Panel Decision for dispute CAC-ADREU-007951

Case number	CAC-ADREU-007951
Time of filing	2020-07-22 11:27:26
Domain names	regeocities.eu

Case administrator

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

Complainant

Organization	European Geothermal Energy Council

Respondent

Name	Naden Badalgogtapeh

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, which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, the European Geothermal Energy Council, is an organisation with its address in Belgium. On its own website, it is described as 'a non-profit international organisation founded in 1998 to promote the European geothermal industry and enable its development both in Europe and worldwide, by shaping policy, improving business condition, and driving more research and development'.

The Respondent is an individual, with an address in Germany. The Respondent registered the disputed domain name on 9 September 2019; at the time that this Complaint was transmitted to the Panel, and at the time of this decision, the disputed domain name did not resolve to an active website.

A. COMPLAINANT

The Complainant affirms that REGEOCITIES was a research project on the regulation of geothermal heat pump systems at local and regional level in Europe, for which the Complainant was the project coordinator. The project received European Union funding (through the European Commission's Executive Agency for Small and Medium-Sized Enterprises), as part of the 'Intelligent Energy - Europe II' programme, from May 2012 until a point in 2015.

The Complainant notes that in this context and that as a 'deliverable' arising out of the project, it created a website, which was hosted at the disputed domain name; the Complainant was registrant of the disputed domain name from 30 July 2012 onwards. The Complainant initially contended that the disputed domain name was 'stolen by an unknown entity using it now for showing pornography' during a reorganisation of websites in September 2019, though it clarified in a subsequent statement that the domain name was registered by the Respondent when it was 'free, due to a mistake of our IT company'. It argued that the Respondent registered the domain name without rights or legitimate interests and that such registration and use was in bad faith. Additionally, the Complainant noted an inability to communicate with the Respondent. The Complainant requested that the disputed domain name be transferred to it.

B. RESPONDENT

The Respondent denies that it has stolen the disputed domain name, and states that its registration was not in bad faith, as there was no relevant trade mark. It responds to the Complainant's remarks regarding communication by pointing to the practice of the Registry in not supplying the contact details of domain name registrants to others, on account of data protection law. It expresses nonetheless a willingness to transfer the disputed domain name to the Complainant.

DISCUSSION AND FINDINGS

The Complainant is required to show that there exists a 'right [...] recognised or established by national and/or [EU] law' (article 21(1) of Regulation 874/2004) and to support such with documentary evidence (paragraph B1(b)(16) of the ADR Rules). In particular, a Complainant is asked (in paragraph B1(b)9 of the ADR Rules) to 'specify the names in respect of which a right is recognised or established by the national law of a Member State and/or European Union law' and so to 'describe exactly the type of right(s) claimed, and specify the law(s) as well as the conditions under which the right is recognised and/or established'. If such a right is found, a Panel may then consider whether a disputed domain name is identical or confusingly similar to it.

In many disputes under this Regulation and these Rules, the presence of such a right is straightforward. The Regulation adopts a fairly broad approach to rights, which is seen in the (non-exclusive) list of rights promulgated (in article 10(1) for a related purpose ('sunrise' applications prior to general registration)), but expressly incorporated into the article 21 analysis, and therefore of continuing relevance, by way of article 21(1). So, rights include 'registered national and [EU] 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'. As explained in detail in Case 06616 WGM Services Ltd. v Private, Stephan Hoefinger (10 March 2014), the burden of proof in this particular regard rests exclusively with the Complainant.

In summary, a Complainant must (i) identify the type or nature of right, (ii) show how the right is one recognised and/or established by member state or EU law, and (iii) verify the existence of the specific right. In some cases, all three points can be verified at once e.g. evidence of a valid current registration of an EU trade mark, which shows that (i) the type of right is a trade mark (ii) granted under the EUTM Regulation (iii) in respect of the specific mark. In other cases, such as business names recognised under national law, more detail may be necessary.

The difficulty that the Complainant faces in the present case is that it has neither identified the type of right claimed nor the law and conditions under which the right is recognised or established. While the onus is on a Complainant to do so, the Panel has extended a further opportunity to the Complainant to provide this information (as per paragraph B8 of the ADR Rules), given the brevity of the original Complaint, which did not expressly address the above mentioned requirements. The Complainant has however, in its additional submission, referred once more to, and resubmitted for the Panel's consideration, the grant agreement in respect of the project. This does not meet the Complainant's burden of proof, as although the Complainant has shown that it did in fact coordinate a research project with the acronym REGEOCITIES, it has not shown how this activity proves the existence of a right 'recognised or established by national and/or [EU] law' in that name.

It is true that, in contrast with some other domain name dispute resolution systems, the Regulation erects relatively few barriers to the acceptance of a Complaint. The above-noted broad definition of a relevant right, and the need to show bad faith or the absence of rights or legitimate interests on the part of the Respondent (rather than bad faith *and* the absence of rights or legitimate interests), demonstrate this. And although the Respondent notes the absence of a trade mark, the Panel must apply the broader test in article 21, which expressly allows for rights other than trade mark rights to be the basis of a Complaint. However, a Complainant must still show, first, that a relevant right, which is a mandatory component of article 21 of the Regulation, exists. The Panel is therefore not satisfied that the Complaint is within the scope of the Regulation, and cannot proceed to consider whether the disputed domain name is identical or confusingly similar to a name in which the Complainant has rights.

It is, as such, not necessary for the Panel to consider the submissions of the Complainant and Respondent regarding rights or legitimate interests or regarding bad faith, or indeed the Respondent's willingness (in principle) to transfer the disputed domain name to the Complainant. (The Panel notes the continuing difference of opinion between Panelists on how to deal with indications by Respondents that they would be willing to transfer a disputed domain name: Overview of CAC Panel Views on Selected Questions of the ADR for .EU Domain Name Disputes, 2nd Edition, page 14).

For the avoidance of doubt, the Panel makes no finding regarding the circumstances under which the disputed domain name became available for registration by the Respondent, nor regarding the Respondent's use of the disputed domain name (noting that the disputed domain name does not currently resolve to an active website and that the Complaint itself contains no evidence of such).

Finally, it is noted that the Panel exercised its discretion to request that the Complainant provide additional information, as noted above. Such information being duly supplied in a timely manner, the Respondent was allowed to make any further observations of its own regarding this additional information. A seven-day period was specified for such purpose, though the Respondent did not make any such observations.

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 2020-07-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: REGEOCITIES.EU

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

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:
The Complainant did not satisfy the Panel of the existence of a relevant right.

V. Response submitted: Yes

VI. Domain name is identical or confusingly similar to the protected right/s of the Complainant: Not applicable

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Not applicable

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Not applicable

IX. Other substantial facts the Panel considers relevant: Not applicable

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: discretion exercised to allow Complainant to make further submission on the subsistence of rights