Panel Decision for dispute CAC-ADREU-008380

Case number	CAC-ADREU-008380
Time of filing	2022-10-26 10:17:47
Domain names	grazianomenghi.eu

Case administrator

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

Complainant

Organization	

Respondent

Organization	P R M DI ROSSI GRAZIANO E C. S.N.C.

FACTUAL BACKGROUND

- On March 3rd, 2021, Mr. Graziano Menghi registered the domain name “grazianomenghi.eu” (hereafter the “Domain Name”).
- On July 26, 2022, Mr. Graziano Menghi filed a complaint against the registration of the Domain Name.
- The Complainant produced two Police reports with its complaint.
o In the Police report, from February 12, 2021, it appears that Complainant had his identity card (“ID”) stolen and that a third party tried to transfer Complainant’s domain name : “menghi.eu” but the third party did not succeed.
o In the Police report, from March 19, 2022, it appears that Complainant realized in March 2022 that three domain names (“menghi.eu”, “grazianomenghi.eu” and “molock.eu”) were transferred from his Aruba account (<288290@arubat.it>) to a third party. It also appears from the report that a password change was requested on the Complainant’s Aruba account and was followed by a request to cancel all services.
- The Complainant also provided a copy of his ID from which it appears that it was issued on April 8, 2022 and that his first name and surname are: Graziano Menghi.
- On September 20, 2022, the Czech Arbitration Court notified the parties that Respondent did not submit a response.

A. COMPLAINANT

The Complainant seeks the return of the Domain Name.
The Complainant alleges that he owned the Domain Name and produces a Declaration of Ownership of the Domain Name from March 3rd, 2021.
The Complainant alleges that the Domain Name was fraudulently transferred to a third party.

B. RESPONDENT

The Respondent failed to submit a Response.

DISCUSSION AND FINDINGS

The Respondent did not file a response to the complaint. Although Respondent failed to file a response, in order to obtain the transfer of the Domain Name, Complainant must demonstrate that the conditions laid down in Article 21 (1) (a), (b) and

22 (11) of the Regulation (EC) No. 874/04 (hereafter the “Regulation”) are fulfilled.

According to Article 21 of the Regulation a registered domain name is subject to revocation, and where necessary subsequently to a transfer, when two conditions are met (i) where that name is “identical or confusingly similar to a name in respect of which a right is recognized or established” by Union or national law, and (ii) either a) where the domain name has been registered by its holder without rights or legitimate interest in the name; or b) where the “domain name has been registered or is being used in bad faith”.

According to Article 10 (1) of the Regulation, prior rights include family names.

Regarding the first requirement:

The Complainant as a natural person is the holder of the name “Graziano Menghi” and he demonstrates that he was the owner of the Domain Name in March 2021.

The Domain Name (i) is exactly identical to the domain name owned by Complainant as shown on the Declaration of Ownership of 3rd March, 2021; and (ii) contains the surname “Menghi” of Complainant.

In view of the foregoing, the Panel finds that the Domain Name is identical or confusingly similar to a name in respect of which the Complainant has established a right. The Complainant is deemed to have satisfied the first requirement of Article 21 (1) of the Regulation.

Regarding the second requirement:

The second requirement is fulfilled when Complainant proves either that : a) the domain name has been registered by its holder without rights or legitimate interest in the name; or b) the “domain name has been registered or is being used in bad faith”.

The Panel will first examine whether the Domain Name has been registered or is being used in bad faith. In order for bad faith to exist, it must be shown, on the basis of all relevant and illustrative circumstances pursuant to Article 21 (3) of the Regulation, that there was an intention to cause harm to the holder of an earlier right.

According to Article 21 (3) (e) of the Regulation, there is a registration or use of a domain name in bad faith when :
“the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered”.

The Complainant claims that the Domain Name was fraudulently taken from him, by means of an unlawful transfer of the Domain Name obtained through the use of an unauthorised access to the Complainant’s Aruba account. The Complainant produces, in support of his argument, a complaint made to the “Legione Carabinieri”, a proof of prior ownership of the Domain Name dated 3rd March, 2021 and a copy of his ID issued on April 8, 2022.

The Respondent did not provide any response to contradict the Complainant’s allegations. Should the Respondent have lawfully acquired the Domain Name, it is assumed that he would have intervened in his own defence. In view of Respondent’s failure to file a response, the Panel may take the allegations of Complainant as true (Article 22 (10) of the Regulation: “failure (…) to respond within the given deadlines (…) may be considered as grounds to accept the claims of the counterparty”).

In view of the above, the Panel finds that there are enough circumstances indicating that the Domain Name was unlawfully acquired and that the Domain Name is the personal name of Complainant, Dr. Graziano Menghi, and no demonstrable link exists between Respondent and the Domain Name. In addition, there are precedents in which a domain name was subject to an involuntary transfer to an unauthorised third party. In those circumstances the hacking and transfer can be assimilated to

an abusive registration, see, e.g. CAC Case No. 08332 which cited cases “WIPO No. D2013-0168 (ANGLOTOPIA.NET), FORUM No. FA1608001686520 (STEPPMFG.COM)”.

The Complainant is deemed to have satisfied the second requirement of Article 21 (1) (b) of the Regulation.

The registration of the Domain Name without rights or legitimate interest in the name (Article 21 (1) (a) of the Regulation) does not have to be examined since the criteria to revoke speculative or abusive registration are fulfilled.

Conclusion
The Domain Name is identical or confusingly similar to the name in respect of which the Complainant holds prior rights, the Domain Name was acquired and is being used in bad faith. The Domain Name should therefore be transferred to the Complainant who satisfies the general eligibility criteria set out in Article 4 (2) (b) of Regulation (EC) No. 733/2002.

DECISION

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

PANELISTS

Name	**Paul Van den Bulck**

DATE OF PANEL DECISION 2022-10-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: GRAZIANOMENGHI.EU

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

III. Date of registration of the domain name: 3 March 2021

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: 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. [Yes/No]
2. Why:

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

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