Panel Decision for dispute CAC-ADREU-008356

Case number	CAC-ADREU-008356
Time of filing	2022-09-19 19:39:17
Domain names	soares.eu

Case administrator

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

Complainant

Organization	

Respondent

Name	Domain Administrator

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

No other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a Portuguese citizen.

While the disputed domain name is registered in the name of “Domain Administrator”, it is not in dispute that the disputed domain name is controlled by Manuel Costa, on whose behalf the Response was filed, and who describes himself as “a Portuguese entrepreneur, founder of numerous Internet companies in Europe and the United States”. References to “the Respondent” below include Manuel Costa, unless otherwise stated.

The Respondent registered the disputed domain name on 7 April 2006.

As of 18 June 2022, the disputed domain name resolved to a Sedo parking page with pay per click (“PPC”) links to “Classement VPN” (VPN Ranking), “Billeterie Cse” (Cse Ticket Office) and “Prime Renouvation Gouv” (“Government Renewal Grant”). The page also stated: “This domain may be for sale”.

A. COMPLAINANT

Here is a summary of the Complainant’s submissions:

The Complainant possesses relevant rights. His national ID card establishes that his family name is “Soares”. Family names are formally listed as relevant rights and a personal ID is sufficient proof.

The holder of the disputed domain name lacks relevant rights. His family name is not “Soares” and there is no indication that he possesses any other relevant rights.

Given the lack of legitimate interest, there is no need for the Complainant to show bad faith. In any case, registration of a disputed domain name related to a personal name with no link to the holder is itself bad faith.

Non-use of the disputed domain name is evidence of bad faith. The period of non-use vastly exceeds the two-year threshold applied in previous cases.

The combination of a parking page and an extended lack of active use is suggestive of a primary intention to sell, which a bad faith

indicator. The Complainant offered to buy the disputed domain name from the Respondent for EUR 100 but received no response.

The use of the disputed domain name for a Sedo page with PPC links of itself indicates of bad faith, as does the Respondent's concealment of his identity by using "Domain Administrator" as the registrant of the disputed domain name instead of his actual name.

B. RESPONDENT

Here is a summary of the Respondent's submissions:

The Complainant must demonstrate rights in a distinctive sign which national and/or EU law recognises or legally protects. The Complainant mentions no European or Portuguese law in support of his claim. Portuguese law specifically states that family names do not guarantee any special rights to a citizen. The Respondent believes that a commonplace family name such as "Soares" can never constitute a distinctive sign but invites the Complainant to identify the European or Portuguese law on which his claim is based.

The Respondent possesses relevant rights or legitimate interest in the disputed domain name because he registered it in connection with his email service whereby services users can obtain email addresses with which they have an "affinity". The Respondent owns over 400 family domain names. The Respondent intended to enable the 1.8 million people called "Soares" to use the disputed domain name for their personal email addresses. In Portugal, the suffix ".eu" can denote not only Europe, but also "I" and "me" in Portuguese.

The Complainant has failed to provide any evidence of bad faith. The Respondent was not aware of the Complainant when he registered the disputed domain name.

The fact that Respondent ignored the Complainant's offer to buy the disputed domain name does not demonstrate that the Respondent offered the disputed domain name for sale in bad faith.

The disputed domain name is not for sale at Sedo. The Sedo default message simply states that the domain name "may" be for sale, arising from Sedo's relationship with the Respondent's portfolio manager. The Respondent has not listed the disputed domain name for sale with Sedo.

The Respondent did not set out to conceal his identity. If he had done so, he would not have used his personal email address in the public Whois data.

DISCUSSION AND FINDINGS

Introduction

Under Article 21(1) of Regulation (EC) 874/2004 ("the Regulation"), the disputed domain name is subject to revocation if it 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.

Rights

The Complainant must first establish a right that "is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1)".

The first paragraph of Article 10(1) of the Regulation deals with the entitlement of holders of prior rights "recognised or established by national and/or Community law and public bodies" to apply to register domain names before general registration of .eu domain names.

The second paragraph of Article 10(1) of the Regulation states as follows "'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."

Accordingly, while the Complainant correctly asserts that family names are "formally listed" as relevant rights, that is only the case "in so far as they are protected under national law in the Member-State where they are held".

In the Panel's view, therefore, in order to rely on his surname as constituting a relevant right, the Complainant is required to establish that

family names are protected under the law of Portugal. However, the Complainant has not mentioned any applicable Portuguese law, or even claimed that Portuguese law protects family names at all. On the other hand, the Respondent asserts, albeit without proof, that Portuguese law specifically provides that family names do not guarantee any special rights to a citizen. In any case, it is up to the Complainant to prove that he possesses relevant rights, and, in the Panel's view, he has failed to do so.

Lack of Rights or Legitimate Interest

It is unnecessary to consider this element in view of the Panel's conclusion above.

Bad Faith

It is unnecessary to consider this element in view of the Panel's conclusion above.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is Denied.

PANELISTS

Name	**Adam Taylor**

DATE OF PANEL DECISION 2022-09-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: soares.eu

II. Country of the Complainant: Portugal, country of the Respondent: Portugal

III. Date of registration of the domain name: 7 April 2006

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

V. Response submitted: Yes

VI. The Complainant does not possess any protected rights.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004): Not considered.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): Not considered.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: Complaint denied.

XI. Procedural factors the Panel considers relevant: None.