Panel Decision for dispute CAC-ADREU-007786

Case number	CAC-ADREU-007786
Time of filing	2019-11-04 14:07:17
Domain names	rnan.eu

Case administrator

Lenka Náhlovská (Case admin)

Complainant

Organization	Gilead Sciences, Inc.

Respondent

Name	rahul sharma

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

The Panel is not aware of any other legal proceedings pending with regard to the domain name in dispute.

FACTUAL BACKGROUND

1. The Complainant - MAN Truck & Bus SE - is a manufacturer of commercial vehicles and it's MAN trademark is well known in many countries. The Complainant has it's registered office in München, Germany, and is a European company incorporated under the EU law (Societas Europaea). The Complainant is the owner of MAN trademark through numerous trademark registrations with trademark agencies throughout the world, including:

- International Trademark Registration No. 542762 MAN (fig.), enjoying protection for AM-AT-AZ-BG-BX-CH-DE-DZ-EG-ES-FR-HU-IT-KG-KZ-LI-LV-MA-MD-ME-PT-RO-RS-RU-SK-TJ-UA in classes 7, 12, 37 with priority of 25 August 1989;

- International Trademark Registration No. 542763 MAN (fig.) enjoying protection for LV, LU, GE, LT, TJ, RO, TM, DZ, HU, BG, FR, ME, BE, DE, UZ, KG, MD, MA, AT, SK, AZ, IT, KZ, PT, UA, RS, RU, CH, ES, NL, LI, EG, EE, AM in classes 7, 12, 37 with priority of 25 August 1989;

- German Trademark Registration no 981579 MAN (combined) in classes 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 19, 20, 21 with priority of 27 May 1977 (registered on 2 February 1979).

2. The Complainant is also using MAN mark for its email communication with email addresses based on the domain name <man.eu>.

3. Respondent is the individual Rahul Sharma from Kaunas, Lithuania. He/she has registered the disputed domain name <rnan.eu> on 15 July 2019. The domain name was not used for the provision of any services; however, it was fraudulently used already on July 16, 2019 for sending emails to business partners of the Complainant requesting fraud payments.

4. The Respondent has not demonstrated what comprises his/her economic activity, if any.

A. COMPLAINANT

5. The Complainant is the owner of the well-known combined MAN mark, registered in Germany in classes 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 19, 20, 21 since 1977.

6. The Complainant is using <man.eu> domain name for its email communication with <@man.eu> email addresses.

7. The Respondent has registered the disputed domain name <rnan.eu> on 15 July 2019 and fraudulently used it already on July 16,

2019 for sending emails to business partners of the Complainant requesting fraud payments. The Complainant alleges that the email addresses used in Respondent‘s fraudulent communication are consistent with the structure of the Complainant’s email addresses and are apparently used for the purpose of creating the impression that this is a genuine email sent by the Complainant. Notably the signature block of this email is authentic and also uses the Complainant’s authentic domain name <man.eu> as well as telephone numbers. The payment which is fraudulently requested from the Complainant’s business partner amounts to EUR 196,519.59.

8. Therefore, the Complainant concludes that the email using the disputed domain name was clearly sent for fraudulent criminal purposes. Immediately after being informed of this email, the Complainant had the Registrar Godaddy contacted and notified of the blatantly fraudulent use of the domain name rnan.eu. However, there was no reaction and the domain name is still active.

9. The domain name <rnan.eu> is confusingly similar to the MAN mark. The disputed domain name <rnan.eu> differs from the Complainant's registered trademark in one way: the letter “m” has been substituted by the letters “rn”. Therefore, there is an actual risk that the recipient will not notice this difference. The domain name at subject “rnan.eu” is clearly a misspelling of the Complainant’s mark (and domain name man.eu) and at least visually similar (Enterprise Holdings, Inc. v. Domains Master, CAC 6542, <enterprize.eu>)

10. The Respondent has no rights or legitimate interests in the name MAN. Respondent is not using the domain name for providing a website and is not otherwise known under the domain name.

11. The Respondent has registered or used the domain name in bad faith: the disputed domain name, which is confusingly similar to the trademark of Complainant, was used for the purpose of defrauding the Complainant’s business partners as the email of July 16, 2019.

12. The disputed domain name <rnan.eu> shall be transferred to the Complainant for the following reasons:

a) it has been registered without Respondent having any rights or legitimate interest and,

b) it has been registered and is being used in bad faith.

B. RESPONDENT

13. The Respondent has failed to submit a Response to the Complaint. According to Para. B10(a) of .eu ADR Rules, in the event that a Party does not comply with any of the time periods established by these ADR Rules or by 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.

DISCUSSION AND FINDINGS

14. The Panel has reviewed the documentary evidence and has found it sufficient to conclude that the Complainant is the proprietor of the trademark MAN, namely: International Registrations No. 542762 and 542763 since 25 August 1989; national registration in Germany no 981579 since 2 February 1979 (with priority as of 27 May 1977).

15. The Complainant is using its mark in its website <www.man.eu> and for its email communication with <@man.eu> email address.

16. According to Article 21 (1) of the Regulation EC No. 874/2004, the Complainant must demonstrate that the disputed domain name:

(a) is identical or confusingly similar to a name in respect of which the Complainant has a recognised right; and

(b) has been registered by its holder without rights or legitimate interests; or

(c) has registered or is being used in bad faith.

