# Panel Decision for dispute CAC-ADREU-006440

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| Case number | **CAC-ADREU-006440** |
| Time of filing | **2013-06-08 10:21:37** |
| Domain names | **fiala.eu** |

## Case administrator

**Lada Válková (Case admin)**

## Complainant

Organization

## Respondent

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| Organization | **Aphrodite Ventures, 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

No other pending proceedings are known to the Panelist.

FACTUAL BACKGROUND

As evidenced by the document EURid's verification – ADR case nr. 06440 DOMAIN NAME FIALA.eu, dated March 11, 2013, the Respondent has registered the disputed domain name on April the 7th 2006. The Complainant's personal surname is „FIALA". Furthermore the Complainant is CEO and shareholder of a company called „Fiala Projects GmbH", with its seat in Vienna, Austria.

A. COMPLAINANT

The Complainant's line of argument goes as follows: First and foremost, his personal surname is „FIALA". Furthermore the Complainant is CEO and shareholder of a company called „Fiala Projects GmbH", situated in Vienna, Austria. The Complainant is self-employed since January 1, 2006 and places his business experience (in consulting) for himself and the services of his company – both known under the name „FIALA" – for several years on the market. He claims to have attached 2 pieces of evidence to his complaint, namely Evidence 1: Excerpt of the Austrian Commercial register of „Fiala Projects GmbH", and Evidence 2: copy of passport. However, a copy of his passport is not to be found in the attached documents.

The Complainant works as a self-employed project developer throughout Europe. In particular, he buys/develops/sells real estates in Austria and Germany, both as a private person and as a business man for his company „Fiala Projects GmbH". Hence, the domain name „FIALA.EU" is identical to the Complainant's surname and crucial part of the Complainant's company.

The Complainant claims that the Respondent / registrant does not use the domain name as its company's name or trade mark, nor does he use parts of the name. Furthermore, several judgements were passed against the Respondent. In all legal proceedings, the Respondent was the unsuccessful party.

Even profound, internet-based investigations did not bring any results regarding a connection between the Respondent and the domain name. Furthermore, a link with the description "Buy this domain at Aftermarket.com" can be found on the website www.fiala.eu. The Complainant supports this on the basis of Evidence Nr. 4, although he mistakenly refers to Evidence Nr. 3. The link leads to a website: http://www.aftermarket.com/domain/fiala.eu. On this website it is possible to place a bid, in case you want to buy the domain name "FIALA.EU". The Complainant supports his assertion to Annex 4: print Aftermarket. Again there seems to be an obvious mistake, since the relevant document is attached to the complaint as Annex 3.

The Complainant refers to the wording of Article B11(f) (1 and 2) of the ADR Rules, however he fails to reproduce the full text of these provisions in his complaint.

Finally, the Complainant underlines that the Respondent has lost several proceedings filed against him, leading to the conclusion that the Respondent has engaged in a pattern of conduct. In particular, he refers to cases Nr. 05685, 05040, 04843, 04616, 04723, 04440, and 04069.

The Complainant requests transfer of the domain name and provides as evidence that he satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, his personal certificate of registration in Vienna, as well as a commercial register report for his company “Fiala Projects GmbH”. Finally, the Complainant requests the transfer of the domain name, due to the reason that the Respondent did not and does not have any legitimate rights in holding the domain name “FIALA.EU”, whereas this domain name is identical to the Complainant´s surname.

B. RESPONDENT

The Respondent failed to file any response (as pointed out in the Notification of Respondent's Default, dated May 16, 2013).

DISCUSSION AND FINDINGS

The Complainant has paid the procedural fee as well as the Single Panelist fee of the Czech Arbitration Court, as evidenced by the case file.

The Complainant’s surname is identical to the domain name under dispute (as proven by the certificate of registration, issued by the District of Purkersdorf, Austria, Annex 1 of the complaint). He’s also the founder and CEO of an Austrian legal entity (Fiala Projects GmbH) registered in Vienna (as proven by the excerpt of the commercial Registry of Austria, Annex 2 of the complaint). The above facts are leading to the conclusion that the Complainant satisfies the general eligibility criteria set by EC Regulation 733/2002 article 4.2.b and is entitled to ask for the transfer of said domain name in accordance with article 22 § 11 of Regulation 874/2004.

In response to the CAC´s request for verification, EURID replied on March 11, 2013, disclosing the contact details of the Respondent. As evidenced by the Non-standard Communication dated May 10, 2013, the Case Administrator informed the interested parties that "neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. In accordance with Art. 2 (e) (3) of the ADR Rules we consider the written notice to be delivered on 02 April 2013. Therefore the term for submitting the Response to Complaint will expire on 15 May 2013". On May 16, 2013, the Court issued a Notification of Respondent’s default.

Pursuant to Articles 22 (10) of the Regulation 874/2004 & B 10 (a) of the ADR Rules, the Panel may consider an absence of response as grounds to accept the claims of the Complainant. Although no response was filed, the Panel will nevertheless examine whether the conditions set by the Regulation 874/2004 are met in the case at hand.

