

Panel Decision for dispute CAC-ADREU-008966

Case number CAC-ADREU-008966

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Domain names 39.eu

Case administrator

Olga Dvořáková (Case admin)

Complainant

Organization 39 Europe

Respondent

Organization SERENITY TRAVEL LIMITED

Respondent representative

Organization Serenity Travel 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 any pending or decided legal proceedings regarding the disputed domain name.

FACTUAL BACKGROUND

The Complainant's company 39 Europe was incorporated in France on July 31, 2020 approximately fourteen years after the disputed domain name was registered on October 16, 2006. No evidence has been filed by the Complainant as to how the Complainant's company name 39 Europe has been used.

The disputed domain name has not been used. There is evidence of it being offered for sale by the Respondent generally in 2014 and 2020 for 2750 Euros .

A. COMPLAINANT

Relevant contentions made by the Complainant can be summarised as follows:

1. The disputed domain name is identical or confusingly similar to a name in respect of which the Complainant has rights:
 - The Complainant's company is named 39 Europe and the domain 39.eu reflects its name and belonging to the European Union.
2. The Complainant believes that the current registrant has no rights or legitimate interests in the disputed domain name
 - The registrant company name is Serenity Travel and based in the UK
 - the domain 39.eu has never been used since its registration:
 - the Internet archive shows that the disputed domain name has always been parked between 2014 and 2020
 - Since 2020, the domain has no DNS records anymore
3. The disputed domain name was registered in bad faith, primarily for resale to the rights holder.
 - From 2014 to 2020, the registrant has put the disputed domain name on Sedo's domain parking page with the sole purpose of selling it to the highest bidder.

B. RESPONDENT

Relevant contentions of the Respondent can be summarised as follows:

The Complaint fails on every limb that the Complainant is required to establish under Article 21 of Commission Regulation (EC) No 874/2004 and Paragraph B11 of the ADR Rules:

- (a) The Complainant has no prior right within the meaning of Article 21(1) in the name "39" or "39 Europe" that could form the basis for a finding of identity or confusing similarity with the disputed domain name. The Complainant's company was incorporated only on July 31, 2020 — approximately fourteen years after the disputed domain name was registered on October 16, 2006.
 - (b) The Respondent has rights and legitimate interests in the disputed domain name. Two-character numeric .eudomains constitute a finite, inherently valuable and generic class of digital asset. The number 39 is, among other things, the international telephone country code of Italy and a common numeric identifier carrying no distinctiveness as to any particular undertaking.
 - (c) The disputed domain name was neither registered nor used in bad faith, speculatively or abusively within the meaning of Article 21(2) of Regulation 874/2004. There is no obligation under the .eu ADR framework to actively use a registered domain name. Critically, the Domain Name was registered approximately fourteen years before the Complainant came into existence, and accordingly could not have been registered to target, sell to, disrupt or confuse users of an entity that did not then exist.
 - (d) The Domain Name is a scarce and valuable two-character .eu domain whose replacement would be impossible at any reasonable cost. Transfer would cause disproportionate and irreversible harm to the Respondent and would reward the Complainant for its own later choice of an inherently generic corporate name.
- THE COMPLAINANT LACKS ANY RECOGNIZED PRIOR RIGHT

The chronology is dispositive.

Article 21(1) of Regulation 874/2004 requires, as a threshold condition, that the Complainant demonstrate a right recognized or established by national or Community law in respect of which the disputed domain name is identical or confusingly similar. Such rights include prior rights such as company names, trade names, registered national or Community trademarks, and other distinctive signs protected under national or Community law.

The disputed domain name was registered on October 16, 2006. This date is well over a decade before the Complainant's company was incorporated.

The Complainant's company, "39 Europe," was incorporated in France on July 31, 2020, as a société à responsabilité limitée à associé unique, registered under RCS Bourg-en-Bresse No. [887 486 041](#), with a share capital of 39 euros.

