Panel Decision for dispute CAC-ADREU-008287

Case number	**CAC-ADREU-008287**
Time of filing	**2022-05-04 20:09:24**
Domain names	**macbride.eu**

Case administrator

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

Complainant

Organization	

Respondent

Organization	**Yellow Network**

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 disputed domain name was previously the subject of legal proceedings brought by the Registry against Zheng Quingying in the Belgian courts, which resulted in Zheng Quingying's registration being cancelled and the disputed domain name being released, along with several thousand other domain names, for registration by third parties. The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is Seamus MacBride, an Irish citizen and resident in Poland. The Complainant applied to register the disputed domain name during the Sunrise period but his application was rejected by EURid in 2006.

When the disputed domain name was subsequently released in 2011, it was immediately registered by Yellow Network Limited, a dormant company incorporated in England and Wales. Following the departure of the United Kingdom from the EU, the EURid WHOIS data now shows the registrant as Yellow Network (omitting the company form "Limited") with an address in France.

The disputed domain name resolves to a page offering the disputed domain name for sale. The Complainant engaged in e-mail correspondence with the Respondent about the sale of the disputed domain name which eventually was left unanswered by the Respondent.

The Respondent registered the disputed domain name on 25 October 2011.

A. COMPLAINANT

The Complainant seeks a decision transferring the disputed domain name to himself. He asserts that he has a legitimate interest and legal right in his family name MacBride and that the disputed domain name is identical or confusingly similar to it. He explains that he runs an architectural practice under his name but his complaint is principally based on the fact that his family name is MacBride. He wishes to use the disputed domain name for family e-mails.

The Complainant further contends that the Respondent has no rights or legitimate interest in the disputed domain name and that it was registered in bad faith or on purely speculative grounds.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

General observations

The Panel has reviewed and considered the Complainant's Amended Complaint, and his further submissions in response to the Panel's Nonstandard Communication, together with the annexed supporting documents, in detail.

Article 22.10 of Commission Regulation EC 874/2004 (the "Regulation") and Paragraph B.10(a) of the ADR Rules provide that if, as in the present case, a party fails to respond to a complaint within the applicable deadlines, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other party.

However, the Panel does not consider that the Regulation or the ADR Rules envisage the Panel simply upholding the Complaint in all cases where a Respondent fails to respond. Rather, in order for the complaint to succeed, the Complainant must still demonstrate that the requirements of Article 21.1 of the Regulation and Paragraph B.11(d)(1) of the ADR Rules are satisfied.

In order for the Complaint to succeed, the Complainants must show, in accordance with Article 21.1 of the Regulation and Paragraph B.11(d)(1) of the ADR Rules, that:

(a) the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and /or Community law; and either;

(b) the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or

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

If the Complainants succeed in this respect, in order to obtain a transfer of the disputed domain name to the Complainant, Article 22.11 of the Regulation further requires that the Complainant applies for the disputed domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation EC No 733/2002.

The Complainant's right in the name MacBride

Article 10(1) of the Regulation refers to holders of prior rights recognised or established by national and/or Community law. It goes on to state that prior rights shall be understood to include inter alia family names in as far as they are protected under national law in the Member-State where they are held. It is clear from the wording of the Regulation that the list of rights referred to in Article 10(1) is not exhaustive and that other rights may also be recognised.

The Panel notes that the Complainant does not point to any specific rule of Irish law protecting his family name. The Panel is not persuaded in this regard that the common law tort of "passing-off" is relevant to the protection of a family name. However, the Panel notes that the Complainant is evidently entitled to use the name MACBRIDE and the Panel is prepared in the circumstances to follow what may now be regarded as an established line of cases indicating that Article 10(1) of the Regulation itself recognises family names as protected rights (see, for example, ADR Case 07741, Foti -v- Evolution Media <FOTI.EU>; ADR Case 06895, Guggenheim -v- Marcus J <GUGGENHEIM>EU>; and ADR Case 06915, Mulder -v- Jank <MULDER.EU>; see also ADR Case 07861, Kirpestein -v- Yellow Network <KIRPESTEIN.EU>).

Identical or confusingly similar

The disputed domain name is identical with the Complainant's family name.

The Panel is therefore satisfied that the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

Rights or legitimate interest

The Respondent has not asserted any rights or legitimate interest in the disputed domain name. There is no evidence before the Panel to demonstrate that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with any offering of goods or services, or for any legitimate and non-commercial fair use. The Respondent is also not commonly known by the disputed domain name. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore accepts that the Respondent has no rights or legitimate interest in the disputed domain name.

Bad faith

The Panel further notes that the circumstances of the case indicate that the Respondent acquired the disputed domain name principally for the purpose of sale to a person who has a right in respect of it. Absent any response from the Respondent, the Panel therefore also accepts that the Respondent registered the disputed domain name in bad faith.

Eligibility of the Complainant

The Complainant has applied for the transfer of the disputed domain name to himself and has demonstrated that he satisfied the general eligibility criteria in Article 4(2)(b) of Regulation EC No 733/2002 because he is both an Irish citizen and resident in Poland.

The disputed domain name should therefore be transferred to him in accordance with Article 22(11) of the Regulation.

DECISION

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

PANELISTS

Name	**Gregor Kleinknecht, LLM MCIArb**

DATE OF PANEL DECISION 2022-05-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: macbride.eu

II. Country of the Complainant: Ireland/Poland, country of the Respondent: France

III. Date of registration of the domain name: 25 October 2011

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: MacBride

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. Why: No use for offering goods or services, or preparations for such use, or legitimate non-commercial or fair use; Respondent not commonly known by the disputed domain name, no other evidence before the Panel supporting respondent's rights or legitimate interest

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Disputed domain name offered for sale

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: No response filed

XII. Is Complainant eligible? Yes