Panel Decision for dispute CAC-ADREU-007139

Case number	CAC-ADREU-007139
Time of filing	2016-05-13 12:22:02
Domain names	manuel.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Wolf Konrad

FACTUAL BACKGROUND

The Complainant, an individual, goes by the name of Robert Manuel and has carried on business under this name for some time. He owns a registered business name for “Manuel” that dates from November 1994.
The Respondent registered the disputed domain name <manuel.eu> on 8 May 2006. The Respondent subsequently registered a trade mark in Germany under registration number 302014030507 with a registration date of 27 June 2014. The Respondent also owns the corresponding domain name <manuel.de> and the Complainant notes that he telephoned the Respondent in order to buy this domain name in 1999.
The Panel has considered both parties’ submissions. The Panel has also considered the supplementary submission of the Complainant dated 2 May 2016 and the supplementary response from the Respondent dated 5 May 2016 in accordance with paragraph B 8 of the ADR Rules.

A. COMPLAINANT

The Complainant submits that the disputed domain name is based on and incorporates his surname and registered business name since 1994 and accordingly that he has a prior right to it.
The Complainant claims that the Respondent has not used the disputed domain name and has no rights or legitimate interests in it. The Complainant also submits that the Respondent has registered a number of names as top level domains with no apparent rights in these names. For example he says that the Respondent has registered “Dennis, Julia, Kevin, Fabian and Sophie” as top level domain names and subsequently promoted sub-domains as web and email addresses through the Respondent’s enterprise Julia GmbH. The Complainant notes that he approached the Respondent in 1999 about the Respondent’s registration and use of the domain name <manuel.de> but the Respondent refused to sell it to him although he did offer him a sub-domain. The Complainant says that he took this offer up and used it for some time but decided to terminate it in 2006.

B. RESPONDENT

The Respondent claims that he has a legitimate interest in using the domain name as it is identical to his registered German trade mark. The Respondent says that he could not have registered the disputed domain name in bad faith as he did not know the Complainant at the time of registration, although he says that it is possible that the Complainant called him in

1999, but he has no recollection of the call. He also maintains that any sub-domain registration or email forwarding service that he offers from the disputed domain name is provided free of charge and therefore is not in bad faith.
The Respondent says that he assumed that domains, which correspond to ordinary names could be shared and used by hundreds of people and not be monopolized. He notes that the Respondent has the possibility of setting up a free forwarding address by registering the address “robert.manuel.de” to forward to his own website. This service, says the Respondent, is completely free and he is not "reselling secondary use". He notes that he has not offered chargeable email services for many years.

DISCUSSION AND FINDINGS

The Complainant submits that his personal surname “Manuel” is a relevant prior right for the purposes of Article 21 of Commission Regulation 874/2004 (“the Regulation”). He also says that he has owned a registered business name since 1994 which also qualifies as a prior right.
Article 10 of the Regulation specifies expressly that “Prior Rights” “shall be understood to include inter alia ”business identifiers” and “family names”. Although there is no evidence of the Complainant’s business name registration, he has provided evidence of his personal name being “Manuel” and the Panel accepts this and finds that it is identical to the substantive word element of the disputed domain name.
The second limb of the test under Article 21(1)(a) of the Regulation is that the disputed domain name “has been registered by its holder without rights or legitimate interest in the name”. The Complainant claims that the Respondent has not used the disputed domain name and that there is no visible evidence that he is known by, or trades under that name. The Respondent submits that he owns a registered trade mark right for MANUEL which demonstrates his legitimate right or interest.
The Panel finds that the Complainant has made out a prima facie case under this head. However on considering the Respondent’s arguments and the supplemental submission made by the Complainant the Panel is not persuaded on the balance of probabilities that the Respondent did register the disputed domain name without rights or legitimate interest in the name.

The Respondent appears to have been engaged in the acquisition of a series of domain names comprising common first names with the original plan of marketing sub-domains as web and email addresses. He appears to have acquired the corresponding domain name <manuel.de>, amongst others, for this purpose and the Complainant was by his own admission aware of this in 1999 and upon the Respondent refusing to sell this domain name to him he agreed to and used the Respondent’s sub-domain service until 2006.

The Complainant himself notes that the German registration authority, Denic, advised him that there was a “first in time” right to registration of such domain names in the <.de> domain name space. Subject to there being evidence that the Respondent did not have rights or legitimate interests at the time of registration, or there is reason to suspect registration, or use in bad faith, a similar rule applies to the registration of generic words or common Christian names in the <.eu> domain name space under Article 21(1) of the Regulation.

In this case the Respondent had been using the corresponding domain name <manuel.de> and had been providing a sub-domain under it to the Complainant (whether on a remunerated basis or not) up to the year in which the disputed domain name was registered. It can therefore not be said that the Respondent registered the disputed domain name “without” any rights or legitimate interests in the disputed domain name when it had in fact been using this corresponding domain name in the course of trade. That said, the Respondent’s argument that its right or legitimate interest is founded in its trade mark registration is irrelevant under Article 21 (1) (a) in the circumstances that this registration post- dates the date of the disputed domain name registration by 8 years.

Article 21(1)(b) of the Regulation provides that the Complainant may still succeed if the disputed domain “has been registered or is being used in bad faith”.

Under Article 21(3)(a), bad faith may be demonstrated where circumstances indicate 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 recognised. The Respondent in his initial submission denied all knowledge of the Complainant in 2006 at the time of registration of the disputed domain name. However, the Respondent concedes in his supplementary

response dated 5 May 2016 that the Complainant may have called him in 1999 in relation to the domain name <manuel.de>. There is however no evidence of the Respondent having sought subsequently to sell the disputed domain name to the Complainant and therefore the Panel does not find for the Complainant under this head.

Under Article 21(3)(b), bad faith may also be demonstrated where the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised from reflecting this name in a corresponding domain name and (1) a pattern of such conduct can be demonstrated or (2) the domain name has not been used in a relevant way for at least two years from the date of registration. Although it seems that the Respondent must have been made aware around 1999 of the Complainant's interest in the "manuel" name, the Respondent had already, as noted above, registered a corresponding domain name in the ".de" domain name space and subsequently provided sub-domain services using this domain name to the Complainant. In these circumstances and in the absence of further evidence, the Panel is not persuaded that the Respondent registered the disputed domain name in order to prevent the Complainant from registering it as a domain name.
The Panel notes further that there is no evidence of the disputed domain name having been used in bad faith by the Respondent.

Therefore, the Complainant has not demonstrated that the disputed domain name has been registered or used in bad faith for the purposes of Article 21(1)(b).

DECISION

The Complainant has established that he owned relevant Prior Rights for the purposes of the Regulation, but has not established that the disputed domain name was registered without rights or legitimate interest under 21(1)(a) or was registered or used in bad faith under Article 21(1)(b). For all the foregoing reasons, the Complaint is refused.

PANELISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2016-05-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: [manuel.eu]

II. Country of the Complainant: [Germany], country of the Respondent: [Germany]

III. Date of registration of the domain name: [08 May 2006]

IV. Response submitted: [Yes]

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

VI. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Respondent has been using the corresponding domain name <manuel.de> in the course of trade for several years.

VII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: There is insufficient evidence to infer that the Respondent sought to sell the domain name to the Complainant or that he registered it in order to prevent the Complainant from registering or that he has otherwise used it in bad faith.

VIII. Dispute Result: Complaint denied