Panel Decision for dispute CAC-ADREU-007658

Case number	CAC-ADREU-007658
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Domain names	armgate.eu

Case administrator

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

Complainant

Organization	Armgate SIA

Respondent

Name	Kiril Dimitrov

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 of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant is a company incorporated in the Republic of Latvia since 1994. Its company name is Armgate, SIA. It is one of a number of affiliated companies that operate in the Baltic republics under the "Armgate" name.

The Complainant was previously the registered holder of the disputed domain name <armgate.eu> (the "Domain Name"). The Domain Name was used to host a webpage for international visitors, who would then be redirected to sites operating from the domain names <armgate.lv>, <armgate.lt> and <armgate.ee>, in Latvia, Lithuania and Estonia.

The Complainant inadvertently allowed the Domain Name to lapse and was re-registered in the name of the Respondent on 11 November 2017. The Respondent would appear to be an individual based in Bulgaria.

Initially the Domain Name was then used for a website that display pornographic content or links to such content, but it would appear that the Complainant has taken steps to have that website taken down. There is currently no website operating from the Domain Name.

A. COMPLAINANT

It is case the Complainant set out the facts set out above in the "Factual Background" section of this decision.

The Complaint sets out no further legal argument.

B. RESPONDENT

No formal Response has been filed in these proceedings.

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

In order to succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of Regulation (EC) No. 874/2004 of 28 April 2004 as amended (the "Regulation"). That paragraph reads as follows:

"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that 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, such as the rights mentioned in Article 10(1), and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith."

Articles 21(2) and (3) contain a list of examples of circumstances which may demonstrate the existence of a legitimate interest within the meaning of Article 21(1)(a) and of bad faith within the meaning of Article 21(1)(b), but these examples are non-exhaustive.

Paragraph B.10(a) of the ADR rules provides that:

“In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.”

However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

With this in mind I deal with each of the three constituent parts of Article 21(1) of the Regulation in turn.

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

The Complainant has not claimed any trade mark rights in the term "Armgate", but its company name is Armgate SIA.

The Complainant claims no trade mark rights in the term "Armgate" of "Armgate SIA". However, the consensus view among .eu panelists appears to be that an EU company name constitutes a name in respect of which a right is recognised or established by national and/or Community law. See in this respect section II 8 of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition.

Accordingly, I accept that the Complainant has relevant rights in its company name Armgate SIA.

Given this the only difference between the company name and the Domain Name are the letters SIA and the <.eu> TLD. It would appear that the letters SIA merely indicate the form of company that the Complainant comprises in Latvia. Accordingly, this part of the name is not particularly significant.

So far as the <.eu> suffix is concerned, many, and perhaps most, panels consider it appropriate to disregard the <.eu> suffix when it comes to the assessment of whether the Domain Name is identical or confusingly similar to the mark or marks relied upon (see, for example, Helsingin Kaupunki v Traffic Web Holding BV, CAC Case No. 00475; Global Network Communication v Holland and Barrett Holdings Ltd, CAC Case No. 00387; and Nicolas De Borrekens v Van der Velden Beheer BV, Stephan Van der Velden, CAC Case No 00597).

I am not sure that this is right (for similar reasons to those that I gave in Philip Morris USA Inc. v. Marlboro Beverages / Vivek Singh WIPO Case No. D2014-1398). However, practically it does not matter here. The point is that <.eu> suffix does not significantly impact on the reading of the Domain Name. The most sensible reading of the Domain Name is as the Complainant's company name incorporated into an ".eu" Domain Name.

As a consequence the name relied upon and the Domain Name are clearly confusingly similar.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

The only use of by the Respondent of the term “Armgate” appears to be in the Domain Name itself. There is no suggestion, and it is inherently implausible, that the Respondent has any trade mark type rights in that term.

Article 21(2) of the Regulation gives a number of examples of circumstances that may demonstrate a legitimate interest and Article

21(2)(a) refers to the following:

"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."

Here the Respondent has used the Domain Name to redirect users to and to promote certain adult websites. However, the term "Armgate" is not being used as the name for any independent business or service and the term Armgate has no obvious descriptive or generic connection with the content of the websites.

Given this, in the absence of any explanation being offered by the Respondent as to why the Domain Name was registered, the most obvious inference is that the Domain Name was re-registered opportunistically after it was inadvertently dropped by the Complainant with a view to using its previous associations with the Complainant to draw internet users to the Respondent's website.

Not only does such activity not provide a right or legitimate interest for the purposes of the Policy, but it provides positive evidence that such a right or interest does not exist.

The Complainant has, therefore, satisfied the requirements of Article 21(1)(a) of the Regulation.

BAD FAITH REGISTRATION OR USE

My findings above are sufficient for the Complainant to succeed in this case. However, it also follows from those findings that the Domain Name has also been both registered and is being used in bad faith.

Article 21(3)(d) of the Regulation states that bad faith may be demonstrated where:

"the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or 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 holder of a domain name "

The opportunistic re-registration of the Domain Name after it was inadvertently dropped by the Complainant with a view to using its previous associations with the Complainant to draw internet users to the Respondent website, is activity that falls within the scope of Article 21(3)(d).

Whether the Respondent has personally gained by redirecting internet users to various adult websites is unclear. But it does not matter. The intended commercial gain by the operators of those sites is sufficient for the purposes of to satisfy Article 21(3)(d).

The Complainant has, therefore, satisfied the requirements of Article 21(1)(b) of the Regulation.

REMEDY

The Complainant appears to satisfy the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002. Accordingly, having satisfied the requirements of the first paragraph of Article 21(1), it is entitled to the transfer of the Domain Name in accordance with Article 22(11) of the Regulation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Domain Name <ARMGATE.EU> be transferred to the Complainant.

PANELISTS

Name	**Matthew Stuart Harris**

DATE OF PANEL DECISION 2018-07-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant demonstrated that it had rights in the term "Armgate SIA", being its company name in Latvia. The Panel held that the Domain Name was confusingly similar to that company name comprising the term "Armgate" from that name to the “.eu“ suffix.

The Complainant inadvertently failed to renew the Domain Name and it was dropped. The Panel held that the most credible explanation of the Respondent's re-registration of the Domain Name was that this was an opportunistic re-registration with a view to using the Domain Name's previous associations with the Complainant to draw internet users to a website promoting pornographic content.

Such use did not provide the Respondent with a right or legitimate interest and constituted positive evidence that no such right or legitimate interest existed. Further, the registration and subsequent of the Domain Name for such a purpose demonstrated both bad faith registration and use.

The Complainant therefore had satisfied the requirements of both Article 21(1)(a) and of Article 21(1)(b) of the Regulation.

The Panel, being satisfied that the Complainant appeared to satisfy the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002 ordered the transfer of the Domain Name to the Complainant.