A. Is The Domain Name Identical Or Confusingly Similar To The Complainant‘s Mark?

17. The disputed domain name <rnan.eu> differs from the Complainant's registered trademark in one way: the letter “m” has been substituted for the letters “rn”. Therefore, the disputed domain name consists of the obvious misspelling of the MAN trademark of the Complainant, with the substitution of the letter “m” with the letters “r” and “n” in the disputed domain name, which are visually similar-appearing characters when put together – i.e. “rn”. This misspelling in the disputed domain name, also referred as typosquatting, is insufficient to avoid a finding of confusing similarity (Virgin Enterprises Limited v. Registration Private, Domains by Proxy, LLC / Name Redacted, WIPO Case No. D2018-0644 (<virgingalaitic.com>).

18. As it is already established by several WIPO panels in recent typosquatting cases, two lowercase „r“ and „n“ letters used instead of „m“ results in confusing similarity (see WIPO cases No. DCO2018-0005 (ArcelorMittal SA v. Tina Campbell, <arcelorrnittal.co> typosquatting of ARCELORMITAL), case No. DCO2018-0039 (KPMG International Cooperative v. Cimpress Schweiz GmbH, <kprng.co> typosquatting of KPMG), Case No. D2019-1445 Compagnia Generale Telemar S.p.A. v. chu cash (<telernar.com> typosquatting of TELEMAR).

19. The confusing effect of multi-letter homoglyphs (for instance, „cl“ looks similar to „d“, „vv“ looks similar to „w“ and, eventually, „rn“ looks similar to „m“) may be used in so called „homograph attack“: a way a malicious party may deceive computer user by exploiting the fact that some different characters look alike (see more: https://en.wikipedia.org/wiki/IDN_homograph_attack).

20. It is well accepted by .eu ADR and UDRP panels that a generic Top-Level Domains, such as <.eu> or <.com>, does not create any distinctiveness of the disputed domain names and is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark.

21. The Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark and, therefore, finds that the first requirement of Para. 21(a) of the Regulation is satisfied.

B. Has The Domain Name Been Registered By Its Holder Without Rights Or Legitimate Interests?

22. The Respondent failed to provide the response and did not even try to argue regarding this question. In fact, there is no evidence that the Complainant would have granted to the Respondent any authorization to use the mark MAN. There is no any connection between the Complainant and the Respondent. The Respondent has not demonstrated in any way that prior to any dispute resolution procedure, he/she would have used domain name or a corresponding name in the context of an offer of goods or services, or that he/she would have prepared for it. Therefore, the Panel agrees with the contentions of the Complainant, namely, that the Respondent registered the disputed domain name without having any rights or legitimate interests to the mark in question. Therefore, the second requirement of Para. 21(a) of the Regulation is satisfied.

C. Was The Domain Name Registered Or Used In Bad Faith?

23. The evidence shows that fraudulent email was sent from the disputed domain name to the Complainant’s business partners and employees. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration of the disputed domain name and sought to take advantage of the MAN trademark. Furthermore, as the Complainant noticed, the Respondent used the disputed domain name shortly after registration to deceive the accounting personnel, most likely as part of a phishing criminal activity. The pattern of such conduct is already detected in several recent UDRP decisions: “the Respondent’s fraudulent use of the disputed domain name, which began almost immediately after its registration, confirms the possibility that the disputed domain name was registered to conduct a ‘social engineering’ attack or other type of scam” (See, e.g., Virgin Enterprises Limited v. Vincent Battista, WIPO Case No. D2018-1416; Compagnia Generale Telemar S.p.A. v. chu cash, WIPO Case No. D2019-1445). Therefore, the Panel is of the view that the Respondent should have been fully aware of the Complainant’s trademark and activities when he/she registered the disputed domain name.

24. As regards the use of the disputed domain name, one should refer to the fact that disputed domain name consists of a misspelling of the Complainant’s trademark MAN. The Respondent has registered the disputed domain name with a misspelling of the Complainant’s trademark (“typosquatting”) which means he/she had an intention to attract Internet users and consumers for commercial gain by creating a likelihood of confusion with the Complainant and its business. The evidence put forward by the Complainant shows that the disputed domain name was used to send deceptive emails and seek payment of fraudulent invoices. This criminal conduct evidently constitutes bad faith.

25. In the Panel’s view, these circumstances represent evidence of registration and use in bad faith of the disputed domain name and leads to the conclusion that the third requirement of Para. 21(a) of the Regulation is satisfied.

DECISION

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

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

PANELISTS

Name	**Dr. Darius Sauliunas**

DATE OF PANEL DECISION 2019-11-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <rnan.eu> (better visualised in caps: <RNAN.EU>)

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

III. Date of registration of the domain name: 15 July 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. combined trademark MAN, registered in Germany, reg. No. 981579, for the term of ten years (later renewed for additional periods), filed on 27 May 1977, registered on 2 February 1979 in respect of goods and services in classes 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 19, 20, 21

V. Response submitted: No

VI. Domain name is confusingly 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: no affiliation, no license, no proof of interest (lack of response), no active website or any economic activity

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: typosquatting (two letters "rn" instead of one letter "m"); homograph attack (sending fraudulent emails to Complainant's business partners)

IX. Other substantial facts the Panel considers relevant: none

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: none

XII. [If transfer to Complainant] Is Complainant eligible? Yes