Panel Decision for dispute CAC-ADREU-008270

Case number	CAC-ADREU-008270
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Domain names	lesbavardsrois.eu

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	

Respondent

Name	Maxim Filippov

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a representative of Les Bavards Rois (roughly translated from the French language as “The Talkative Kings”), a non-profit theatre troupe and an unincorporated association, based in Munich, Germany. References in this decision to “the Complainant” are, save where stated, to the theatre troupe, Les Bavards Rois.

The Complainant was established in 2009 and was previously the registrant of the domain name lesbavardsrois.eu (“the disputed domain name”). Its registration lapsed in or around May 1, 2021 for reasons which are unclear. The disputed domain name was then registered by the Respondent on June 11, 2021. Exercising its powers under paragraph B7(a) of the Rules, the Panel has sought to visit the website at the disputed domain name and established that it redirects to a third party website which contains adult images.

A. COMPLAINANT

The Complainant sets out the nature of its unregistered trade mark rights in LES BAVARDS ROIS. It has traded as “Les Bavards Rois” since 2009 as an unincorporated entity and has now applied for formal status as an association. The Complainant has had a profile on Facebook under the name “Les Bavards Rois” since at least 2012. Additionally, it sells “Les Bavards Rois”-branded t-shirts and other marketing materials and hosts performances under the name “Les Bavards Rois”. Moreover, a former member of Les Bavards Rois, Grégoire Kerr, had registered the disputed domain name on behalf of the troupe in January 2018, the registration lapsing in May 2021.

The disputed domain name is identical to the Complainant’s unregistered trade mark. The disputed domain name is being used in order to resolve to a webpage providing links to pornographic material. The website has no relation to the Complainant nor is the term “Les Bavards Rois” even used on the website. The Respondent is clearly using the disputed domain name for abusive purposes.

B. RESPONDENT

The Respondent did not reply to the Complainant’s contentions.

DISCUSSION AND FINDINGS

Article 21,1 of Commission Regulation (EC) No 874/2004 (“the Regulation”) and paragraph B 11 (d) (1) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules") provide that a registered domain name shall be subject to revocation or (subject to the eligibility requirements of the Regulation being satisfied) transfer if the following elements are established;

(i) the domain name is identical or confusingly similar to a trademark or service mark in which a complainant has rights and; either

(ii) the domain name has been registered by the respondent without rights or legitimate interests in the name; or

(iii) the domain name has been registered or is being used in bad faith.

Paragraph B 10 (a) of the ADR Rules provides that the Panel may consider the failure to comply with the time limits established by them as grounds to accept the claims of the other party. Paragraph B 10 (b) of the ADR Rules states that if a party does not comply with any provision of, or requirement under, the ADR Rules or the Supplemental Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

The Complaint is exceptionally brief and does not direct itself to specifically establishing that element (a) above and either element (b) and/or element (c) is satisfied. However, the Panel takes into account that the Complainant is a small entity, self-represented, and the overall circumstances are evident from the Complaint.

1 Identical or confusingly similar to the Complainant´s trademark

The Complainant does not have a registered trade mark. As a consequence, it is necessary for the Complainant to establish that it has acquired rights recognised or established by the national law of a Member State of the European Union and/or under Community law; see paragraph 11(d)(1)(i) of the ADR Rules and also section II, paragraphs 6 and 7 of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition ("CAC .EU Overview 2.0").

The Complainant has provided evidence of trading under the name "Les Bavards Rois" since 2009, including its promotion on Facebook and indeed on its website at the disputed domain name whilst it was under its control. The Panel is aware that the Federal Republic of Germany recognises the concept of unregistered trade marks and the Respondent has not sought to question the nature and extent of the Complainant's trade mark rights in "Les Bavards Rois". The Panel therefore determines that, for the purposes of the Policy, the Complainant has rights in this name.

When considering whether the disputed domain name is confusingly similar to the Complainant's trade mark, it is usual to disregard the Top-Level Domain ("TLD") suffix, .eu as this is a technical requirement of registration. Having regard to this practice, the disputed domain name is identical to the Complainant's unregistered mark LES BAVARDS ROIS.

The Panel accordingly finds that the disputed domain name is identical to a name in which the Complainant has rights.