A. ON THE RIGHTS OF THE COMPLAINANT TO THE DOMAIN NAME

The Complainant’s fundament for seeking the transfer of the domain name fiala.eu lies on his claimed right according to Art. 10.1 Para. 2, in conjunction with Art. 21.1 of the Regulation 874/2004. Article 21.1 of the Regulation 874/2004 stipulates that a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that 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, such as the rights mentioned in article 10.1 of the Regulation 874/2004, 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. The issue in need of verification is whether the Complainant actually has a right recognized or established by national and/or Community law, falling within the ambit of Art. 10.1 of the Regulation 874/2004. Art. 10.1 provides that (Section 1): "Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts. “Prior rights” shall be understood to include, inter alia, registered national and community trademarks,… and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works... (Section 2): The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists".

The Complainant is entitled to ask for the transfer of the domain name under dispute, because it fulfils the requirements according to Art. 10.1 Para. b, in conjunction with Art. 10.2 Reg. 874/2004. The Complainant is the holder of prior rights. Family names, company and trade names of legal entities constitute prior rights pursuant to Art. 10.1 and 10.2 of the Reg. 874/2004. Beyond any doubt, it is the duty of the Complainant to describe exactly the type of rights claimed, and specify the law or the laws as well as the conditions under which the right is recognized and/or established. The wording in Art. B 1 b (9) of the ADR Rules is clear in this respect. The Complainant has

partially met those requirements, as evidenced by the complaint filed and the contentions included in the present decision. He has indeed demonstrated that he has rights to the domain name, since it is identical to his surname, as evidenced by the certificate of registration issued by the District of Purkersdorf, Austria (Annex 1 of the complaint). Pursuant to Paragraph 43 of ABGB (Austrian Civil Code), names are protected against unlawful use. Hence, the requirement set by Art. 10.1 Para. B of the Regulation 874/2004, namely that family names constitute prior rights "in as far as they are protected under national law in the Member-State where they are held", has been met.

The Complainant has also proved that the Austrian company "Fiala Projects GmbH" holds rights to the domain name, since it constitutes the main part of its company / trade name. Those rights are strengthening his position, since it is obvious that the Complainant is using his last name as trade and company name too. However, the latter company's rights are not relevant to the case in question, taken into account that the Austrian company is not a party to the dispute. The complaint is filed solely by Mr. Paul Fiala. There is no indication that he has filed the complaint under his capacity as the Austrian company's CEO.

For all the above reasons, the Panel decides that the Complainant is the holder of prior rights identical to the domain name "fiala.eu".

B. ON THE BAD FAITH OF THE RESPONDENT

The complaint is based on Art. 21.3 of the Reg. 874/2004. The Complainant invokes Art. B 11 (f) (1) & (2) of the ADR Rules, in order to demonstrate the Respondent's bad faith. Bearing in mind the Respondent's reluctance to access the online platform, read the Complainant's statement of facts, communicate any information to the CAC or its Case administrator, and file any response to the complaint, it clearly failed to show any demonstrable link between himself and the domain name he registered, thus leaving to the Panel no other way as to deem the above failures as full acceptance of the Complainant's argumentation in regard to his bad faith, pursuant to Art. 21.3, combined with Art. 22 (10) of the Reg. 874/2004 and Art. B 10 (a) of the ADR Rules.

Beyond the above, the complaint is to be accepted on the grounds of Art. 21.3 e of the Regulation 874/2004 and Art. B 11 (f) (1) & (2) of the ADR Rules. In particular, the former provision states that "bad faith may be demonstrated, where the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered", whereas the latter provision stipulates that: "For purposes of Paragraph B11(d)(1)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, may be evidence of the registration or use of a domain name in bad faith:

(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or

(2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that: (i) the Respondent has engaged in a pattern of such conduct; or (ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or (iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or Community law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated".

As evidenced by Annexes 3 & 4 of the complaint, the disputed domain name was for sale. Hence, there was no indication whatsoever of any use of said domain name by the Respondent. The sole purpose of registration was clearly to benefit from its future sale or auction. Adding to the above the existence of 7 decisions of the Czech Arbitration Court against the Respondent, based on similar facts, the assertion of the Complainant that the Respondent has engaged in a pattern of abusive conduct, is considered as proven.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name FIALA.EU be transferred to the Complainant

## PANELISTS

| Name | Apostolos Anthimos |
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DATE OF PANEL DECISION 2013-06-02

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: fiala.eu

II. Country of the Complainant: Austria, country of the Respondent: United Kingdom

III. Date of registration of the domain name: 07 April 2006

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

V. Response submitted: No

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The Respondent was in default. No evidence was presented to the Panel.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: There was no indication whatsoever of any use of said domain name by the Respondent. The sole purpose of registration was clearly to benefit from its future sale or auction.

IX. Other substantial facts the Panel considers relevant:The existence of 7 decisions of the Czech Arbitration Court against the Respondent, based on similar facts, functioning as aggravating factors against the Respondent, allowing the Panel to accept that the Respondent has engaged in a pattern of abusive conduct.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: The Complainant has proved that the Austrian company "Fiala Projects GmbH" holds rights to the domain name, since it constitutes the main part of its company / trade name. The latter company's rights are not relevant to the case in question, taken into account that the Austrian company is not a party to the dispute. The complaint is filed solely by Mr. Paul Fiala. There is no indication that he has filed the complaint under his capacity as the Austrian company's CEO

XII. [If transfer to Complainant] Is Complainant eligible? Yes