Accordingly, at the date of registration of the disputed domain name the Complainant did not exist and possessed no company name, no trade name, no trademark and no other right of any kind in the name "39," "39 Europe" or any similar designation. The Complainant cannot, by incorporating a company under a generic name in 2020, retroactively generate a right that predates the registration of the Domain Name in 2006.

The Complainant's name is inherently weak and generic

The corporate name "39 Europe" combines a generic number (39) with the geographic term "Europe." Neither element is distinctive of the Complainant.

The number 39 is, among other things: (i) the international telephone country code of the Italian Republic; (ii) the number of a French département (Jura); and (iii) an ordinary numeric identifier used in countless unrelated commercial, cultural and geographical contexts. No reasonable observer would associate the bare numeric disputed domain name 39.eu exclusively with the Complainant.

On the present record the Complainant has produced no registered trademark (national or EUTM), no prior use of an unregistered mark with reputation, and no other recognized right that could be invoked under Article 21(1). The threshold condition is therefore not satisfied.

THE RESPONDENT HAS RIGHTS AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

Two-character numeric .eu domain names are a finite, scarce and inherently valuable class of generic identifier. There are only one hundred possible two-character numeric combinations under .eu. Each is generic and non-distinctive of any particular undertaking, and is valuable precisely because of that scarcity.

The Respondent lawfully registered the disputed domain name as a generic digital asset. There is no evidence — and the Complainant has adduced none — that the Respondent ever targeted, intended to sell to, or intended to disrupt any entity called "39 Europe." No such entity existed at the time of registration.

The Respondent has held the disputed domain name continuously since 2006. Neither Regulation 874/2004 nor the ADR Rules impose any obligation on a registrant to develop, host or actively operate a website on a registered .eu domain name as a condition of legitimate interest. The bare fact of non-resolution (NXDOMAIN) is not, of itself, evidence of any lack of rights or legitimate interests.

NO BAD FAITH, NO SPECULATIVE OR ABUSIVE REGISTRATION

Article 21(2)(a) of Regulation 874/2004 lists the circumstances in which a registration may be found to be speculative or abusive, namely where the domain is identical to a name in respect of which a right is recognized, the holder has no rights or legitimate interests, and the holder has:

- (a) offered the domain for sale to the holder of the right, or to a competitor, for valuable consideration in excess of documented, directly related costs (Article 21(2)(a)(i));
- (b) registered the domain primarily to prevent the holder of the right from using the name (Article 21(2)(a)(ii));
- (c) registered the domain primarily to disrupt the business of a competitor (Article 21(2)(a)(iii)); or
- (d) intentionally used the domain to attract, for commercial gain, internet users by creating a likelihood of confusion with the name that is the subject of a recognized right (Article 21(2)(a)(iv)).

15. Each of these limbs requires, by its express terms, conduct directed at the holder of a right that existed at the time of registration. The Complainant did not exist in 2006. It is logically and chronologically impossible for the disputed domain name to have been registered:

- (a) to sell to the Complainant — the Complainant did not exist;
- (b) to prevent the Complainant from using the name "39 Europe" — the Complainant did not exist;
- (c) to disrupt the business of a competitor — the Complainant did not exist; or
- (d) to confuse internet users as to the Complainant — the Complainant did not exist.

The chronology alone is dispositive of the absence of bad faith.

Non-use of a lawfully registered domain name is not, of itself, evidence of speculative or abusive registration. The Complainant relies solely on alleged non-resolution of the disputed domain name and alleged non-reply of a contact email. Neither fact, standing alone and particularly in the face of a fourteen-year priority in favour of the Respondent, can sustain a finding of bad faith under Article 21.

There is no rule, statutory or otherwise, requiring a registrant to use a .eu domain name. A registrant is entitled to hold a domain name as a legitimate digital asset without deploying it. The Complainant's entire bad-faith theory rests on the false premise that non-use equals bad faith; that premise has no basis in Regulation 874/2004 or in the ADR Rules.

