Panel Decision for dispute CAC-ADREU-008340

Case number	CAC-ADREU-008340
Time of filing	2022-07-29 12:09:58
Domain names	poos.eu

Case administrator

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

Complainant

Organization	

Respondent

Name	Bernadette Selim Abou Zakhm

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 related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a natural person named Krisztian Poos and with an address in Budapest, Hungary.

The Respondent is a natural person named Bernadette Selim Abou Zakhm with an address in Quebec, Canada.

The disputed domain name relates to the website www.poos.eu. The Respondent registered the disputed domain name on 28 January 2017.

A. COMPLAINANT

The Complainant seeks a decision transferring the disputed domain name to the Complainant, asserting that the disputed domain name consists of his surname, together with the top level domain .eu.

The Complainant points out that the disputed domain name is offered for sale on sedo.com and claims that it is registered for speculative purposes only. He has submitted evidence that when he tried to buy the disputed domain name he received a counter-offer of €12,500 and that the disputed domain name continues to be offered for sale. The Complainant asserts that the Respondent has no legitimate interest in the disputed domain name

B. RESPONDENT

The Respondent has not filed a response to the complaint.

DISCUSSION AND FINDINGS

The Respondent did not file a response to the complaint. Although the failure to file a response may be considered by the Panel as grounds to accept the claims of the Complainant, the Complainant is still required to demonstrate that the provisions of Paragraph B11(d)(1) of the ADR rules are satisfied.

Under Article 21(1) of Commission Regulation (EC) No. 874/2004 ("the Regulation") in order to succeed the Complainant must prove that:
(1) the domain name is identical or confusingly similar to a name in respect of which a right is recognised by the national law of a Member State and/or Community law and; either

(2) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
(3) the domain name has been registered or is being used in bad faith.

Article 10 (1) of the Regulation states that prior rights include family names.

Dealing with the burden of proof under Article 21(1) in turn:

1. Whether the disputed domain name is confusingly similar to a name in which rights are recognised

The Complainant submits that he has rights in his family name. Family names are formally listed as relevant rights in Article 10 (1) of the Regulation provided they are recognised by national and/or EU law. The Complainant has, in his amended complaint, provided details of the rights for protection of his name under the Hungarian Civil Code (Sections 2.42 and 2.43).

The Complainant has produced an image of his Hungarian national identity card clearly displaying his given name and surname.

The Panel finds that the disputed domain name is confusingly similar (identical) to a name in which the Complainant has established a satisfactory right within the meaning of Article 21 (1) of the Regulation.

2. Whether the Respondent has rights or a legitimate interest in the disputed domain name

The Complainant alleges that the disputed domain name has been registered without the Respondent having any rights or legitimate interest in it. Article 21 (2) of the Regulation and paragraph B11(e) of the ADR rules provide non exhaustive examples of how a respondent may demonstrate a legitimate interest. They include:

(a) prior to notice of the dispute the Respondent has used the domain name or a name corresponding to it in connection to the offering of goods or services or has made demonstrable preparation to do so; or
(b) the Respondent has been commonly known by the domain name; or
(c) the Respondent is making a legitimate, non commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under national or EU law.

The Complainant has furnished screenshots to show the disputed domain name is not in use. He has also furnished screenshots to show the disputed domain name is actively for sale.

The Panel has reviewed the screenshots and reviewed the details furnished. The Panel does not find any evidence sufficient upon which to find that the Respondent has used or made demonstrable preparations to use the disputed domain name at all. The Respondent has no established link to the disputed domain name. There is no clear legitimate, non commercial or fair use of the disputed domain name.

3. Whether the disputed domain name has been registered or used in bad faith

Article 21 (1) (b) of the Regulation and paragraph B11(d)(1)(iii) of the ADR rules express that registration or use in bad faith can be used as an alternative to a lack of rights or legitimate interest. Article 21 (3) of the Regulation and paragraph B11(f) provide a non exhaustive list of examples.

The Complainant has provided evidence that the disputed domain name is being offered for sale. The Respondent has not responded to the complaint and has therefore offered no evidence to contradict this. Given the evidence offered by the Complainant showing that the website was not in use and is being offered for sale at a variety of prices the Panel finds that there are sufficient circumstances indicating that the disputed domain name was registered in bad faith.

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 <POOS.EU> be transferred to the Complainant

PANELISTS

Name	Griffin Conor

DATE OF PANEL DECISION 2022-07-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: poos.eu

II. Country of the Complainant: Hungary, country of the Respondent: Canada

III. Date of registration of the domain name: 28 January 2017

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: Poos

V. Response submitted: No

VI. Domain name is identical to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. The records show no rights or legitimate interest on the part of the Respondent in the disputed domain name and the Complainant has shown that the disputed domain name is his family name and is being offered for general sale. No evidence shown that the Respondent has any connection to that family name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Panel finds that the primary purpose for the registration of the disputed domain name is to offer it 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:None

XII. Is Complainant eligible? Yes