Panel Decision for dispute CAC-ADREU-006616

Case number	CAC-ADREU-006616
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Domain names	eztrader.eu

Case administrator

	Lada Válková (Case admin)

Complainant

Organization	WGM Services Ltd.

Respondent

Organization	Private

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 has not been made aware of any other pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a corporation seated in Nicosia, Cyprus.

The Complainant is the registrant of the domain name <eztrader.com>, under which it operates a website for online binary option trading.

The Respondent appears to be a physical person, residing in Vienna, Austria.

On March 22, 2013 the Respondent registered the disputed domain name <eztrader.eu> through eNom Registrar.

In October 2013, the Complainant sent through the Registrar eNom several communications to the Respondent in relation to the disputed domain name through email; however the Respondent did not respond to the same.

On November 14, 2013 the Complainant submitted the Complaint in the subject ADR proceedings.

On November 15, 2013, EURid confirmed that the Respondent is the registrant of the disputed domain name, and that the same domain name will be locked during the pending ADR proceedings.

On November 19, 2013 the Complainant was notified about the formal deficiencies in the Complaint, invited to correct said deficiencies and file the amended Complaint within seven (7) days as of receiving the same notification.

On November 25, 2013 the Complainant submitted the amended Complaint.

On November 26, 2013 the Czech Arbitration Court issued a Notification on Commencement of the subject ADR proceedings.

Having been notified about the Complaint and commencement of the present ADR proceedings, the Respondent did not submit the Response within the required time period. Consequently, Notification of Respondent's Default was issued on February 03, 2014.

Following the selection of panelist and filing of the panelist's Statement of Acceptance and Declaration of Impartiality and Independence, on February 13, 2014, the Czech Arbitration Court notified the Parties about appointment of the panel and the projected

decision date.

On February 18, 2014, the Case was transmitted to the Panel for decision making. The Panel considers itself properly constituted.

A. COMPLAINANT

The Complainant asserts that:

- The Complainant is a subsidiary of a public traded company;

- It has been active in the Binary Option industry for several years where it engages in the operation of Binary Option Online Trading Platform bearing the brand name “EZTrader”;

- The brand name "EZTrader" was registered in 2008 and was owned since its registration by a private Israeli company called Venice Technologies Ltd. ("Venice");

- On June 5, 2011 the Complainant purchased all of Venice's assets and rights in respect of online trading in binary options, including the brand name "EZTrader";

- Since the purchase of Venice’s assets and rights, the Complainant is well familiar in the industry under the brand name "EZTrader", and has invested significant resources in the marketing and branding of such brand name and has succeeded to build a reputation which is associated with such brand name;

- The European regulatory authorities had required the Complainant to divide its websites and to establish a new website, which should be designated to the European market and which should bear the extension ".eu". The regulation process which the Complainant went through, which commenced on May 2012, lasted 18 months, and during such process the Complainant was demanded to deposit a guarantee of EUR 1,000,000.00;

- The Complainant has purchased several domain names containing the brand name "EZTrader", which domain names are used by the Complainant as part of its activities in the Binary Options Industry;

- The amounts spent by the Complainant in order to register its other domain names containing the brand name "EZTrader" and in the marketing of such domain name is approximately US$4,872,480 (in addition to the sum of the above mentioned guarantee);

- Recently, the Complainant, who asked to purchase the disputed domain name, has discovered that the Respondent is holding such domain name, and that the Respondent has purchased it only lately (March 22, 2013);

- Since the disputed domain name is associated with the Complainant and its activity in the Binary Option industry, there is a concrete concern that the use of such domain name by the Respondent may mislead the public and may cause the public to believe that the operator of such domain name is the Complainant;

- The Complainant has contacted the Registrar of the disputed domain name and has requested its assistance in contacting the Respondent; however the Registrar did not agree to provide the contact details of the Respondent;

- The Respondent did not use the disputed domain name and did not upload any internet website using such domain name. To the best of the Complainant’s knowledge, the Respondent has no activity using the disputed domain name and has no legitimate interest in such domain name and/or in the brand name "EZTrader";

- The Respondent has registered the domain name without any legitimate interest and in bad faith, in order to try and mislead the public to think that it's activity is similar or being part of the Complainant's activity and/or in order to unlawfully try to cause traders of the Trading Platform to trade over other trading platforms, to enjoy the Complainant's huge efforts and investments in the brand name "EZTrader" and to enjoy the traffic which was created as a result of such efforts and investments. Additional option is that the Respondent has purchased the disputed domain name in order to try and sell it later on to the Complainant for high consideration. Such conduct shall constitute an unlawful attempt to effect unjust enrichment on the account of the Complainant;

- The Complainant has legal rights with respect to the brand name "EZTrader" and that the Respondent has registered the domain name without any legitimate interest and in bad faith;

- Due to the aforesaid, the Complainant requests transfer of the disputed domain name to the Complainant, or alternatively revocation of the same.

