# Panel Decision for dispute CAC-ADREU-007618

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| Case number | CAC-ADREU-007618 |
| Time of filing | 2018-05-15 18:38:27 |
| Domain names | ccstele.eu |

## Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

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| Organization | Capital City Service Ltd. |

## Respondent

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| Organization | Capital City Service Limited |

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 Complainant states that there are no related proceedings.
The Respondent states that the proceedings between the Company's shareholders Alexandru Taracanov and Sergiu Savocikin, which is currently being considered by the High Court of London (Case Nr. CR-2017-002945) and is scheduled for preliminary hearing in 2019 are related.
Both parties refer to investigations of alleged offences in Moldova and Germany.

FACTUAL BACKGROUND

Both the Complainant and the Respondent are directors of Capital City Services Limited incorporated in England and Wales.

The Respondent submits that the issues in dispute are also subject to proceedings in the High Court in London which have been given a date for a procedural directions in 2019.

A. COMPLAINANT

The Complaint is brief and can be quoted in full with the names of third parties anonymised as there are unsubstantiated allegations of a criminal nature made against certain people. It states as follows: “the domain ccstele.eu I, Tarakanov Evgeny, bought on June 20, 2016.
A copy of the letter from the registrar Godaddy attached.
We had it as a backup for our European companies, as well as a reserve option in case of unpredictable excesses of "brexite".
In the fall of 2016, we had problems with our system administrator (named in the Complaint but hereinafter anonymised as “Mr A”). We was decided to fire him. Our main domain ccstele.co.uk was under his control. On the fact of extortion of a bribe for "preservation of efficiency of all IT-systems" a criminal case was opened in Chelisant in Moldova and Germany.
On December 22, at the request of our technical director (named in the Complaint but hereinafter anonymised as “Mr B”), I transferred the domain ccstele.eu from my account to his Godaddy account. That is, the domain was under his control. We transferred all our work to the domain ccstele.eu.
In September 2017, our former employee…Mr A, disconnected our old domain ccstele.co.uk from all our servers. We had some problems, since some of the settings were tied to the old domain, some of the letters from the partners came to the old addresses.
Since our technical director Mr B was not available, I was trying to access his account with domains. Unfortunately, I did not manage to do this. We lost access to the account, because Mr. A had access to Mr B’s mail.
After a while, I managed to restore the domain ccstele.eu on my account.
February 5, 2017 at 10:27 GMT I received a letter from godaddy stating that the domain ccstele.eu was removed from my account.
Moreover, the domain was transferred to another registrar. I contacted the support of the registrar, filled out the forms that were needed to appeal the transfer of the domain. In response, a letter came from technical support, which said that I need to contact the registrar of .eu domains.

I, as the owner of the domain ccstele.eu, no one notified in advance that someone initiated the transfer of the domain from my account. Also, the reason for this was not mentioned.
I ask you to understand this situation and resolve it. Currently, the company has a big problem with partners in connection with the blocking of this domain.
Thank you!"
The Complaint was accompanied by five annexes, namely:
• An e-mail in the Russian language to "Evgeny" at the e-mail address exp@me.com dated 20 June 2016 from GoDaddy to "Evgeny" confirming the order for "ccstele.biz" and "ccstele.eu";
• An e-mail in the English language to the e-mail address exp@me.com dated 26 September 2017 from GoDaddy stating: "Your domain name transfer was completed successfully We've just confirmed the transfer of the following domain(s) to your account: ccstele.eu";
• A copy of a Ruling on the Commencement of Criminal Proceedings issued by the senior prosecution officer of the Criminal Prosecution Section of the Center for Combatting Information (Computer) Crimes of the National Inspectorate for Investigations of the Chief Police Inspectorate, Senior Police Lieutenant in the municipality of Chisnau, Romania, together with a notarised translation of same into the Russian language and further translated into English;
• Two untranslated documents in the German language, one of which appears to be a copy of a complaint from the Complainant's representatives to the Staatsanwaltschaft Frankfurt am Main dated 1 February 2017 and singe page document which is perhaps a receipt thereto dated 20 February 2017.

