Panel Decision for dispute CAC-ADREU-008534

Case number	CAC-ADREU-008534
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Domain names	circulate.eu

Case administrator

Olga Slanařová (Case admin)

Complainant

Organization	Circulate

Respondent

Organization	D-Cube Resource

FACTUAL BACKGROUND

Respondent is in the business of selling generic domain names.

It registered the disputed domain name several years before Complainant was incorporated.

It offered the disputed domain name for sale for a relatively high price.

A. COMPLAINANT

Complainant states that it is a pan-EU company, with the mission to speed up Europe's transition to more circular and sustainable packaging. Its vision is a world where we consume only what the planet can regenerate and an environment free from packaging waste. Through its digital sourcing platform, Complainant provides packaging buyers with the tools, insights and data to easier find, buy, compare sustainable packaging and make better choices. Providing them with reports and dashboards to understand their packaging consumption, environmental impact and incentivise progress. Working solely with the most sustainable packaging suppliers across the EU, promoting them as the better choices, by thoroughly screening all packaging products to ensure they meet Complainant's very high sustainability standards and are highly circular. Demanding transparency in the entire supply chain of the packaging, helping buyers take ownership of their purchases, and complying with EPR regulations as well as all upcoming packaging regulations. Currently supporting over 200 companies across 22+ EU countries to transition to more circular packaging. Complainant holds domain names such as <circulate.fr>, <circulate.es>, <circulate-packaging.com>. Complainant asserts rights in the company name CIRCULATE, since it was registered in Sweden as Circulate AB on 2 July 2021.

Complainant alleges that the disputed domain name is identical to its CIRCULATE company name.

According to Complainant, the disputed domain name has been registered by Respondent without rights or legitimate interest because it is not commonly known by the disputed domain name and it offers the disputed domain name for sale through the <sedo.com> platform.

Further, says Complainant, the disputed domain name is being used in bad faith. The disputed domain name is redirected to the <sedo.com> platform, where it is offered for sale. In response to a query, Complainant received an offer to buy the disputed domain name for 200,000 USD.

B. RESPONDENT

Respondent states that it is in the business of selling generic domain names, which is just as legitimate as the business of selling circular and sustainable packaging solutions.

According to Respondent, Complainant does not provide prima facie evidence for the allegation that Respondent has no rights or legitimate interests in the disputed domain name. It is not contested that the disputed domain name was offered for sale, but that in itself does not imply an absence of rights or legitimate interest, nor does it imply bad faith.

The CAC court has ruled repeatedly in similar cases (CAC-ADREU-007159, CAC-ADREU-008448, CAC-ADREU-008066, CAC-ADREU-007312, CAC-ADREU-008449) that there is nothing wrong per se with selling domain names and that merely offering a name for sale does not prove bad faith nor a lack of legitimate interest.

Further, as the CAC court found in CAC-ADREU-007159, the fact that Complainant is in the business of registering, buying and selling generic domain names in itself constitutes a legitimate interest in such names, insofar as it does not attempt to benefit from the goodwill or positive image of a third party's trade mark or sign.

The word 'circulate' is a very common and generic word in both English, Spanish and Italian, has a low distinctiveness, and is hence a descriptive name rather than a brand name.

The disputed domain name was registered in 2016, while Complainant was incorporated in 2021. So obviously the name was not registered with the intent to mislead Complainant’s customers to harm Complainant’s reputation. Indeed it has never been used in that fashion, as it has only being offered for sale.

Complainant falsely alleges that a price of 200,000 USD was asked for the disputed domain name, however the documentary evidence supplied by Complainant itself shows that the asking price was 25,000 USD. Furthermore, that same document also shows that the broker negotiating on behalf of Complainant didn't find this outrageous, but instead called it 'great news', and as a first option advised to accept the offer, which indicates that the broker, a professional knowledgeable about this market, considered it a fair price for a generic name like this.

The CAC court has ruled (CAC-ADREU-008066) that owners of descriptive domain names, registered prior to any other’s name rights, have the full right to claim a market based price for such domain names. It has equally stated (CAC-ADREU-008448, CAC-ADREU-008449) that it is not the purpose of ADR proceedings to be used as a substitute for standard commercial negotiations over the price of domain names between interested parties, which is what Complainant, unwilling to pay a fair market price, is trying to do here.

