Panel Decision for dispute CAC-ADREU-007911

Case number	CAC-ADREU-007911
Time of filing	2020-07-05 20:12:15
Domain names	bemyhome.eu

Case administrator

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

Complainant

Organization	BeMyHome Kft.

Respondent

Organization	EuMajak Consulting Kft

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 proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The relevant factual background is set out in the submissions of the parties, below. The disputed domain name was registered on 9 September 2019.

A. COMPLAINANT

The Complainant, a company in Hungary, states that it has been operating under the name BeMyHome since February 2018, registering as a limited company on 31 August 2018, and that it is known to the general public under this name. Arguing that the Respondent is another real estate firm operating under the same name, since the autumn of 2019, the Complainant submits that it has received (an unspecified number of) communications intended for the Respondent (through telephone), thereby alleging that the Respondent's activities are ruining its (the Complainant's) reputation and creating a negative image of it. The Complainant requests transfer of the disputed domain name to itself, in a very short Complaint containing limited detail.

B. RESPONDENT

The Respondent, a company in Hungary, states that it carries out various activities, including real estate management, and that it created a website at the disputed domain name in this context in summer 2019. The Respondent adds that it chose the disputed domain name as the alternative domain name <bemyhome.com> was already registered by another party. Noting that the Complainant wrote to the Respondent alleging unlawful use of the Complainant's trade mark, and that it (the Respondent) offered transfer in return for just compensation for registration and support costs (receiving no further response), the Respondent asks the Panel to dismiss the present Complaint. The Response is also brief.

DISCUSSION AND FINDINGS

The Panel first considers whether the Complainant has demonstrated that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by relevant law. There are two possible bases for the presence of such rights in this case - trade mark and company name.

(i) The Complainant relies upon its application for a trade mark under the law of Hungary, with reference M1903892 and situated in class 36. This application was submitted on 19 December 2019 and, as verified by the letter supplied as an annex to the Complaint, published by the national IP office on 28 February 2020. The Panel must assume that the application was still pending, at the time of the commencement of the present proceedings (indeed, as of the date of the Panel's decision, the matter was still listed as 'application

procedure in progress' by the said national office - according to the Panel's own search). In the absence of any further information in the Complaint, it is recalled that all of the above steps have occurred after the registration of the disputed domain name, which took place on 9 September 2019. The Panel notes that there is a question, in the .eu jurisprudence, regarding the relevance of trade marks that postdate the registration of a disputed domain name (see Overview of CAC Panel Views on Selected Questions of the ADR for .EU Domain Name Disputes, 2nd Edition, page 32). However, the Panel does not reach this question in respect of the present facts, because there is no evidence that the trade mark relied upon by the Complainant has been accepted onto the register by the competent authority. A pending mark is not sufficient for the purposes of article 21(1) of Regulation 874/2004 ('a right is recognised or established by national and/or [EU] law'); see e.g. CAC 7237, Wild East Travels ApS v Neil Smith <praguepissup.eu>.

(ii) The Complainant notes that it has operated under the name BeMyHome since February 2018, and that it registered as a limited company on 31 August 2018 (BeMyHome Kft; the abbreviation Kft being that used in Hungary to designate a limited liability company). The Panel notes that 'company names' (where protected under national law) is one of the examples of rights enumerated in article 10(1) of the Regulation and so incorporated by reference into the definition of rights for the purposes of article 21(1) of the same. Neither the existence of this official name, nor the position of such under national law, has been supported by specific evidence supplied by the Complainant, though its correspondence regarding its trade mark application has been under this name, and it is apparent to the Panel that the Complainant does business (e.g. at its own website) in this style. The Panel accepts the statement to which the Complainant has made a declaration of truth and good faith, without challenge by the Respondent, and so accepts the Complainant's reliance upon its company name for the purposes of this assessment.

Disregarding the top-level domain .eu, the disputed domain name is therefore identical to the text in which the Complainant, albeit only on the basis of (ii) and not (i), has rights.

Next, the Panel considers whether one the conditions set out in Article 21(1) of the Regulation have been satisfied (that is, registration without rights or legitimate interest, or registration or use in bad faith). In this regard, the absence, in the Complaint, of reference to (i) articles 21(1)(a) and (b) of the Regulation, (ii) the relevant provisions of the Regulation or Rules e.g. article 21(3) of the Regulation or article B11(f) of the Rules on non-exhaustive examples of bad faith; (iii) any further legal arguments, means that the Panel is not assisted in identifying which of the two conditions the Complainant relies upon (or indeed if it is both), and how the very brief assertions contained in the Complaint relate to either condition. The Panel recalls the importance, notwithstanding the important role for the Respondent in defending its actions, of a Complainant 'at least asserting' with 'argument, statement or evidence' matters relevant to the assessment of the dispute under article 21: see CAC 07798, TT PUR Finanz GmbH v Lazslo Muka.

Turning first to bad faith, the Panel finds that there is no evidence of registration or use in bad faith. There is little to suggest that the Respondent had or should have had any awareness of the Complainant at the time of registering the disputed domain name, especially in light of the irrelevance of the Complainant's subsequent trade mark application. Indeed, the matter has only got to this stage because of the Panel's assumption of rights in the Complainant's company name; nothing is supplied, for instance, verifying its activities let alone its fame. The Respondent states that it operates a legitimate business with various activities, one of which is real estate services promoted on the website at the disputed domain name, and there is no evidence to the contrary available to the Panel. There is nothing in the Complaint to support other points that could support a finding of bad faith e.g. a false suggestion of affiliation, or a resemblance with the Complainant's own website, or a pattern of conduct on the part of the Respondent. The Complainant has made very brief reference to consumer confusion (i.e. that customers of the Respondent have telephoned the Complainant), but the Panel places limited weight upon this given the absence of detail or argument supplied.

Regarding the absence of rights or legitimate interests on the part of the Respondent, the Complainant has similarly failed to provide the Panel with sufficient information to allow for a finding of such absence. Given the somewhat descriptive nature of the text in question ('be my home' - which, as the Respondent notes in its Response, is already used by another, unconnected company believed to be in Thailand for a .com domain name), and the Respondent's offerings of services consistent with the likely meaning of the text (property sales and rentals), the Complainant has not made out a prima facie case under this heading. Moreover, the submissions of both Complainant and Respondent appear to confirm that the Respondent's website was active, and offering the services in question, prior to any notice of the ADR procedure (which is relevant on account of the reference to such in article 21(2)(a)).

DECISION

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

PANELISTS

Name	**Prof. Daithí Mac Síthigh**

DATE OF PANEL DECISION 2020-07-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: BEMYHOME.EU

II. Country of the Complainant: Hungary; country of the Respondent: Hungary

III. Date of registration of the domain name: 9 September 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
9. company name

V. Response submitted: Yes

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. Yes
2. Why: Use of the disputed domain name in connection with the offering of goods or services, prior to any notice of an ADR procedure (article 21(2)(a)).

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: No evidence of registration in bad faith (no extant mark or application for a mark at the time of registration; presence of Complainant company name but no further basis for Respondent awareness) nor of use in bad faith (no basis for finding of e.g. intentional use to create likelihood of confusion).

IX. Other substantial facts the Panel considers relevant: trade mark not relied upon as has not been granted at the time of the Complaint, and even the application for protection postdates the registration of the disputed domain name

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: n/a