THE DOMAIN NAME IS A SCARCE AND VALUABLE ASSET

Two-character numeric .eu domain names constitute a closed and finite class of generic identifiers. Once transferred, the Respondent would be unable to acquire a comparable asset at any reasonable cost.

Transfer of a scarce, generic, pre-existing digital asset to an undertaking that was incorporated some fourteen years after the asset was registered would cause disproportionate and irreversible harm to the Respondent and would, in effect, reward the Complainant for its own later, voluntary choice of an inherently generic corporate name. The Complainant could have chosen any non-generic name available to it at the time of incorporation; it chose a name that conflicts with a pre-existing, generic and valuable domain. The consequence of that choice cannot fairly be borne by the Respondent.

REVERSE DOMAIN NAME HIJACKING

The Complainant deliberately chose a corporate name ("39 Europe") consisting of a generic number and the geographic term "Europe" — both inherently non-distinctive and freely available to any third party — and now seeks to appropriate a generic numeric domain registered approximately fourteen years before the Complainant existed.

The Complaint is, in substance, an attempt to use the ADR mechanism to obtain by transfer what the Complainant could only otherwise acquire through arm's-length commercial negotiation with the Respondent. The Complainant's failure even to contact the Respondent before filing is consistent with that characterization.

Where a complaint is brought in respect of a domain name that was registered long before the complainant's rights came into existence, and where the complaint is unsupported by evidence and rests on a misstatement of the disputed domain itself, ADR panels have repeatedly found such conduct to amount to reverse domain name hijacking. The Respondent respectfully invites the Panel to make such a finding in this case.

In light of the foregoing, the Respondent respectfully requests that the Panel:

-Deny the Complaint in its entirety;

- Decline to order the transfer of the disputed domain name 39.eu;
 - Find that the Complaint constitutes reverse domain name hijacking; and
 - Award the Respondent its reasonable costs of these proceedings to the extent permitted under the ADR Rules.
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DISCUSSION AND FINDINGS

Overview

In order to obtain a transfer of the disputed domain name the Complainant must demonstrate:

(i) The disputed domain name is identical or confusingly similar to a name in

respect of which a right is recognised or established by the

national law of a Member State and/or European Union law and;

either

(ii) The disputed domain name has been registered by the Respondent without

rights or legitimate interest in the name; or

(iii) The disputed domain name has been registered or is being used in bad

faith.

Confusing Similarity

Article 21(1) of Regulation 874/2004 requires that the Complainant demonstrate a right recognized or established by national or Community law in respect of which the disputed domain name is identical or confusingly similar. Such rights include company names, trade names, registered national or Community trademarks, and other distinctive signs protected under national or Community law.

The consensus view amongst .eu Panels is that for the purposes of this first limb of the rules the Complainant's right does not have to be a prior right. The Complainant has a French company name 39 Europe registered in 2020 which in France gives exclusive rights to that particular company name and so has demonstrated a relevant right for the purposes of these proceedings.

The .eu element of the disputed domain name is generally ignored for the purposes of the confusing similarity comparison if it does not form part of a Complainant's trademark. Both elements of the Complainant's company name '39' and 'Europe' are descriptive, but since the bar is generally low for this first limb of the rules the Panel accepts that there is some confusing similarity between the disputed domain name and the Complainant's company name, namely due to the common element of both the first element of the Complainant's company name and the second level of the disputed domain name "39". However nothing turns on this as the Panel finds that the Complainant has failed to satisfy requirements (ii) and (iii) set out above as discussed below.

Rights Or Legitimate Interest

39.eu is and in the opinion of the Panel would be generally perceived as a generic domain name not necessarily associated with the Complainant. Indeed there is no evidence that the Complainant has used its 39 Europe company name and it is not well known. Anyone can use a common number like 39 or own a domain name that consists of a common number and a TLD and offer it for sale generally in the absence of exceptional circumstances such as proof of cybersquatting activity. There is no evidence that the Respondent has ever been involved in cybersquatting activity involving any trade marks of third parties or the Complainant.

