Panel Decision for dispute CAC-ADREU-007780

Case number	CAC-ADREU-007780
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Domain names	laurelkoeniger.eu

Case administrator

Lenka Náhlovská (Case admin)

Complainant

Organization

Respondent

Name	Florian Zeuner

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an individual and he is using the artist name "Laurel Koeniger" since 2014 and has more than 10.000 Followers on Instagram and 2000 visitors on his lifestyle and fashion blog per month, knowing him under this name. Further, he is regularly present in the media. This level of awareness makes him the rightful owner of this artist name by Austrian copyright law in the sense of § 43 Austrian Civil Code (ABGB).

The Complainant originally registered the disputed domain name through the registrar "all-inkl.com", located in Germany. When the Complainant changed his hosting provider in autumn 2018, the disputed domain name was temporarily suspended by mistake and, later, registered by the Respondent. The Respondent started to operate a similar blog with lifestyle content.

The disputed domain name was registered in the name of the Respondent on 15 November, 2018.

The Complainant requests the Panel to decide:

Revocation and transfer of the disputed domain name to the Complainant.

As regards content, Respondent has not disputed Complainant’s contentions. Even after being informed by CAC, the Respondent did not sent a response.

A. COMPLAINANT

The Complainant asserts rights according to Article 21 (1), (2), and (3) of EC Regulation No. 874/2004.

I. Recognition and establishment of rights by law (Article 21 (1), and 10 (1) of EC Regulation No. 874/2004)

The Complainant is widely known under the artist name "Laurel Koeniger", which is a worldwide unique name. Therefore, this artist name is protected by name's right in Austria according to § 43 of Austrian Civil Code (ABGB).

II. Identity or confusing similarity (Article 21 (1) of EC Regulation No. 874/2004)

The Complainant`s artist name is entirely reproduced in the disputed domain name.
The suffix “EU” is to be disregarded in this respect. Therefore, the disputed domain name is identical to the Complainant's artist name.

III. Registration without rights or legitimate interests (Article 21 (1) (a), (2) of EC Regulation No. 874/2004)

The Respondent has not been authorized by the Complainant to use the name “Laurel Koeniger”. In addition, the disputed domain name was registered by the Respondent to operate a similar blog with lifestyle content. No apparent interest in favor of the Respondent can be seen for this practice. Further, an internet search for the Respondent's mail-address reveals several websites which have the same design as the website linked under the disputed domain name. This and the practice of using same blogposts on these sites indicate domain-grabbing activities of the Respondent. Therefore, the Respondent lacks rights and legitimate interests in the disputed domain name.

IV. Registration or use in bad faith (Article 21 (1) (b), (3) of EC Regulation No. 874/2004)

Since the artist name of the Complainant is widely known it can be concluded that the Respondent registered the disputed domain name with full knowledge of these circumstances. Therefore, the Respondent registered the disputed domain name and is using it in bad faith, namely for so called domain-grabbing activities.

B. RESPONDENT

The Respondent did not file a Response to the Complaint.

DISCUSSION AND FINDINGS

A claim for the transfer of the disputed domain name to the Complainant can only be granted in case the requirements of Article 21 (1) of EC Regulation No. 874/2004 (Speculative and abusive registrations) are complied with and the Complainant is eligible to register “.eu”-names according to Article 4 (2) (b) of EC Regulation No. 733/2002 (see also Paragraph B11 (b) ADR Rules) as amended by Article 22 of EC Regulation 2019/517.

I. As the Respondent has not disputed the facts provided by the Complainant with the Complaint, the Panel regards the facts provided by Complainant as accepted according to paragraph B10 ADR Rules (see also ADR 4477 “WALTHER-PRAEZISION, 2810 “RATIOPARTS”, 3976 “ABAT”).

II. Under Article 21 (1) of EC Regulation No. 874/2004 in order to succeed under this dispute resolution procedure the Complainant must show that the disputed domain name is:
(i) identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law and:
(ii) the disputed domain name has been registered by its holder without rights or legitimate interest in the name; or
(iii) has been registered or is being used in bad faith.

1. Recognition and establishment of rights by law (Article 21 (1), and 10 (1) of EC Regulation No. 874/2004)

The Complainant has been using his artist name for many years. He gathered more than 10.000 Followers on Instagram and 2000 visitors per month on his blog and he is regularly present in the media. As a result, he is widely known under this unique name, which makes him the rightful owner of this name by Austrian law. This is the case, since § 43 Austrian Civil Code (ABGB) covers so called artist names (alias, pseudonym) such as the artist name of the Complainant. The Panel has no doubts that, accordingly, such artist names shall also be protected under Article 10 (1) of EC Regulation No. 874/2004.

