Panel Decision for dispute CAC-ADREU-008472

Case number	**CAC-ADREU-008472**
Time of filing	**2023-01-17 09:08:57**
Domain names	**majabrkan.eu**

Case administrator

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

Complainant

Name	**Dr. Maja Brkan**

Respondent

Name	**Remal Uellen**

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 legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

Complainant is a European national, citizen of the Republic of Slovenia. According to Complainant the disputed domain name is identical to her family name.

The disputed domain name <majabrkan.eu> was originally registered by Complainant on 23 April 2020. It was used to create and manage the personal website of Complainant. The disputed domain name expired on 24 April 2022 due to non-payment.

EURid confirmed that the disputed domain name was registered by Respondent on 9 June 2022. At the time of the decision there is no website associated with the disputed domain name. Previously it was offered for sale.

Complainant requests that the disputed domain name shall be transferred to Complainant.

A. COMPLAINANT

According to Complainant the disputed domain name is identical to her personal forename (Maja) and surname (Brkan). Complainant submitted as proof her identity card issued by the Republic of Slovenia. Complainant submits that a family name is acknowledged as a relevant right recognized by national or Community law. Further to a request for clarification issued by the Panel in accordance with Article B8 of the .eu Alternative Dispute Resolution Rules (the "ADR Rules") effective as of 13 October 2022, asking Complainant to elaborate on conditions in respect of which a family name is a right recognized and/or established by Slovenian law, Complainant submits the following.

According to Complainant the Personal name Act (Official Gazette of the Republic of Slovenia, no. 20/06 and 43/19) states in Article 2 that a personal name is a right of a citizen, serving to distinguish and identify natural persons, and that the citizen is obliged to use its personal name. The same article stipulates that a personal name of a person guarantees identity and protection of that person's personality and dignity. Moreover, Article 3 (2) of the Personal name Act stipulates that a personal name consist of a first name and a surname (which is considered a family name), therefore in Slovenian law, a family name is protected through a notion of a personal name and it is an element of the person's personality, identity, and dignity. The use of Complainant's personal name (first name and family name) as a domain name by Respondent is thus interfering with Complainant's personality, identity and dignity.

Additionally, Complainant submits that as Slovenia is a member of European Union, the Regulation EU 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, "the GDPR"), applies in its territory. According to Article 1 of said regulation, its subject matter and objective is to protect fundamental rights and freedoms of natural persons and in particular, their right to the protection of personal data. The regulation applies to the processing of personal data wholly or partly by automated means. Article 4 of the GDPR regulation defines "personal data" as any information relating to an identified or identifiable natural person. The personal name of a person undoubtedly falls within the notion of personal data, as the main reason a person is given a name is to be identified by it throughout his life within a society. In other words, a personal name is a curtail identification factor of a person, thus representing information relating to an identity of a person. Furthermore, the

GDPR defines “processing” of personal data also as the “use” of personal data, the “controller” of personal data as “a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data”, and the “processor” of personal data as “a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller”. Complainant submits that in the present case, Respondent is a controller and a processor of Complainant’s personal data, as it used Complainant’s personal name to register the disputed domain name <majabrkan.eu> and it employs this disputed domain name (that exploits Complainant’s personal name), for unknown purposes. The processing of personal data is limited to legal grounds provided for in Article 6 GDPR. Complainant submits that none of the legal grounds for the use of her first name and family name for Respondent’s disputed domain name, can be applicable in the present case. Thus, Respondent is using Complainant’s personal data illegally. Furthermore, Complainant wishes to stress that data protection is a fundamental right protected at the highest level of EU law. Namely, the Charter of fundamental rights of the European Union states in Article 8 that everyone has the right to the protection of personal data concerning him or her. The GDPR transposes this right also to horizontal relationships between private parties, thus Complainant has a right to her personal name (as her personal data) also towards Respondent. Therefore, the fundamental right to protection of personal data gives Complainant the right to her personal name (encompassing also her family name). Complainant concludes that her family name is protected through the protection of her personal name at the level of the Slovenian Personal name Act, and EU primary and secondary law.

According to Complainant Respondent has no rights or legitimate interests in the disputed domain name using the personal name and surname of Complainant.

Respondent’s name is in no way similar to the disputed domain name. In addition, Respondent has not used and is not currently using the disputed domain name or a name corresponding to the disputed domain name in connection with the offering of goods or services nor has he made demonstrable preparation to do so. On the contrary, Complainant submits that until 24 April 2022 she was the one using the disputed domain name for her personal website.

According to Complainant Respondent’s registration and use of the disputed domain name constitutes bad faith.
The circumstances of the present case clearly show that the disputed domain name was registered for the purpose of reselling it for a profit. Namely, when searching for the disputed domain name using Respondent’s registrar website, the domain name appears to be taken, but there is an option to make an offer to the holder to sell the domain name. Furthermore, the fact that Respondent is not using the disputed domain name clearly suggests that he has registered the disputed domain name to resell it.
Complainant finally asserts that any unauthorized use of the name of Complainant or a creation of a fictitious website using the disputed domain name by a holder who has no legitimate interest in this domain and acts in bad faith can cause prejudice and harm to the online image of Complainant and could unjustifiably affect the professional and personal integrity of Complainant.

B. RESPONDENT

Respondent did not reply to Complainant’s contentions.

DISCUSSION AND FINDINGS

According to Article 4 of Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 (“the Regulation”) a domain name may be transferred to another party, following an appropriate ADR or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, 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.