## B. RESPONDENT

The Respondent states that she acts in her capacity of Capital City Service Limited (Company number: 04686010) (hereinafter the "Company"). She has provided a copy of a certificate of the Registrar of Companies for England and Wales that the Company was incorporated on 4 March 2004 and that as of 13 October 2017 there were two directors, namely the Respondent and the Complainant. The Respondent is also Company Secretary.
The Respondent states that in that in her capacity as a director of the Company she has never authorised the Complainant Evgeny Tarakanov or his named authorised representative to act on behalf of company as representatives on any matter related to Company's assets including ccstele.eu domain name and thus neither the Complainant Evgeny Tarakanov nor his authorised representative are authorized to make statements on behalf of the company.
She recalls and terminates on behalf of the Company, all the powers of the Complainant Evgeny Tarakanov, as well as his authorized representative, and request that the Complaint be withdrawn as groundless without further action.
She states that the disputed domain name is the property of the Company. She denies that the owner of the disputed domain name has been changed, and asserts that the disputed domain ccstele.eu is still owned by the Company. She states that as legal representative of the Company she manages the disputed domain name, as well as any other Company's property on the basis of the Company's Charter documents and asserts that the right to manage this domain on behalf of the Company should be fixed at the level of directors and / or shareholders of the company.
The Respondent states that this is essentially a dispute over the management of the property of the Company.
The Respondent states that the trademark of Capital City Service Limited is an integral part of the disputed domain name ccstele.eu and belongs to the representative office of the Company in Moldova. The Respondent has provided a translation of the Certificate of Trademark Registration issued by the State Agency for Intellectual Property of the Republic of Moldova, but the there is no copy of the original certificate and the translations do not show the trademark.
The Respondent further states that the present dispute may be related to a shareholder dispute between the Company's shareholders which is currently being considered by the High Court of London and is scheduled for preliminary hearings in 2019. The Respondent has furnished a copy of the Deputy Master of the Chancery Division, Companies Court of the High Court of Justice, directing a Case Management Conference.
The Respondent states that this Complaint should reasonably be frozen at least until the decision of the High Court of London is announced.
The Respondent states that as an employee of the Company Mr A has never been "related to the ownership of any Company's domain and is not related anyhow to its administration". Mr A refused to transfer the Company's domain names of to a third party company which is headed by Mr B as a director and the Complainant as a beneficiary owner. As a revenge action, the Complainant's representative has filed a groundless application to the police in Moldova and Germany against Mr A and put him under pressure.
The Respondent submits that this Complaint is aimed to take over the disputed domain name and to operate it against the interests of the Company in favour of their "companies-clones" i.e. similarly named companies established in other jurisdictions and other offshore corporations not related to the Company.

## DISCUSSION AND FINDINGS

In order for the Complaint to succeed, the Complainant must show, in accordance with Article 21 (1) of Commission Regulation (EC) No. 874/2004 and Paragraph B11(d)(1) of the ADR Rules, that:

(a) the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law;
and either

(b) the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(c) the disputed domain name has been registered or is being used in bad faith.

Preliminary Point
The Complaint was very brief. The points made were not supported by evidence. One of the annexes was in the German language but not translated. This Panel took the view that requesting a translation would serve no purpose in the circumstances of this case as the issues essentially relate to the ownership and control of a company and the ownership and control of the disputed domain name are part of a much wider dispute which on the balance of probabilites are the subject of proceedings in the High Court in London.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or Community law
The Complaint is filed in the name "Capital City Service Ltd., Evgeny Tarakanov". The Complainant provides no evidence of any rights which Evgeny Tarakanov may have in any name identical or similar to the disputed domain name. He asserts that he registered the domain name and it may be implied that he registered it on behalf of himself and some third party or third parties. This can be deduced from the fact that he states "[w]e had it as back up…", " we had problems with our system administrator…" however later in the Complaint he appears to claim personal ownership as he states "I, as the owner of stele.eu…"
The Respondent has furnished a copy of a trademark registration certificate which is of no evidential value as the document does not mention or describe the claimed trademark. The Respondent has however provided evidence that the Company Capital City Service Ltd., is a company incorporated in the United Kingdom.
Having considered the submissions of both parties this Panel finds that on the balance of probabilities the disputed domain name <ccstele.eu> is derived from the Company name and that the letters "ccs" in the disputed domain name are an acronym for the words "Capital City Service".
For the purposes of this decision this Panel finds that on the balance of probabilities the disputed domain name is confusingly similar to the name of the Company because the letters "ccs" are the dominant and distinctive element in the disputed domain name.
As the Company is established in the United Kingdom this Panel finds that the Complainant has satisfied the first element of the test in Article 21 (1) of Commission Regulation (EC) No. 874/2004 and Paragraph B11(d)(1) of the ADR Rules name as the disputed domain name is confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.
This Complaint is taken by one of the directors of an English Company Capital City Service Ltd. in the name of the Company and in his own name. The Respondent is the second director of the Company and is also a company director.

