Panel Decision for dispute CAC-ADREU-008389

Case number	CAC-ADREU-008389
Time of filing	2022-09-21 09:53:00
Domain names	gourmetwelten.eu

Case administrator

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

Complainant

Name	Nikolas Rechenberg

Respondent

Organization	ADMG Ltd.

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 other legal proceedings relating to the disputed domain name which are pending.

FACTUAL BACKGROUND

The Complainant is a private individual, who for many years has been operating the online magazine Gourmetwelten providing information and articles in the field of foods, drinks and gastronomy under the website https://www.nikos-wein-welten.de/.

The Complainant not only owns work title protection for the website title "Gourmetwelten", but has also registered the GOURMETWELTEN trademark as a German trademark registration No. 30 2010 073 415.9 for the word mark: GOURMETWELTEN, with priority of December 15, 2010. The registration is protected for rental of advertising space on the Internet, telecommunication services via portals on the Internet and publication of magazines in electronic form on the Internet.

According to the Whois information available, the Respondent is ADMG Ltd., Dr. Ralph Rieder. The Respondent is not known or in any way related to the Complainant and is not authorized to use the GOURMETWELTEN trademark.

The disputed domain is linked to a website on https://gourmetwelten.eu/ copying not only the Complainant's concept of offering an online magazine titled “Gourmetwelten” and providing information and articles in the field of foods, drinks and gastronomy, Instead, the Respondent's website copies entire articles from the Complainant’s website without authorization. The website is provided in German and is clearly aimed at a German speaking public.

Furthermore, the website under https://gourmetwelten.eu/ could to be used to spread malware through various pop-ups showing up when visiting the website.

A. COMPLAINANT

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. The Complainant makes a number of legal arguments (referenced below) and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

B. RESPONDENT

The Respondent failed to submit a response.

DISCUSSION AND FINDINGS

The Panel accepts that the information provided by the Complainant shows that he is a private individual with rights to the name "Gourmetwelten" estalished prior to the filing of the disputed domain name through the registration of a German word mark in the year 2010. The Complainant has been operating an online magazine in the field of foods, drinks and gastronomy entitled Gourmetwelten under the domain https://www.nikos-wein-welten.de/. The Complainant therefore owns work title protection as well as trademark protection to the name GOURMETWELTEN. According to the Whois information available for the disputed domain name , which has been registered since 2012 and the Respondent is ADMG Ltd., Dr. Ralph Rieder. The Respondent is not known or in any way related to the Complainant and is not authorized to use the GOURMETWELTEN trademark.

The disputed domain name is linked to a website on https://gourmetwelten.eu/ copying not only the Complainant's concept but instead copying entire articles from the Complainant's website without authorization. The website is provided in German and is clearly aimed at a German speaking public. The website under https://gourmetwelten.eu/ could to be used to spread malware through various pop-ups showing up when visiting the website.

On the basis of these facts, the Panel will decide whether the conditions of article 21 of Reg. No. 874/2004 are satisfied and whether the disputed domain name should be transferred.

The Panel shall decide, on the basis of the facts and arguments before it, whether the conditions of article 21 of Reg. No. 874/2004 are satisfied and whether the disputed domain name should be transferred to the Complainant or not.

1. a) EARLIER RIGHTS

Pursuant to Article 21. Reg. No. 874/2004, "A registered domain name shall be subject to revocation […] where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10."

The Panel finds that the right in the German national trademark registration GOURMETWELTEN has been substantiated by the Complainant. Since the trademark is registered, it must be considered to be valid and enforceable against third parties.

As at least the registered trademark predates the disputed domain name, the Panel finds that the Complainant has successfully demonstrated prior rights to the name.

1. b) IDENTITY OR CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME

The disputed domain name consists of the registered trademark of the Complainant GOURMETWELTEN and the Top-Level Domain .EU.