Therefore, the Complainant has, to the satisfaction of the Panel, shown that he has valid rights to the name “Laurel Koeniger” in the sense of Article 10 (1) of EC Regulation No. 874/2004.

2. Identity or confusing similarity (Article 21 (1) of EC Regulation No. 874/2004)

The disputed domain name reproduces the artist name of the Complainant in its entirety. Therefore, the disputed domain name is identical to his (artist) name “Laurel Koeniger”. The fact that a protected name is wholly incorporated in the disputed domain name has been seen as sufficient by numerous panels to establish identity (e.g. ADR 07850 Timo Kettenbach vs. Evolution Media e. U; 07861 Roy Kirpestein vs. Yellow Network Limited; 07849 Chousein Kagia Ozalp vs. Kemal Ceylan).

Also, the artist name "Laurel Koeniger" is identical to the disputed domain name except for the ccTLD suffix “EU”. However, according to the prevailing opinion and consistent case law of the Panel, the top-level domain may be disregarded when assessing identity or confusing similarity (see also ADR 6442 “SWAROVSKI”, 4477 “WALTHER-PRAEZISION”, 475 “HELSINKI”, 387 “GNC”, 596 “RESTAURANT”).

For the above reasons, the Panel concludes that the disputed domain name is identical to a name in respect of which the Complainant possesses a right recognised or established by national law (Article 21 (1) of EC Regulation No. 874/2004).

3. Registration without rights or legitimate interests (Article 21 (1) (a), (2) of EC Regulation No. 874/2004)

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Complainant has the Respondent not granted any permission or consent to use its artist name in a domain name.

Further, the disputed domain name does not correspond to the name of the Respondent and he is not commonly known as “Laurel Koeniger”. In fact, the Complainant was originally the owner of the disputed domain name. At that time, the disputed domain name had many active links and automatically referred to the Complainant's main domain name <LAURELKOENIGER.COM>. Shortly after the Complainant mistakenly dropped the disputed domain name, the Respondent registered it and offered a blog online with contents that are thematically similar to the Complainant's work. There is no apparent interest of the Respondent why he is presenting his content, which is similar to the Complainant's, via a disputed domain name, which was previously owned by the Complainant and via which the Complainant has built up his internet presence as "Laurel Koeniger", and which simply consists of the Complainant's name, which has no connection to the Respondent.

According to Paragraph B10 of the ADR-Rules and with respect to the missing response of Respondent the panel accepts this presentation as given and bases its decision on this presentation and accepts that the Respondent has no right or legitimate interest in the disputed domain name. Therefore the Panel finds that the Complainant succeeds under Article 21 (1) (a) of EC Regulation No. 874/2004.

4. Registration or use in bad faith (Article 21 (1) (b), (3) of EC Regulation No. 874/2004)

The fact that the Complainant’s artist name is widely known lead the Panel to the conclusion that the Respondent must have known the Complainant and therefore registered the disputed domain name in bad faith.

Furthermore, the Respondent does not have anything to do with the name "Laurel Koeniger", nor has the Complainant ever transferred any rights to his name to the Respondent. In fact, the disputed domain name points to a website with similar content to the website of the Complainant. Without any objection to the facts presented by the Complainant, the Panel assumes that the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website, by creating a likelihood of confusion with a name on which a right is recognised or established by Austrian national law, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website of the Respondent as the holder of the disputed domain name. Moreover, the disputed domain name is a personal name for which no demonstrable link exists to the Respondent.

In this regard, the Panel also finds that the Respondent has engaged in a pattern of conduct as set out in Article 21 (3) (d), (e) of EC Regulation No. 874/2004.

III. As the Complainant is a natural person resident in the EU member state Austria, according to Article 4 (2) (b) (i) EC Regulation 733/2002 as amended by Article 22 of EC Regulation 2019/517 (Article 4 (2) (b) (iii) EC Regulation 733/2002) the Complainant is entitled to request the transfer of the disputed domain name.

DECISION

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

the domain name LAURELKOENIGER.EU be transferred to the Complainant.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2020-04-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: laurelkoeniger.eu

II. Country of the Complainant: Austria, country of the Respondent: Germany

III. Date of registration of the domain name: 15 November, 2018.

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.
12. other: artist name.

V. Response submitted: No

VI. Domain name is 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: no own name or other rights in the disputed domain name, no rights granted by Complainant.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The disputed domain name is a personal name for which no demonstrable link exists between the Respondent and disputed domain name.

IX. Other substantial facts the Panel considers relevant: Artost names to be protected under Regulation (EC) No 874/2004, if national law of Complainant provides for such a right.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: Regulation (EC) No 733/2002 amended by Regulation (EU) No 2019/517

XII. Is Complainant eligible? Yes