Panel Decision for dispute CAC-ADREU-007817

Case number	CAC-ADREU-007817
Time of filing	2020-01-06 22:47:59
Domain names	Langmaack.eu

Case administrator

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

Complainant

Organization	

Respondent

Organization	Yellow Network Limited

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant appears to be a physical person, residing in Düsseldorf, Germany.

On October 25, 2011 the Respondent registered the disputed domain name <langmaack.eu>.

On October 8, 2019 the Complainant submitted the Complaint in the present ADR proceeding, in German. On the same date, EURid provided details about the registrant of the disputed domain name, indicated that the language of the registration agreement was English and confirmed that the disputed domain name will be locked during the ADR proceeding.

On October 14, 2019 the Complainant was notified about formal deficiencies in the Complaint, invited to correct them and file an amended Complaint within seven days from receipt of the above-mentioned notification.

In particular, the identified issues were:
1) The Complaint was not filed in the language of the Registration Agreement, which is English.
2) The Complainant did not sufficiently identified the Respondent.
3) The Complainant did not specified the remedy sought.
4) The Complaint did not include any documentary evidence.
5) The Complaint did not sufficiently clarify the relevant factual and legal grounds.

On the same day the Complainant submitted the amended Complaint.

On October 15, 2019 the Czech Arbitration Court issued a Notification of Commencement of the present ADR proceeding.

The Respondent was duly notified electronically and by post about the present ADR proceeding but did not submit the Response within the given deadline. Consequently, the Notification of Respondent's Default was issued on December 17, 2019.

Following the selection of panelist and filing of the panelist's Statement of Acceptance and Declaration of Impartiality and Independence, on December 30, 2019, the Czech Arbitration Court notified the Parties about the appointment of the Panel and the projected decision date.

A. COMPLAINANT

The Complainant asserts that he personally holds the family name "LANGMAACK" and that for this reason he has a prior right to the disputed domain name.

The Complainant takes the view that the Respondent has registered or uses the disputed domain name for speculative or abusive purposes.

The Complainant assumes that he has a prior right regarding the disputed domain name and that the Respondent had no rights at the time of registration and uses the domain name in bad faith.

The Complainant points out that the disputed domain name resolves to a website where the disputed domain name is on sale and he provided two screenshots of that website as evidence of the purported speculative purposes.

The Complainant requests the transfer of the disputed domain name.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

In accordance with Article 21 (1) of the Commission Regulation (EC) No 874/2004 (as well as, in substance, paragraph B 11 of the ADR Rules), the Complainant, in order to succeed, is required to prove that the disputed domain name:

(a) is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10 (1); and

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

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

With reference to the terms “Community law” used at point (a) above, it is worth mentioning that, as a consequence of the fact that the European Union replaced and succeeded the European Community at the entry into force of the Lisbon Treaty on 1st December 2009, the reference to Community law should be regarded as reference to European Union law.

In accordance with paragraph B 1 (b) (9) of the ADR Rules, the Complaint has to specify the names in respect of which a right is recognized or established by the national law of a Member State and/or European Union law. For each such name, the Complaint has to describe exactly the type of right claimed, specify the law or laws as well as the conditions under which the right is recognized and/or established.

In accordance with paragraph B 1 (b) (10) (i) of the ADR Rules, the Complaint has to describe the grounds on which it is made including, in particular:

A. why the domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or European Union law (as specified and described in accordance with Paragraph B 1 (b) (9)); and, either

B. why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint ; or

C. why the domain name should be considered as having been registered or being used in bad faith.

Pursuant to paragraph B 1 (b) (12) of the ADR Rules, if the Complainant requests transfer of the domain name, the Complaint has to provide evidence that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4 (2) (b) of Regulation (EC) No 733/2002.

In accordance with B 1 (b) (16) of the ADR Rules, the Complaint has to include as annex any documentary or other evidence, including any evidence concerning the rights upon which the Complaint relies, together with a schedule indexing such evidence.

The Complaint is very brief. The Complainant's allegations, as indicated in section "Parties' contentions" above, do not contain any

supporting argument. Moreover, no evidence was provided, except two screenshots of the website to which the disputed domain name resolves.

Notwithstanding the fact that in the first submission of the Complaint several deficiencies were indicated, in the amended Complainant the provided elements are still insufficient for complying with the commonly accepted standards of proof. In these circumstances, the Panel does not find appropriate to make use of the powers at his disposal under paragraphs B 7 and B 8 of the ADR Rules (i.e. investigations, further statements or documents).

As highlighted by other panels (see, for example, CAC Case No 03239), paragraph B 11 (d) of the ADR Rules makes it clear that ultimately the burden of proving the requirements of Article 22 (1) of Regulation (EC) No 874/2004 rests upon a complainant. A complainant must at a bare minimum put forward a prima facie case to the effect that a domain name should be subject to revocation. It is not sufficient for a complainant merely to assert that the requirements of the above-mentioned Article 22 (1) have been satisfied and to leave it to the panel to investigate whether or not this is correct.

The Complainant asserts that his family name is "LANGMAACK".

However, the Complainant has not provided any evidence of the ownership of the above-mentioned family name.

Furthermore, the Complainant has not described exactly the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established.

It is a common view that a simple allegation of the ownership of a right is not sufficient to meet the first requirement of Article 21 (1) of Regulation (EC) No 874/2004 (see, for example, CAC Case No 06801).

Therefore, the Panel finds that the Complainant has failed to show evidence that he is the holder of a prior right to the name "LANGMAACK", has not provided any reference to the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established.

In circumstances where the Complainant has failed to establish that he is the holder of rights in the name that are recognized or established under national and/or European Union law, the Panel does not need to assess whether the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and/or has been registered or is being used in bad faith.

For the above reasons, the Panel finds that the Complainant has not satisfied the requirements of Article 21 (1) of Regulation (EC) No 874/2004.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B 12 (b) and (c) of the Rules, the Panel orders that

the Complaint is Denied

PANELISTS

Name	Michele Antonini

DATE OF PANEL DECISION 2020-01-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <LANGMAACK.EU>

II. Country of the Complainant: Germany, country of the Respondent: Great Britain (UK)

III. Date of registration of the domain name: 25 October 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: family name (the Complainant has not provided any evidence of the ownership of the family name "LANGMAACK", therefore the first requirement of Article 21 (1) of Regulation (EC) No 874/2004 was not satisfied)

V. Response submitted: No

VI. Domain name is identical/confusingly similar to the protected right of the Complainant: not applicable, because no evidence of any protected right, any description of the type of right claimed, any specification of the applicable law or laws, nor any condition under which the right is recognized and/or established have been provided

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004): the issue was not assessed due to the fact that the first requirement of Article 21 (1) of Regulation (EC) No 874/2004 was not satisfied

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): the issue was not assessed due to the fact that the first requirement of Article 21 (1) of Regulation (EC) No 874/2004 was not satisfied

IX. Other substantial facts the Panel considers relevant: ---

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: ---