According to Article B(11)(d)(1) of the ADR Rules (the Alternative dispute resolution proceedings for the resolution of disputes under Article 11 of Commission Implementing Regulation (EU) 2020/857 of 17 June 2020 laying down the principles to be included in the contract between the European Commission and the .eu top-level domain Registry in accordance with Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019, the “Implementing Regulation”) Complainant bears the burden of proving the following:
i. the domain name is identical 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 European Union and: either
ii. the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
iii. the domain name has been registered or is being used in bad faith.

Article 9.2 of the Implementing Regulation and Article B(1)(b)(9) of the ADR Rules recognize a family name in respect of which a right is recognized or established.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or Community law

Pursuant to Article B(11)(d)(1) of the ADR Rules, Complainant must, first of all, establish that the disputed domain name is identical 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.

Complainant submitted as proof of her personal first name/given name (Maja) and personal surname (Brkan) her valid identity card issued by the Republic of Slovenia. Complainant also demonstrated that the Personal name Act of Slovenia (Official Gazette of the Republic of Slovenia, no. 20/06 and 43/19) states in Article 2 that a personal name is a right of a citizen, serving to distinguish and identify natural persons, and that the citizen is obliged to use its personal name. The same article stipulates that a personal name of a person guarantees identity and protection of that person’s personality and dignity. Moreover, Article 3 (2) of the Personal name Act stipulates that a personal name consist of a first name and a surname (which is considered a family name), therefore in Slovenian law, a family name is protected through a notion of a personal name and it is an element of the person’s personality and identity.

The disputed domain name <majabrkan.eu> consists of the entirety of Complainant's family name. With reference to the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Names, 2nd Edition ("CAC .EU Overview 2.0"), section II.10, in cases where a domain name incorporates the entirety of a family name, the disputed domain name will be considered identical or confusingly similar to that family name for the purposes of standing.

Furthermore, it is the consensus view among panels that the applicable Top-Level Domain ("TLD") .eu suffix may be disregarded in determining identity or confusing similarity, since it is viewed as a standard registration requirement (see section III.1 of the Overview of CAC .EU Overview).

The Panel thus finds that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national law.

B. Rights or Legitimate Interests

The Panel finds that there is absolutely no information to suggest any rights or legitimate interests of Respondent to use Complainant's family name. As mentioned above Respondent registered the disputed domain name after the disputed domain name terminated due to non-payment.

Article B11(e) of the ADR Rules contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the undisputed circumstances stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds that there is no evidence showing that Respondent might be commonly known by the disputed domain name. No evidence is shown that Respondent has any connection to the family name of Complainant.
In addition, as there is no website to which the disputed domain name resolves, Respondent has not used and is not currently using the disputed domain name in connection with the offering of goods or services.

The Panel also notes the undisputed and elaborate submission of Complainant that according to the EU General Data Protection Regulation none of the legal grounds for the use of her personal name for Respondent's disputed domain name, are applicable, and that Respondent is using Complainant's personal name and data illegally. Complainant's personal name and data are thus protected and Respondent does not have consent or other legitimate basis for any right or legitimate interest in the disputed domain name consisting of the personal name of Complainant.

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Used in Bad Faith

It results from the undisputed evidence before the Panel that Respondent registered or uses the disputed domain name in bad faith, pursuant to Article B(11)(d)(1)(iii) of the ADR Rules. The Panel notes in particular that according to Article B(11)(f)(5) there is evidence of bad faith if the disputed domain name is a personal name for which no demonstratable link exists between Respondent and the disputed domain name. The Panel finds that such link does not exist. On the contrary the personal name of Complainant is fully reflected in the disputed domain name.
The Panel adds that under the doctrine of passive holding (see CAC Overview, section IV, 3) lack of an active website is further evidence of bad faith registration and use.

In the light of the above, Complainant is therefore deemed to also have satisfied Article B(11)(d)(1)(iii) of the ADR Rules.

D. Eligibility

Complainant has requested the transfer of the disputed domain name to herself. The requested transfer of the disputed domain name to a Complainant can only be granted in case Complainant is eligible to register .eu domain names according to Article 3 of the Regulation; see also Article B(11)(b) of the ADR Rules.

It is undisputed that the Complainant is a Union citizen of the Republic of Slovenia. The Panel holds that Complainant meets the general eligibility criteria within the meaning of Article 3 of the Regulation and is therefore entitled to obtain transfer of the disputed domain name.

DECISION

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

PANELISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2023-03-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <majabrkan.eu>

II. Country of the Complainant: Slovenia, country of the Respondent: Netherlands

III. Date of registration of the domain name: 9 June 2022

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision: family name; articles 2 and 3(2) of the Personal name Act of Slovenia (Official Gazette of the Republic of Slovenia, no. 20/06 and 43/19)

V. Response submitted: No

VI. Domain name is identical or confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. No
2. Why: there is no evidence showing that Respondent might be commonly known by the disputed domain name. Complainant has shown that the disputed domain name is identical or confusingly similar to her family name. No evidence is shown that the Respondent has any connection to that family name. The EU General Data Protection Regulation applies.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: disputed domain name is a personal name for which no demonstratable link exists between Respondent and the disputed domain name (Article B(11)(f)(5) of the ADR Rules).

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: Request for clarification through Nonstandard Communication. Respondent did not respond.

XII. Is Complainant eligible? Yes