Panel Decision for dispute CAC-ADREU-007849

Case number	CAC-ADREU-007849
Time of filing	2020-03-05 15:09:41
Domain names	ozalp.eu

Case administrator

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

Complainant

Organization	N/A

Respondent

Name	Kemal Ceylan

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 or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The disputed domain name OZALP.EU was registered on June 6, 2006 and is currently not used. Furthermore, there are no indications that it has ever been used at all.

The Complainant is a natural person, a citizen of Greece, with a name Chousein Kagia Ozalp, whereas Ozalp is his surname.

In 2010, about nine years before filing the Complaint, the Complainant tried to contact the Respondent via email, both directly and through the registrar, in order to acquire the disputed domain name. Apparently, the Respondent received no response.

The Complainant filed the Complaint on December 7, 2019 and amended it on December 14, 2019.

The Respondent is Kemal Ceylan with German address and phone number. The Respondent has not replied in due time to the Complaint.

A. COMPLAINANT

The Complainant asserted that OZALP was his family name. To prove that, he submitted a scanned copy of his passport, from which it is evident that indeed OZALP is his family name and also that he is a citizen of Greece.

Furthermore, the Complainant asserted that no website had been active on the disputed domain name at least since 2008. To prove that, the Complainant submitted a screenshot of a display dated December 14, 2019 showing that no website was active on the disputed domain name.

The Complainant also asserted that the Respondent had no legitimate interest in the disputed domain name and that the disputed domain name had been registered in bad faith due to lack of any use.

The Complainant also submitted copies of emails from 2010, showing that he had tried to contact the domain name holder directly and through the registrar, in order to acquire the disputed domain name. Apparently, the Complainant has received no response.

The Complainant demanded that the disputed domain name be transferred to him.

B. RESPONDENT

The Respondent has failed to submit any response to the Complaint.

DISCUSSION AND FINDINGS

Article 21(1) of Regulation 874/2004 states:
"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where the name 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 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."

Article 22(11) of the Regulation No. 874/2004 defines when the transfer of the disputed domain name is justified in addition to revocation, namely:
"In the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002."

Article 10(1) of Regulation 874/2004 defines prior rights that constitute the basis for challenging a domain name .EU, namely:
" 'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works."

Article 4(2)(b) of the Regulation No. 733/2002 defines general eligibility criteria for a holder of a domain name .EU, namely:
The Registry shall:
"...
(b) register domain names in the.eu TLD through any accredited .eu Registrar requested by any:
(i) undertaking having its registered office, central administration or principal place of business within the Community, or
(ii) organisation established within the Community without prejudice to the application of national law, or
(iii) natural person resident within the Community;
..."

Therefore, in order to decide on the Complaint, ie whether to transfer the disputed domain name to the Complainant, the Panel must establish:
(1) whether the Complainant has any valid prior right;
(2) whether the disputed domain name is identical with or similar to that prior right;
(3) whether the disputed domain name has been registered without rights or legitimate interest, or it has been registered or is being used in bad faith; and
(4) whether the Complainant is legible in general to be the holder of the disputed domain name.

If all four questions above are answered affirmatively, the Complaint is justified and the disputed domain name must be transferred to the Complainant.

Given that the Respondent had failed to respond to the Complaint, the Panel examined the evidence submitted by the Complainant, evaluated the Complainant's assertions and checked whether there is any internet site active on the disputed domain name. The Panel established that no website is active on the disputed domain name.

Based on the Complainant's assertions and evidence, the Panel has concluded that the Complainant is a natural person, a citizen of Greece, with a name Chousein Kagia Ozalp, whereas Ozalp is his surname. This is evident from the scanned copy of the Complainant's passport submitted as evidence with the Complaint.

The Complainant based his Complaint on his surname as a prior right, so the question is whether a surname of a citizen of Greece constitutes a valid prior right under Article 10(1) and consequently under Article 21(1). Family name is explicitly mentioned in Article 10(1) as one of possible justified prior rights, however under an additional condition that it must be protected under the national law in the Member-State where the right is held. The Greek Civil Code in Articles 57 through 59, especially in Article 58, protects the right to a personal name and provides for several remedies if that right is infringed. Therefore, the Complainant's surname constitutes valid prior right to challenge the disputed domain name.

The disputed domain name is obviously identical with the Complainant's surname.

The Complainant asserted that the Respondent had no legitimate interest in registering and holding the disputed domain name. There are no indications in the Complaint and accompanying evidence to doubt this assertion. On the contrary, the lack of use of the disputed domain name since its registration on June 6, 2006, which is evident from the submitted evidence (a copy of screenshot of a display dated December 14, 2019 showing that no website was active on the disputed domain name) and from checking of possible active website on the disputed domain name by the Panel, additionally supports the Complainant assertion. The Respondent has failed to respond to the Complaint, so he has forgone a possibility to contradict the Complainant's assertion and to provide facts and evidence in support of his possible legitimate interest. Therefore, according to Section B10(a) of the ADR Rules, the Panel accepted the Complainant's assertion that the Respondent had no legitimate interest in the disputed domain name.

Furthermore, the lack of use of the disputed domain name since its registration on June 6, 2006 demonstrates that the disputed domain name was registered in bad faith according to Article 21(3)(b)(ii) of Regulation 874/2004, because it has not been used for more than 13 years, which is way more than two years mentioned in the Article. Therefore, the Panel concluded that the disputed domain name was registered in bad faith.

The Complainant is a Greek citizen which is evident from the submitted copy of the passport, so it is certain that he is a natural person, and the Panel had no reason to doubt that he is resident within the European Union. Therefore, the Panel finds the Complainant to be legible in general to be the holder of the disputed domain name according to Article 4(2)(b) of the Regulation No. 733/2002.

Given that the registration of the disputed domain name was speculative and abusive according to Article 21(1) of the Regulation No. 874/2004, and the Complainant satisfies the general eligibility criteria under Article 4(2)(b) of the Regulation No. 733/2002, the Panel grants the Complainant's request and transfers the disputed domain name to the Complainant according to Article 22(11) of the Regulation No. 874/2004.

DECISION

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

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

PANELISTS

Name	Gregor Macek

DATE OF PANEL DECISION 2020-03-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: OZALP.EU

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

III. Date of registration of the domain name: 6 June 2006

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 of the Complainant: OZALP

V. Response submitted: No

VI. Domain name is identical 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: Complainant's assertion in combination with Respondent's failure to respond and lack of use of the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Yes
2. Why: Lack of use of the disputed domain name for more than 13 years.

IX. Other substantial facts the Panel considers relevant: The prior right (identical to the disputed domain name) is the Complainant's family name which is protected under the Greek Civil Code.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. Is Complainant eligible? Yes