2 No rights or legitimate interests

Paragraph B11 (e) of the ADR Rules lists examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name, namely that:

(i) before any notice of the dispute, the respondent can show use of the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; or

(ii) the respondent can show that it has been commonly known by the domain name, even if no trade mark or service mark rights have been acquired; or

(iii) the respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law.

There is no information before the Panel which would suggest that the Respondent has any basis for asserting a right or legitimate interest in the disputed domain name. As outlined earlier, the disputed domain name simply redirects to a third party website which contains adult images. The Respondent is not therefore using the disputed domain name or a name corresponding to it, for an offering of goods and services. There is no evidence that the Respondent is known by the disputed domain name, nor is it making a legitimate and non-commercial or fair use of the disputed domain name.

The Complainant has made out a prima facie case and the burden of proof therefore shifts to the Respondent; see section IV, 5 of the CAC .EU Overview 2.0. As no response of any sort has been served by the Respondent, the Respondent has self-evidently failed to satisfy that burden. Accordingly, the Panel finds that the Respondent has no rights or legitimate interest in respect of the disputed domain

name.

3. Bad faith

3 Registered and used in bad faith

Under the ADR Rules, the need to establish bad faith registration and use is an alternative, rather than an additional, requirement to showing no rights or legitimate interests on the part of the Respondent. Accordingly, having satisfied sub-paragraphs (i) and (ii) of paragraph B 11 (d) (1) the Complainant succeeds in its case.

However, for completeness, the Panel will briefly consider the issue of bad faith. The Complainant's LES BAVARDS ROIS mark is distinctive and the Respondent registered the disputed domain name shortly after the Complainant's registration of it had lapsed. The only known use of the disputed domain name has been to redirect to third party websites containing adult images. It is accordingly reasonable to conclude that the Respondent registered the disputed domain name in order to take advantage of the Complainant's repute in its mark. This clearly indicates an awareness by the Respondent of the Complainant as well an intention on the part of the Respondent to use the disputed domain name for this purpose as at the date of registration.

Paragraph B11 (f) of the ADR Rules sets out a non-exhaustive list of circumstances in which will be considered bad faith registration and use of a domain name. Paragraph B11(f) (4) provides that such evidence may be found if a disputed domain name was intentionally used to attract Internet users to a respondent's website by creating a likelihood of confusion with a name on which a right is recognised or established, by national or Community law, as to the source, sponsorship, affiliation or endorsement of the respondent's website or service on the website.

The Respondent's conduct falls within these provisions use of the disputed domain name in order to redirect to a third party website is most likely intended to capture web traffic from Internet users who have been seeking information about the Complainant and will assume from the fact that the disputed domain name is identical to the Complainant's trading name, LES BAVARDS ROIS, that the disputed domain name is owned and/or operated by the Complainant. The Respondent's activities therefore fall within the scope of the circumstances set out at paragraph B11(f)(4) of the ADR Rules.

Accordingly the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith.

The Panel therefore finds that all the requirements of Article 21, para. 1 of the Commission Regulation (EC) No 874/2004 and of paragraph B 11(d)(1) of the ADR Rules are met.

Before considering the appropriate remedy, it should be explained that the Complainant is an unincorporated association and paragraph 4(2)(b) of Regulation (EC) No 733/2002 does not permit the ownership of a domain name in the .eu Registry by such an entity. Having regard to the fact that the proceedings have been brought by Matthieu Muller on behalf of Les Bavards Rois, on April 5, 2022, the Panel issued Procedural Order No.1 which ordered that Matthieu Muller provide, on or before April 12, 2022, confirmation that he was a member of the theatre troupe, Les Bavards Rois and, if he was, that he also provide evidence (if the Complainant was successful in the proceedings) that the other members of the troupe consented to the transfer of the disputed domain name into his name. By a communication in these proceedings dated April 11, 2022, the information and confirmation requested was provided by Mathieu Muller.

DECISION

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

PANELISTS

Name	Antony Gold

DATE OF PANEL DECISION 2022-04-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: lesbavardsrois.eu

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

III. Date of registration of the domain name: June 11, 2021

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

V. Response submitted: No

VI. Disputed 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: Disputed domain name not being used in connection with an offering of goods and services and no other basis for finding rights or legitimate interests.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The use for which the disputed domain name was evidently acquired, and the use to which it has been put is to attempt to confuse Internet users who will have been seeking information about the Complainant

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: N/A

XII. [If transfer to Complainant] Is Complainant eligible? Yes