(b) Registered by the Respondent without rights or legitimate interest
While Evgeny Tarakanov appears to claim personal ownership of the disputed domain name, taken on the whole it would appear that both Parties are agreed that the beneficial ownership belongs to the Company and in such circumstances on the balance of probabilities the disputed domain name was registered by an entity that had rights and legitimate interest in the name. The ownership of the registration in the period after the disputed domain name was registered is disputed, however it is clear from the Complaint and the Response that both the Complainant and the Respondent are both directors of the Company. The Respondent has furnished evidence that she is a director and company secretary of the Company and claims to hold the disputed domain name for the Company.

It is beyond the scope or purpose of these proceedings to determine complex issues of company law and ownership of shareholding. Even if this Panel had such a jurisdiction the information provided is so scant and casually presented that it would not be possible to make such a determination.

This Panel finds therefore that the Complainant has failed to prove that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name.

(c) Registered or is being used in bad faith
It would appear that the Complainant's position is that the disputed domain name was registered by him in good faith.
There is disagreement between the Parties as to whether the disputed domain name has been subsequently used in bad faith. In the circumstances of the present case it would appear to turn on the question as to whether the Respondent was entitled to accept the transfer of the disputed domain name into her own name, whether the disputed domain name is the property of the Company as she

claims and whether she is entitled to control the disputed domain name.
These are matters for another Forum. The Respondent submits that this Complaint is brought in the context of a shareholder dispute at present in litigation in the High Court in London with a date set in 2019 to make procedural directions. The Complainant states that "[a]t the moment we have no other proceedings on the domain ccstele.eu". Both Parties refer to two complaints that are the subject of criminal investigations in Moldova and Germany.
This Complaint procedure was not designed to resolve disputes of this nature and the Complaint raises questions that are outside the jurisdiction of this Panel.
Even if this Panel had the jurisdiction to consider and determine the issues of shareholder ownership and the powers and duties of the directors, the information in the Complaint would be insufficient to allow this Panel to embark on such an investigation. The Complaint lacks detail; the documents annexed the Complaint are furnished with very little explanation or description; two of the documents furnished with the Complaint are not in the English language and are not translated; there are too many conflicts of fact to be determined by this Complaint procedure.
In the circumstances this Panel finds that the Complainant has also failed to prove that the disputed domain name has been registered or is being used in bad faith and the Complainant's application must fail.

7. Complainant's Entitlement to Transfer

As the Complainant has failed in this application, his entitlement to a transfer pursuant to Article 4.2.(b) of Commission Regulation No 874/2004 which provides that the Registry may

(b) register domain names in the .eu TLD through any accredited .eu Registrar requested by any:

(i) undertaking having its its registered office, central administration or principal place of business within the Community, or

(ii) organisation established within the Community without prejudice to the application of national law, or

(iii) natural person resident within the Community;

does not arise. The entitlement of the present registrant is a matter for the Registry.

DECISION

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

## PANELISTS

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| Name | **James Bridgeman** |

DATE OF PANEL DECISION 2018-05-15

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: ccstele.eu

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

III. Date of registration of the domain name: 20 June 2016

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

V. Response submitted: Yes

VI. Domain name is confusingly similar to the protected (but disputed) rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes

2. Why: Company name - ownership/control disputed

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: insufficient evidence to support claim and discharge burden of proof

IX. Other substantial facts the Panel considers relevant: The issues were essentially a shareholders dispute and beyond the jurisdiction of the Panel

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: -

XII. Is Complainant eligible? Not applicable