Panel Decision for dispute CAC-ADREU-008622

Case number	**CAC-ADREU-008622**
Time of filing	**2024-06-11 11:25:03**
Domain names	**willey.eu**

Case administrator

Olga Slanařová (Case admin)

Complainant

Name	**Adrian WILLEY**

Respondent

Organization	**Key Domains Unipessoal Lda**

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

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Adrian Willey, appears to be a European Union citizen (citizen of Spain) and he claims that his family name is Willey.

The disputed domain name <willey.eu> was registered by the Respondent on October 9, 2023.

It further results, from the evidence provided by the Complainant, that the disputed domain name currently is offered for sale; it resolves to a simple parking webpage where it is valued EUR 4.980. Through the above page it is possible to direct and immediately buy the domain name for the above indicated price or to make an offer at a lower price.

Finally, it results that the domain name in dispute was previously registered in the name of the Complainant who forgot to renew the domain name in 2023.

A. COMPLAINANT

Firstly, the Complainant points out that the disputed domain name <willey.eu> is identical to his family name “WILLEY” and that, even if it was never linked to any website or webpage, it was used by the Complainant in connection with non-business e-mail. The Complainant also admits having failed to apply for the domain name renewal in 2023.

Secondly, the Complainant contends that the Respondent, Luc Biggs, has no rights or legitimate interests in the disputed domain name; according with the Complainant's view, the Respondent is not doing anything in good faith with the domain name <willey.eu>, being only interested in making profit by selling it for an exorbitant amount of money. In the Complainant’s view, this behaviour clearly shows the only Respondent’s interest in the disputed domain name which is to sell it for the highest offer. The Complainant assumes that this conduct may be considered as cybersquatting.

B. RESPONDENT

The Respondent has failed to send a formal Response. Anyway, well before the expiration of his deadline for the Response, the Respondent filed a writ named "willey.eu domain name" in which he makes clear that the domain was registered legitimately and transparently through the proper channels after it was clear that it had not been renewed and was therefore freely available for registration by any interested party.

The Respondent also assumes to have utilized the domain in good faith, for purposes aligned with his interests and business activities, without any intention to disrupt or profit from another party's reputation or trademark.

Finally, the Respondent declares to be a professional domain name reseller and that, as such, he maintains the right to register and use available generic domains.

DISCUSSION AND FINDINGS

According to Recital 17 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”), an ADR procedure may be initiated by any party where the registration is speculative or abusive. In the present case, the question is therefore, whether the registration is speculative or abusive.

According to Article 4 (4) of the Regulation and Paragraph B 11(d)(1) of the ADR Rules, the Complainant bears the burden of proving the following circumstances:

1. the disputed domain name is identical with or confusingly similar to a name in respect of which a right is established by the national law of a Member State and/or European Union law; and either
2. the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
3. the domain name has been registered or is being used in bad faith.

The Complainant based the complaint upon a family name.

Article 9 (2) of Regulation (EU) 2020/857 of 17 June 2020 ("the Implementing Regulation") lists the rights on which the complaint may be based as follow: "*copyright, trademarks, and geographical indications provided in Union or national law, and, in as far as they are protected under national law in the Member States where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works"*.

Paragraph B 1(b)(9) of the ADR Rules states that: *"the complaint shall specify the names in respect of which a right is recognized or established by the national law of*
a Member State and/or Community law. For each such name, describe exactly the type of right(s) claimed, specify the law or law(s) as well as the conditions under which the right is recognized and/or established".

According to the Overview of CAC Panel Views published on August 2016 (Chapter II paragraph 9): *"Family names are formally listed as relevant rights. Panels saw a personal ID as sufficient proof for a relevant right in a domain name"*.

Considering the above, it is the Panel's view that while the family names are “formally listed” as relevant rights, that is only the case “*as 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 family name as constituting a relevant right, the Complainant is required to (i) prove to have a relevant right through the filing of the ID and (ii) establish that family names are protected under the law of Spain. However, the Complainant has not filed any ID nor has not mentioned any applicable Spanish law, or even claimed that Spanish law protects family names at all (see CAC Case no. 08448 Mgr. David Menšík v. Bohumil Straka).

As highlighted by other panels (see CAC Case No 03239 Euro Suisse International Ltd, Mr Disby Tang v. Lehigh Basin Ltd), paragraph B 11 (d) of the ADR Rules makes it clear that ultimately the burden of proving the requirements of Article 4 (4) of the Regulation rests upon a complainant. In other words, the complainant must at a bare minimum put forward a prima facie case to the effect that a domain name should be subject to revocation. It is not sufficient for a complainant merely to assert that the requirements of the above-mentioned Article 4 (4) have been satisfied and to leave it to the panel to investigate whether this is correct.

The Complainant asserts that his family name is "WILLEY". However, the Complainant has not provided any evidence of the ownership of the above-mentioned family name. Furthermore, the Complainant has not described exactly the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established. It is a common view that a simple allegation of the ownership of a right is not sufficient to meet the first requirement of Article 4 (4) of Regulation (see CAC Case No 06801 Crispin Chung v. M Jank).

Therefore, the Panel finds that the Complainant has failed to show evidence that he is the holder of a prior right in the name "WILLEY", has not provided any reference to the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established.

In circumstances where the Complainant has failed to establish that he is the holder of rights in the name that are recognized or established under national and/or European Union law, the Panel does not need to assess whether the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and/or has been registered or is being used in bad faith (see CAC Case No. 07817 Stephan Man-Ngai Langmaack v. Yellow Network Limited, IT ADMIN).

For the above reasons, the Panel finds that the Complainant has not satisfied the requirements of Article 4 (4) of the Regulation.

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	**Guido Maffei**

DATE OF PANEL DECISION 2024-06-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <willey.eu>.

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

III. Date of registration of the domain name: 09 October 2023.

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision: family name (however the Complainant has not provided any evidence of the ownership of the family name).

V. Response submitted: No (the Respondent did not file a formal Response but only a communication).

VI. Domain name/s is/are [identical/confusingly similar/neither identical nor confusingly similar] to the protected right/s of the Complainant: not applicable, because no evidence of any protected right, any description of the type of right claimed, any specification of the applicable law or laws, nor any condition under which the right is recognized and/or established have been provided.

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules): the issue was not assessed due to the fact that the first requirement of Article 4 (4) of the Regulation was not satisfied

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules): the issue was not assessed due to the fact that the first requirement of Article 4 (4) of the Regulation was not satisfied

IX. Other substantial facts the Panel considers relevant: -

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: -