B. RESPONDENT

The Respondent failed to respond to the Complaint.

DISCUSSION AND FINDINGS

The Panel now proceeds to consider this matter on the merits in the light of the Complaint, the absence of a response, Regulation (EC) No. 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain ("Regulation"), Commission Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration ("Commission Regulation"), .eu Alternative Dispute Resolution Rules of the Czech Arbitration Court ("ADR Rules"), Supplemental ADR Rules of the Czech Arbitration Court ("Supplemental Rules") and other applicable substantive law, pursuant to Article 10 (1) of the Commission Regulation.

Paragraph [22(1)] of the Commission Regulation provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of the same regulation. In Article [21(1)] of the Commission Regulation it is stated 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 recognised or established by national and/or Community law, such as the rights mentioned in Article 10 (1), 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.

Article [21(2)] and [21(3)] set out a number of circumstances which, without limitation, may be effective to demonstrate the existence of the legitimate interest within the meaning of Article [21(1)(a)], as well as of bad faith within the meaning of Article [21(1)(b)]of the Commission Regulation.

The ADR Rules contain similar rules that reflect afore stated rules from the Commission Regulation.

According to the Commission Regulation, ADR Rules and previous practice established in .eu ADR proceedings (see relevant decisions in cases CAC 06457, CAC 6516, CAC04478), the burden of proof is on the side of the Complainant, i.e. the Complainant must establish the existence of the aforementioned requirements envisaged in Article [21(1)] of the Commission Regulation. The standard of proof in the majority view of .eu ADR Panels and in this Panel's view, is that an assertion is to be proven on the balance of probabilities (more likely to be true than not). With regard to legitimate interest within the meaning of Article [21(1)(a)], the majority view, with which this Panel concurs, is that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If a respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied the requirement set out in Article [21(1)(a)]of the Commission Regulation. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interest, the panel then weighs all the evidence, with the burden of proof always remaining on the complainant.

1. Identical or confusingly similar

The first requirement under Article [21(1)] of the Commission Regulation is to establish whether the disputed domain name is identical or confusingly similar to a name in respect of which the Complainant has the right recognized or established by national and/or Community law, such as the rights mentioned in Article [10(1)] of the Commission Regulation ("Prior rights").

Under Article [10(1)] of the Commission Regulation, Prior rights shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, 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.

In line with Article [B1(b)(9)] of the ADR Rules, the Complainant is explicitly required to specify 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.

Furthermore, Article [B1(b)(16)], the Complainant must annex any documentary or other evidence, including any evidence concerning the rights upon which the Complaint relies, together with a schedule indexing such evidence.

Although the ADR Rules, other than the aforementioned, do not contain more detailed provisions about said documentary and other evidence, this Panel holds that Sections 11 – 17 of the Sunrise Rules, i.e. eu Registration Policy and the Terms and Conditions for Domain Name Applications made during the Phased Registration Period issued by EURid („Sunrise Rules“) could serve as indicator of the type of documentary and other evidence which could have been used to establish the existence of the Complainant's Prior rights.

In the subject ADR proceedings, the Complainant claims that the brand name "EZTrader" was registered in 2008, and that was owned since its registration by a privately owned Israeli company Venice Technologies Ltd. Furthermore, the Complainant asserts that on June 5, 2011 it purchased all of Venice Technologies Ltd's assets and rights, including the brand name "EZTrader". As a proof of its assertions in this regard, the Complainant submitted the non-executed copy of the Purchase Agreement dated June 4, 2011 entered into by and between the Complainant as the purchaser and Venice Technologies Ltd as the seller ("Purchase Agreement"). In addition, the Complainant states that it is well familiar within the industry under the brand name "EZTrader" and has invested significant resources in marketing and promotion of the same name.

