Anonymized decision for dispute CAC-ADREU-008246

Case number	CAC-ADREU-008246
Time of filing	
Domain names	marinlujak.eu

Case administrator

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

Complainant

Organization	[redacted]

Respondent

Name	Ulrich Max Georg Roesl

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 proceedings.

A. COMPLAINANT

The Complainant says he is a natural person: Marin Lujak in an ADR Proceeding against the Respondent. According to the relevant WHOIS confirmation, the domain name specified in the Complaint is currently registered by the Respondent. He is the only person with this first name and last name (Marin Lujak) in the world and bought the domain name on the 8 March 2019 at www.Freehostia.com and it expired on 28 June 2021, after which he forgot to renew it. He is a scientist and the material that was on this domain before 28 June 2021 was his homepage about my personal scientific results that is still available at https://sites.google.com/view/marin-lujak/. On 6 August, his domain name was registered and activated by Ledl.net GmbH by a private registrant holder whose email is rxqueen24@gmail.com without rights or legitimate interests. The material that is now found on is a sex-related text directing to porn webpages. The porn-related material that is present at the domain is seriously damaging the Complainant's image. The registration details of the Respondent (holder of the domain name) are for the name: Ulrich Max Georg Roesl of Bad Salzungen, Germany. As a sole person in the world with this first and last name (Marin Lujak), the Complainant is the holder of prior rights in this domain name. The domain name corresponds to his personal name and no demonstrable link exists between the present disputed domain name holder and the registered domain name. The Respondent registered and activated the domain name for speculative and abusive purposes with bad faith intentions that are intentionally damaging the image of the Complainant. The Complainant contacted the Respondent on 28 October 2021 by e-mail and requested that he transfer the domain name. There was no response.

B. RESPONDENT

No Response has been filed.

DISCUSSION AND FINDINGS

This case is unusual as it relies on the rights in personal and Family names. In fact, The Policy Regulation protects these. See Article 10: "Eligible parties and the names they can register 1. Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts. '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." Further guidance is provided by the CAC ADR.eu Handbook as below. "9. Can a complainant have a relevant right from a family name? Family names are formally listed as relevant rights. Panels saw a personal ID as sufficient proof for a relevant right in a domain name. A right in a domain name, that was an abbreviation which included a family name, was refused. ..The fact that a family name coincides with a generic word descriptive of a trade or occupation does not detract from any right that person has in their family name..." Relevant Decisions cited include Helmut Eichhorn v. EURid, CAC 2796, HAUG GmbH & Co. KG v. Winfried Haug, CAC 5208, Propaganda Beheer B.V. v. C&F Media BV, CAC 2596, ANTONIA LLUSAR Y CIA, S.L. v. Jesus Llusar, CAC 7303, Heinrich Leifeld GmbH, Herr Heinrich Werner Leifeld v. Yellow Network Limited, IT Admin, CAC 6701, Swarovski Aktiengesellschaft, Mr Rudolf Haugg v. Marcel Hertz, CAC 6442. Art. 22 of the Policy Regulation provides: "Alternative dispute resolution (ADR)

procedure. 1.An ADR procedure may be initiated by any party where: (a) the registration is speculative or abusive within the meaning of Article 21; or (b) a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002...” Art 21 defines (a) as follows: “21.Speculative and abusive registrations. 1.A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name 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 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.” This is very similar to the well known UDPR test. In this case, the Complainant has a particular interest in his own name given that as an academic, his identity is central to his professional life. It is a very unique and unusual name. In terms of the similarity analysis the names are identical if we ignore the suffix, as is the rule. Marinlujak.eu is identical to Marin Lujak for these purposes. The Panel finds that the Complainant has rights in a name or sign that is identical to the disputed domain name. The next issue is Legitimate Rights and Interests. Where, as here, the Respondent’s name and details as shown in the WHOIS data does not match the disputed domain name, then he cannot be considered as known by the disputed domain name. There are no other obvious rights or interests and the Respondent has not come forward to assert any. Finally, as to bad faith, in light of the Complainant’s very unusual and unique name and his position as a prominent academic, whose information is likely to be searched by colleagues, institutions and students, it seems to the Panel that the registration and use must be intentional and blocking and designed to cause harm and embarrassment to him. If the Respondent had some other good reason for selecting the name, we would have expected him to come forward with it. The Panel orders the transfer of the disputed domain name to the Complainant.

DECISION

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

Panelists

Name

DATE OF PANEL DECISION 2022-02-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: marinlujak.eu II. Country of the Complainant: Spain, country of the Respondent: Germany III. Date of registration of the domain name: 6 August 2021 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/s of the Complainant VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004): 1. No 2. Why: None obvious or asserted. VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): 1. Yes 2. Why: The Complainant a prominent individual IX. Other substantial facts the Panel considers relevant: The Complainant’s name is central to his professional life. X. Dispute Result: Transfer of the disputed domain name. XI. Procedural factors the Panel considers relevant: None. XII. If transfer, is Complainant eligible? Yes as an EU citizen and resident.