DISCUSSION AND FINDINGS

The requirements for transfer of a registered domain name under “.eu” are found in Article 21 of the Public Policy Rules, Commission Regulation (EC) No. 874/2004 of 28 April 2004, and in Regulation (EU) 2019/517 in connection with the ADR Rules applicable as of 13 October 2022.

For the purposes of the transfer of speculative and abusive registrations, the Complainant has to prove that the Respondent holds the disputed domain name; that the domain 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; and that either

(a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or

(b) the domain name has been registered or is being used in bad faith.

Here, it is obvious that the disputed domain name is identical to a name in respect of which Complainant has a recognized right.

It is not disputed that Respondent is not commonly known by the disputed domain name.

It is not disputed that Respondent is in the business of selling generic domain names, that it registered the disputed domain name several years before Complainant was incorporated, and that it offered the disputed domain name for sale for a relatively high price (25’000 USD, and not 200’000 USD as Complainant mistakenly alleges).

The instant Panel has carefully reviewed the case law relevant for the instant case, whether cited by Respondent, or in the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition (”CAC .EU Overview 2.0”).

The cited CAC .EU Overview 2.0 states under V.6: “There is nothing per se wrong in selling domain names.” And: “Could the behavior of the respondent be seen as domain trading, this constitutes bad faith.”

The Panel has reviewed all the cases cited in the said Overview to support the second statement above, it finds that there is only one case whose fact pattern is comparable to that of the instant case, namely CAC-ADREU-003108.

In that case, the disputed domain name was transferred. However, transfer was refused in later cases with similar fact patterns, see CAC-ADREU-007312, CAC-ADREU-007159 (cited below), and CAC-ADREU-008449.

In particular, CAC-ADREU-007159 states: “In this case the Respondent is in the business of registering, buying and selling domain names. Such business is perfectly legal so far as it does not attempt to benefit from the goodwill or positive image of a third party's trade mark or sign. The disputed domain name is a generic Latvian word for ‘lawyer’. … The Panel finds that the Respondent does have a legitimate right in the disputed domain name since he is merely offering for sale a generic name. … As found above, the Respondent is in the business of acquiring and selling domain names and that the disputed domain name is a generic Latvian word meaning "lawyer". There is nothing per se wrong in selling domain names. In this case, as the disputed domain name is a generic word in Latvian, the Panel finds that the Respondent is not acting in bad faith when registering and using the disputed domain name.”

The Panel agrees with the more recent case law and finds, on the basis of the facts of this particular case, that Complainant has failed to satisfy its burden of proving that Respondent, by registering a common word in the course of its business of selling domain names, does not have rights or legitimate interests in the disputed domain name.

Further, the cited CAC .EU Overview 2.0 states under V.2: “… if the respondent could not have been aware of yet not even existing trademark rights there can be no bad faith.”

Such is the case here: since Respondent registered the disputed domain name well before Complainant was incorporated, there are no circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring it to Complainant.

The instant Panel agrees with the findings set forth in CAC-ADREU-008066: “… the Respondent registered the disputed domain name prior to the registration date of the Complainant’s company name. As <phoneparts.eu> is descriptive, and there is no details in the case indicating that the Respondent was aware of the Complainant’s plans to create a similar company name, the Panel cannot see that <phoneparts.eu> was registered in bad faith. … Owners of descriptive domain names, registered prior to any other’s name rights, have the full right to claim a more market based price for that domain name in case someone express interest in buying that domain name.”

Thus the Panel finds that Complainant has failed to satisfy its burden of proving that Respondent registered or used the disputed domain name 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 Complaint is Denied

PANELISTS

Name	Richard Hill

DATE OF PANEL DECISION 2024-02-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <circulate.eu>

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

III. Date of registration of the domain name: 16 September 2016

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

V. Response submitted: Yes

VI. Domain name is confusingly similar to the protected right/s of the Complainant
1. Yes

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes
2. Why: Respondent is in the business of selling generic domain names

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: Respondent registered the disputed domain name several years before Complainant was incorporated

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: None

XII. If transfer to Complainant, is Complainant eligible? Not Applicable