This domain name is found to be highly similar to the earlier right, based on the established practice that the addition of a Top-Level Domain to a trademark (in this case ".eu") does not prevent a finding of confusing similarity.

The Panel therefore finds that the disputed domain name is highly similar and thus confusingly similar to the Complainant's trademark. The requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 are satisfied.

2) LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

Article 21 (1) of the Regulation (EC) No. 874/2004: "A registered domain name shall be subject to revocation […] where it:

a) has been registered by its holder without rights or legitimate interest in the name".

Pursuant to Article 21 (2) of the Regulation (EC) No. 874/2004, the legitimate interest condition is considered as fulfilled when:

a) prior to any notice of an alternative dispute resolution procedure, the respondent has used 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;

b) the respondent has been commonly known by the domain name;

c) the respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of the name on which a right is recognized.

It is generally accepted that the overall burden of proof under the above provision rests with the Complainant, i.e. to establish that the Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name. If the Respondent fails to answer such case, the Complainant is deemed to have satisfied its burden of proof.

The Complainant has put forward that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name. The Respondent is also not known by the disputed domain name.

The Complainant further states that the Respondent does not make any bona fide use of the disputed domain name. On the contrary, apart from using the trademark of the Complainant without any authorization, the Respondent also infringes the Copyright of the Complainant by copying content of the Complainant's website named "Gourmetwelten" and publishing it on a website under the disputed domain name.

In addition, the disputed domain name may be used to spread malware through various pop-ups showing up when visiting the website.

The Respondent has not denied the Complainant's assertions, nor brought forward any information or evidence for demonstrating any rights or legitimate interests.

The use demonstrated made by the Respondent as demonstrated by the Complainant is neither bona fide use of the disputed domain name nor a legitimate non-commercial or fair use of the disputed domain name pursuant to the ADR Rules.

The Respondent therefore does not have any rights or legitimate interests in the disputed domain name and the conditions of Article 21 of Reg. No. 874/2004 are satisfied.

3) BAD FAITH

Article 21 (3) of the Regulation (EC) No. 874/2004: "A registered domain name shall be subject to revocation where it:

(b) has been registered or is being used in bad faith."

The Complainant, has not put forward that the registration of the disputed domain name took place in bad faith. However, the Panel has no doubts that the current use fulfils the criterion of use in bad faith. Not only does the Complainant publish an online journal under the name GOURMETWELTEN, which is copied in the disputed domain name. The Respondent also copies the content published by the Complainant under that name and proceeds to publish it identically under the disputed domain name . Such behavior cannot be construed in any other way than as acting in bad faith and therefore as use of the disputed the domain name in bad faith.

The Panel is also satisfied that the disputed domain name was registered and is used in bad faith in the meaning of Article 21 (3) of Reg. No. 874/2004.

4) ELIGIBILITY OF THE COMPLAINANT / TRANSFER OF THE DISPUTED DOMAIN NAME

The Complainant is a natural person with domicile within the European Union. Therefore, the requirements for the requested transfer of the disputed domain name to the Complainant are satisfied (Section B No.1 (b) (12) of the ADR Rules).

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 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 be transferred to the Complainant.

PANELISTS

Name	**Udo Pfleghar B.A. (Melb.)**

DATE OF PANEL DECISION 2023-01-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: GOURMETWELTEN.EU

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

III. Date of registration of the domain name: 12 September 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Germany, reg. No. 30 2010 073 415.9 for the term GOURMETWELTEN, filed on 15 December 2010 for rental of advertising space on the Internet, telecommunication services via portals on the Internet and publication of magazines in electronic form on the Internet in classes 35, 38 and 41.
11. title of protected literary or artistic work: GOURMETWELTEN

V. Response submitted: No

VI. Domain name is confusingly similar 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: No arguments in favour of rights or legitimate interests

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes

2. Why: Copyright infringement and impersonation of the Complainant's online journal under the disputed domain name.

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. Is Complainant eligible? Yes