to public sources the Complainant is a Russian businessman and billionaire. In 2015 he was ranked 97th in the Forbes World's billionaires list and 9th in Russia.

The disputed domain name resolved to a website which contains inter alia photographs of the Complainant and criticism in relation to the Complainant. At the time of this decision, the domain name did not resolve to any website.

At the very bottom of the afore-mentioned website there has been a notice that that the website's copyright is owned by the Complainant.

A. COMPLAINANT

The Complainant contends the following.

The Respondent registered the disputed domain name without rights or legitimate interests in respect of the domain name and, in addition, has registered and is using the domain name in bad faith.

The Complainant's last name is Melnichenko. A copy of the Complainant's passport was submitted. The name of a person is protected under German law, according to § 12 of the German Civil Code.

Although Respondent does not have any relation to the Complainant, the content the Respondent is posting on the website of the domain name contains false and defamatory facts and opinions, including pictures and videos relating to the Complainant and his companies. Respondent uses the domain name and the corresponding website for a smear campaign against Complainant in a defamatory way in order to harm him.

In addition, the website uses the name, image, company names and logos of Complainant and his companies and thus makes it look like an authentic page which is maintained or at least authorized by the Complainant. This is further supported by the misleading indication

(in Russian language) at the very bottom of the website that the website's copyright is owned by Complainant.

However, the website and its content have been established without permission or even knowledge of the Complainant.
The domain name is identical to the name of the Complainant.

The Respondent does not have any rights or legitimate interest in the domain name. The Complainant has not granted any license or other rights to the Respondent to register the domain name or to use his name at all. There is no other right, which would legitimize Respondent's use of Complainant's name as a domain name. The Respondent does not have any legitimate interest to use Complainant's name as a domain name. The Respondent has not 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. The Respondent has not been commonly known by the domain name. The Respondent is not making a legitimate and non-commercial or fair use of the domain name; instead, he is using the domain name with the intent to mislead consumers or harm the reputation of Complainant's name in which a right is recognized and established by national law (German law).

The Respondent has registered and is using the domain name in bad faith: The Domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

The Respondent's name is Manvel Dann and he is neither authorized to register Complainant's name as a domain name nor use it otherwise, nor does Mr. Dann have any link to Complainant respectively the domain name identical to Complainant's name.

B. RESPONDENT

The Respondent has not submitted a response.

DISCUSSION AND FINDINGS

In accordance with Article 21(1) of Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation (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.
It is generally established case law that Complaints are not granted based on Respondents' failure to supply a response.

The Complainant has to establish a prima facie case in order to succeed. The panel finds in this matter that in the absence of a response the facts as asserted by the Complainant have to be accepted and draws all reasonable inferences therefrom. This also follows from article 22 (10) of the Regulation which says that failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty.

WHETHER THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO A NAME IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant claims rights in his family name Melnichenko. The Complainant has provided a copy of his passport (from the Russian Federation) in the name of Andrey Melnichenko, printed on security paper, showing a date and place of birth, a document expiry date, a serial number, a photograph and personal information.

It is mentioned 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."

The Complainant alleges that the Complainant's a family name is protected under German law, according to § 12 of the German Civil Code. In absence of a Response, the Panel will accept this, despite of the fact the Complainant is a citizen of the Russian Federation and the Complainant has not substantiated that the Complainant can also claim rights to his family name in Germany or the European Union.

For this matter, it has therefore established that the Complainant has rights to the family name Melnichenko.

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 OR A LEGITIMATE INTEREST 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 finds that the Complainant has established a prima facie case in order to succeed.

The Panel has nonetheless viewed the screenshots of the website of the disputed domain name produced in evidence.

The Panel considers that the most likely relevant situation where the Respondent could claim a legitimate interest would be Article 21(2) of the Regulation under (c), i.e. non-commercial use of the domain name. This will in particular be the case if it has to be established that the website is a criticism site.

Such legitimate interest follows from the freedom of speech as it is safeguarded in various constitutions and international treaties.

Nonetheless, the Panel cannot consider this, as the Respondent has not submitted any Response and thus not relied on such a legitimate interest or his freedom of speech.

The Panel therefore finds that the Respondent has not 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 recognized 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 examples of bad faith mentioned above are non-exhaustive. It is for the Panel to consider whether bad faith exists.
Similar to the assessment of the rights and legitimate of the Respondent, the Panel here finds that the Complainant has established a prima facie case in order to succeed.

In absence of a Response, the Panel can, based on the website that was connected to the domain name, at a minimum conclude that the Respondent was familiar with the Complainant and had the intention to negatively target the Respondent. The Panel also takes into account that at the very bottom of the afore-mentioned website there has been a notice that that the website's copyright is owned by the Complainant, which according to the Complainant is incorrect.

In absence of a Response, the Panel cannot take into account whether the Respondent had any valid freedom of speech defence.

The Panel has difficulties in accepting Complainant's allegation that the disputed domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered. In the view of the Panel there is a demonstrable link that is also the reason why the Panel has come to the conclusion that bad faith exists.

Accordingly Panel finds that the disputed domain name has been registered or is being used in bad faith.

DECISION

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

the domain name MELNICHENKO be revoked

PANELISTS

Name	Willem J.H. Leppink

DATE OF PANEL DECISION 2015-09-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: MELNICHENKO

II. Country of the Complainant: Russian Federation, country of the Respondent: Germany

III. Date of registration of the domain name: 19 May 2015

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

10. family name: MELNICHENKO

V. Response submitted: NO

VI. Domain name/s is/are identical to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Prima facie case made by Complainant that no rights or legitimate interests exist. No response submitted.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. YES
2. Why: In absence of a Response and based on the website that was connected to the domain name it was concluded that the Respondent was familiar with the Complainant and had the intention to negatively target the Respondent. In absence of a Response any possible freedom of speech defence cannot be taken into account.

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: N/A

XII. [If transfer to Complainant] Is Complainant eligible? [Yes/No] N/A