Panel Decision for dispute CAC-ADREU-008139

Case number	**CAC-ADREU-008139**
Time of filing	**2021-07-19 17:00:57**
Domain names	**amanda-castello.eu**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	

Respondent

Name	**Peeter Põder**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There is no other legal proceedings the Panel is aware of which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant in this proceeding is a natural person whose name is Amanda Castello. It duly produced a copy of its identity card.
The Complainant contends that it is a public person, lecturer, therapist and writer, with high level international reports (governments, universities, Vatican...) and published many scientific articles and books.
It produces official documents proving that it's the author of a book that was published n 2017.
Its first name and its family name are reproduced in the disputed domain name <amanda-castello.eu>, which was registered on November 29, 2020.

A. COMPLAINANT

The Complainant contends that the disputed domain name <amanda-castello.eu> is composed with a name in respect of which a right is established by French Law. The complaint is based on article 21 of the EU Regulation 874/2004 on « Speculative and abusive registrations ». It relies on French Law to establish its rights, pursuant to article 226-4-1 of the Penal code.
The Complainant asserts that the disputed domain name <amanda-castello.eu> was used to give access to pornographic messages.
The Complainant contends that the Respondent has no legitimate interest in the disputed domain name, and that it has been registered and is being operated in a bad faith.
It requests the transfer of the disputed domain name.

B. RESPONDENT

The Respondent did not answer to the complaint.

DISCUSSION AND FINDINGS

The Regulation (EU) 2019/517 is repealing the Regulation (EC) No 874/2004.
Article 4 of the Regulation (EU) 2019/517 provides that:
« A domain name may also be revoked, and where necessary subsequently transferred to another party, following an appropriate ADR or judicial procedure, in accordance with the principles and procedures on the functioning of the .eu TLD laid down pursuant to Article 11, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, 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 ».

The article 226-4-1 of the penal code states that: “The fact of usurping the identity of a third party or to make use of one or more data of any kind allowing to identify him in order to disturb his peace or that of others, or to harm his honor or reputation, is punished by one year's imprisonment and a fine of € 15,000.
This offense is punishable by the same penalties when it is committed on an online public communication network. When committed by the victim's spouse or partner or by the partner linked to the victim by a civil solidarity pact, these acts are punishable by two years' imprisonment and a fine of 30,000 euros”.

• The disputed domain name is identical to the first name and family name of the Complainant

The full name of the complainant is Amanda Castello. The disputed domain name <amanda-castello.eu> is composed with the first name and the last name of the Complainant.
Therefore, the disputed domain name is obviously identical to these first and last name.

• Absence of rights or legitimate interest in the name
The Respondent’s full name is Peeter Põder.
According to French Law, the family name is protected as a personality right. Any violation of this right is sanctioned by article 9 of the French Civil Code which prohibits any violation of the right to privacy, provided that this violation harmed the victim.
The identity theft is punished by article 226-4-1 of the French Penal Code (above cited).
Given that the applicant provided a copy of its identity card proving that its full name is Amanda Castello, it proved that the disputed domain names is composed with its first name and its family name.
The Respondent was not authorized to register this domain name. Its first name and its family name are totally different. Moreover its first name shows that it’s a man, whereas the Complainant is a woman.
It did not respond to the complaint. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.
Therefore, in the circumstances of this case, it is a prima facie evidence of the Respondent’s lack of rights or legitimate interests in relation to the disputed domain name, which the Respondent has not rebutted.
The Panel is of the opinion that the disputed domain name has been registered by its holder without rights or legitimate interest in this name, according to Article 4 (a) of the Regulation (EU) 2019/517.

DECISION

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

PANELISTS

Name	**Marie Emmanuelle Haas**

DATE OF PANEL DECISION 2021-07-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <amanda-castello.eu>

II. Country of the Complainant: France - country of the Respondent: Estonia

III. Date of registration of the domain name: 29/11/2020

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:

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. Identity theft

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. If transfer to Complainant, Is Complainant eligible? Yes