There is evidence the Respondent has offered the disputed domain name for sale generally for 2750 Euros in 2014 and 2020, but there is no suggestion that the Respondent has targetted the Complainant or offered the disputed domain name for sale to the Complainant. Based on the evidence the Respondent was offering to sell the disputed domain name before the Complainant was incorporated and so before the Complainant could possibly have had any rights.

Registering, holding or selling generic domain names in the absence of exceptional circumstances such as cybersquatting activity is legitimate. The Complainant has not established a prima facie case that the Respondent does not have rights or a legitimate interest in the disputed domain name. The Panel finds that the Respondent has rights or a legitimate interest in the disputed domain name.

Registration in Bad Faith

Since the disputed domain name was registered fourteen years before the Complainant was incorporated there can have been no targetting of the Complainant when the disputed domain name was registered and there is no registration of the disputed domain name in bad faith.

Use in Bad Faith

Based on the evidence the Respondent has not materially changed his use of the disputed domain name since the Complainant was incorporated and acquired its company name right. The Respondent was not actively using the disputed domain name before the Complainant was incorporated and is not actively using it now. The Respondent was already offering the disputed domain name for sale before the Complainant was incorporated. The Respondent has not offered the disputed domain name for sale to the Complainant and there is no evidence it has offered the disputed domain name for sale recently. The Panel holds that the disputed domain name has not been used in bad faith.

Reverse Domain Name Hijacking

The Respondent ought to have been advised or should have realised from common sense principles that when his company name is 39 Europe

and on the evidence has not been used and is not well known that he would not be able to succeed against a Respondent holding or offering to sell the generic numerical domain name 39.eu., particularly when that domain name was registered fourteen years before the Complainant acquired its company name right and there is no evidence whatsoever that the Respondent has targetted the Complainant. The Panel makes a finding of Reverse Domain Name Hijacking.

Costs of the .EU proceedings

The Respondent has requested that the Panel order that the Complainant pay the Respondent's costs. This Panel has no jurisdiction to do this under the Rules and so cannot grant this request.

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 and the Panel makes a finding of reverse domain name hijacking.

PANELISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2026-08-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

- I. Disputed domain name: 39.eu
- II. Country of the Complainant: France , country of the Respondent: UK
- III. Date of registration of the domain name: 16 October 2006.
- IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
 - company name: 39 Europe registered in France 31 July 2020
- V. Response submitted: Yes
- VI. The disputed domain name is confusingly similar to the company name of the Complainant due to the common element "39". Company names are a right recognised for the purposes of these proceedings and the Complainant has a company name registration in France which gives exclusive rights to that company name in France. Whilst it is highly significant for these proceedings that the Complainant's company was incorporated fourteen years after the disputed domain name was registered, the consensus among .eu panels is that the Complainant's right does not have to be a prior right for the purposes of the confusing similarity test.
- VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
 - 1. Yes
 - 2. Why: The Respondent lawfully purchased the generic numeric disputed domain name and absent exceptional circumstances such as cybersquatting a Respondent is entitled to purchase and hold a generic domain name without using it for any purpose and to offer it for sale generally.
- VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
 - 1. No
 - 2. Why: The disputed domain name was registered fourteen years before the Complainant existed and so could not have been registered in bad faith to target the Complainant in any way. Offering a generic domain name for sale generally in particular where there is no targetting of a Complainant is not use in bad faith of a disputed domain name. Before the Complainant was incorporated the Respondent was not pointing the disputed domain name to an active site. Before the Complainant was incorporated the Respondent was offering the disputed domain name for sale. He has not adjusted his behaviour in respect of his generic domain name materially despite this dispute or since learning of the Complainant's existence.
- IX. Other substantial facts the Panel considers relevant: None
- X. Dispute Result: Complaint denied and Panel makes a finding of reverse domain name hijacking
- XI. Procedural factors the Panel considers relevant: None
- XII. Is Complainant eligible to receive the disputed domain name? Not applicable