Panel Decision for dispute CAC-ADREU-007861

Case number	CAC-ADREU-007861
Time of filing	2020-04-04 10:45:45
Domain names	kirpestein.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 disputed domain name was previously subject of legal proceedings brought by the Registry against Zheng Quingying in the Belgian courts, which resulted in its release for registration by others in 2011. The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant's family name is Kirpestein. The Complainant tried to register the disputed domain name in the sunrise period in 2006, but his application was rejected since he did not have a registered trademark.

The disputed domain name was subsequently registered by Zheng Quingying together with about 9000 other domain names, which were all released for registration by others in 2011 pursuant to a decision of Belgian courts in a case brought by the Registry.

Immediately following its release in 2011, the disputed domain name was registered by Yellow Network Limited, a dormant company incorporated in England and Wales in 2010.

The website located by the disputed domain name indicates that it is offered for sale but contains no other content relating to the name Kirpestein. The site has been in this state for some years. The Complainant sent an email to the registrant's address and received an automatic reply in Chinese.

A. COMPLAINANT

The Complainant asserts that he has a legitimate interest and legal right in the name "Kirpestein" and that the disputed domain name is confusingly similar to it. He states that he wants to use the disputed domain name for e-mail for family information and for his company Kader-IT consultancy BV, for which he personally delivers IT consultancy.

The Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name and that it was registered in bad faith or on purely speculative grounds.

B. RESPONDENT

The Respondent did not file a response. The ADR Center notified its default.

DISCUSSION AND FINDINGS

Under Article 22(1) of EU Regulation 874/2004 ("the Regulation") an ADR procedure may be initiated by any party where the registration

is speculative or abusive within the meaning of Article 21 of the Regulation.

Article 21 of the Regulation applies to a domain name that:

A. 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 its Article 10(1); and

B. has been registered by its holder without rights or legitimate interest in the name, or has been registered or is being used in bad faith.

These conditions will be considered in turn below.

Under Rule 10 of the .eu Alternative Dispute Resolution Rules (the "ADR Rules"), where a party does not comply with any of the time periods established by these Rules, 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; and, unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

Nevertheless, under Rule 11, the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.

Under Rule 7(a) a Panel is not obliged, but is permitted at its sole discretion, to conduct its own investigations on the circumstances of the case.

A. Confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law.

Article 10(1) of the Regulation refers to holders of prior rights recognised or established by national and/or Community law. It goes on to state that "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.

It is clear that the rights which may suffice for the purpose of the first condition of Article 21 are not limited to those specified in the second paragraph of Article 10(1), since the non-exhaustive terms "include", "inter alia" and "such as" are used in that paragraph and in Article 21. Nevertheless, it appears from reading the provisions as a whole and in context that some form of legal protection of a name against use by others, going beyond a mere entitlement to use the name, is required.

The Panel notes that under Article 1.8 of the Dutch Civil Code "A person who uses someone else’s name without his permission, commits a tortious act against that other person if he thereby creates the appearance to be this other person or to belong to his dynasty, family or next of kin".

In the absence of any contention to the contrary, the Panel accepts this as sufficient to confer a right under Dutch law in a family name, such as Kirpestein, for the purposes of Article 21 of the Regulation.

The disputed domain name is effectively identical to this name. The first requirement of Article 21 is satisfied.

B. Registered without rights or legitimate interest or registered or used in bad faith.

It is clear from the evidence in the Complaint that the disputed domain name has been registered without any right or legitimate interest of the Respondent and that it has been registered and used in bad faith.

The Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with any offering of goods or services or for any legitimate and non-commercial or fair use, and is not commonly known by the disputed domain name.

On the contrary, the circumstances indicate that the disputed domain name was registered or acquired primarily for the purpose of sale to a person who has a right in respect of it. In the absence of any justification, the Panel regards this as demonstrating bad faith in accordance with Article 21(3)(a) of the Regulation.

Condition B of Article 21 of the Regulation is satisfied.

Eligibility of the Complainant

The Complainant has applied for transfer of the disputed domain name to himself. He is resident in The Netherlands and thus satisfies the general eligibility criteria in Article 4(2)(b) of EU Regulation 733/2002. The disputed domain name should therefore be transferred to him in accordance with Article 22(11) of Regulation 874/2004.

DECISION

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

PANELISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2020-03-31

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: kirpestein.eu

II. Country of the Complainant: The Netherlands, country of the Respondent: UK / China

III. Date of registration of the domain name: October 24, 2011

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: Kirpestein

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. No use for offering goods or service or preparations for such use or legitimate non-commercial or fair use, and Respondent not commonly known by the name, and no other reason for recognising any right of the Respondent.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Offer for sale of the domain name

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. Is Complainant eligible? Yes