

ADR Center for .eu attached to the Czech Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (Czech Arbitration Court)

**PANEL DECISION RELATED TO THE REQUEST TO CHANGE THE**  
**LANGUAGE OF ADR PROCEEDING (DECISION)**  
**§ A3 (b)(6) of the .eu Dispute Resolution Rules (ADR Rules)**

**Case No.:** **07092**

**Administrative Contact:** Lada Válková

**Complainant:** **Mgr. Antónia Mačingová - RUSSO**

Postal address: Jedľová 5, 040 01 Košice-Sever, Slovenská republika

E-mail: lahkechudnutie@gmail.com

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**Authorized representative:** **JUDr. Renáta Bačárová, PhD., LL.M. - advokátka**

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E-mail: [bacarova@vojcik.eu](mailto:bacarova@vojcik.eu)

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**Respondent:** **Mike Kalman**

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Telephone: +61.414784067

Fax:

**Authorized representative:** **none**

Postal address:

E-mail:

Telephone:

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**Domain Name(s):** ***macingovadieta.eu***

**English summary of the decision:** English summary of this Decision is hereby attached as Annex

**Factual Background:**

Original registration language of the disputed domain name, registered by Mr. Jiří Šubr (Original registrant), was Czech language. Content in Czech language based on Complainant's copyrighted content is displayed on the webpage to which leads the disputed domain name.

Complainant takes registration and content published on disputed domain name as illegal unfair competition and requested Original registrant to cease such indented unfair competition.

After certain communication between the Original registrant and the Complainant the Original registrant transferred the disputed domain name to the Respondent. The Complainant informed that disputed domain name and published content were not anymore under his control.

The disputed domain name is now registered by Respondent. All content published under the disputed domain name continues to be in Czech language.

**Parties' Contentions:**

**Complainant:**

Complainant takes registration and content published on disputed domain name as illegal unfair competition and unethical business practices. Especially using of Complainant's name and or its part in the disputed domain name and using name or part of the name of the Complainant for creating revenue from advertising.

Complainant requested Original registrant to cease such unfair competition and illegal business practices.

After certain communication between the parties the Original registrant transferred the disputed domain name to the Respondent and informed the Complainant that disputed domain name and published content are not anymore under his control.

The Complainant takes the transfer as speculative action, which should hide, that the domain name, the content and revenue from published advertising is still under control of Original registrant. Complainant presented that there is several other indirect evidence of it.

All content published under the disputed domain name is in Czech language, the content is identical with the content published by Original registrant, i.e. using contact e-mail from gmail, in the same format as the domain name, mismatched data about Respondent's residence, where country of residence is registered as Austria, but there is not place with name Horsby in Austria but only in Australia.

Whereas most of the documents which needs to be presented within ADR will be in Czech or Slovak, therefore the Complainant want to change the ADR language to language of the original registration. The Complainant is convinced that is evident that the Respondent has adequate knowledge of Czech language.

**Respondent:**

The Respondent did not file any response within the prescribed time.

**Discussion and Findings:**

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According to the applicable Rules language of the ADR Proceedings must be one of the official EU languages. Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the ADR Proceeding shall be the language of the Registration Agreement for the disputed domain name.

The original registration language of the disputed domain name was Czech.

In the absence of an agreement between the Parties, the Panel may in its sole discretion, having regard to the circumstances of the ADR Proceeding, decide on the written request of a Complainant, filed before initiating a Complaint (i.e. a "Language Trial"), that the language of the ADR Proceeding will be different than the language of the Registration Agreement for the disputed domain name.

The panel evaluated all submitted evidence and came to the conclusion, that (a) if the Respondent is able to maintain a website in Czech language only and without any links, contact information or language variations, and (b) there could be a reasonable suspicion that the disputed domain name and transfer of the content should only hide who is really managing and controlling the domain name, then the ADR Proceeding shall be in language of the original Registration Agreement (Czech).

The Panel orders that the language of ADR Proceedings shall be Czech, however presented documents and evidence submitted in Slovak language should not be translated and shall be taken as Czech (Slovak and Czech language should be for this case taken as interchangeable, according to analogy of Art. 7 of the Arbitration Court's Rules and of Paragraph 4(1) of the .CZ Rules).

Based on the presented findings the Panel decides, that the language of the ADR Proceeding shall be Czech.

**Decision:**

For all the foregoing reasons, in accordance with Paragraphs A3 (b)(6) of the Rules, the Panel orders that the language of future ADR Proceeding shall be **Czech** if the Complaint with respect to the disputed domain name mentioned above shall be filed within thirty (30) working days from receiving this decision.

***Přemysl Líbal***

**Date:** 28. 12. 2015

**Annex 1:**

Disputed domain name was registered, and the registration agreement was in Czech language.

Complainant takes registration and content published on disputed domain name as illegal and unfair competition and requested Original registrant to cease such indented unfair competition.

After certain communication between the parties the Original registrant transferred the disputed domain name to the Respondent and informed the Complainant that disputed domain name and published content are not anymore under his control.

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All content published under the disputed domain name is in Czech language.

Panel takes submitted evidence as sufficient to prove that the Respondent has adequate knowledge of requested language.

Therefore, the ADR Proceeding shall be conducted in language of the original Registration Agreement (Czech).