Moreover, from the evidence submitted by the Complainant, the Panel determined that the Complainant is the registrant of the domain name, which incorporates in its entirety the name "EZTrader". From the evidence submitted by the Complainant it is also evident that the Complainant is using the name "EZTrader" on the website that it operates under said domain name <eztrader.com>. The Complainant claims to be the registrant of other domain names incorporating said name "EZTrader". However, due to the poor quality of copies which rendered the evidence submitted by the Complainant effectively illegible, the Panel was not in position to verify such claims of the Complainant.

Other than the aforesaid claims and assertions, the Complainant failed to specify in the Complaint, amended complaint or any annexes to the same, the exact type/nature of the Prior right claimed (e.g. whether name "EZTrader" it invokes is a registered national or community trademark, unregistered trademark, trade name, business identifier etc), or any law(s) and conditions under which such right would be recognized and/or established by the national law of a Member State and/or Community law (which the Complainant, as stated earlier, is explicitly required to do under Article [B1(b)(9)] of the ADR Rules). The Complainant also failed to annex any documentary or other evidence which would confirm existence of such Prior rights under the national law of a Member State and/or Community law (the Complainant is explicitly required to annex such evidence under Article [B1(b)(9)] of the ADR Rules). The Complainant failed to do so, even after the Czech Arbitration Court explicitly notified the Complainant about said deficiencies in the Complaint by means of the Notification of Deficiencies in Complaint as of November 19, 2013 and invited the Complainant to remedy the same in the amended Complaint.

In such circumstances, this Panel finds that the Complainant failed to prove the existence of its Prior right(s). Therefore, this Panel finds the Complainant did not prove the first requirement envisaged under Article [21(1)] of the Commission Regulation, i.e. that the disputed domain name is identical or confusingly similar to a name in respect of which the Complainant has the right recognized or established by national and/or Community law. In this Panel's view, and as elaborated above, the Complainant had sufficient time an opportunity to specify the exact type/nature of the Prior right claimed; to identify the law(s) and conditions under which such right would be recognized and/or established by the national law of a Member State and/or Community law; as well as to annex documentary or other evidence which would confirm existence of such Prior rights under the national law of a Member State and/or Community law. For that reason, this Panel did not find it necessary to exercise its right from Article [B8] of the ADR Rules Article and invite the Complainant to do so once again.

2. Rights or legitimate interest / Bad faith

Having in mind aforesaid, it is not necessary for this Panel to examine whether the Respondent has any rights or legitimate interest in the disputed domain name or whether the disputed domain name has been registered and/or used in bad faith. It is also not necessary for this Panel to examine whether the Complainant meets the eligibility criteria set out in Article [B11(b)] of the ADR Rules, which is all in line with the previous practice established in .eu ADR Proceedings (see relevant decisions in cases CAC 03024, CAC 04478, CAC 05534, CAC 06343).

DECISION

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

the Complaint is Denied.

PANELISTS

Name	Mladen Vukmir

DATE OF PANEL DECISION 2014-02-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <eztrader.eu>

II. Country of the Complainant: Cyprus; country of the Respondent: Austria

III. Date of registration of the domain name: March 22, 2013

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: the Complainant failed to specify in the Complaint or any annexes to the same, the exact type/nature of the Prior right claimed (e.g. whether name “EZTrader” it invokes is a registered national or community trademark, unregistered trademark, trade name, business identifier etc), or any law(s) and conditions under which such right would be recognized and/or established by the national law of a Member State and/or Community law. The Complainant also failed to annex any documentary or other evidence which would confirm existence of such Prior rights under the national law of a Member State and/or Community law.

V. Response submitted: No

VI. Domain name/s is/are neither identical nor confusingly similar to the protected right/s of the Complainant (as stated earlier, the Complainant failed to specify in the Complaint or any annexes to the same, the exact type/nature of the Prior right claimed (e.g. whether name “EZTrader” it invokes is a registered national or community trademark, unregistered trademark, trade name, business identifier etc), or any law(s) and conditions under which such right would be recognized and/or established by the national law of a Member State and/or Community law. The Complainant also failed to annex any documentary or other evidence which would confirm existence of such Prior rights under the national law of a Member State and/or Community law).

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Not necessary to examine

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Not necessary to examine

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: None