Panel Decision for dispute CAC-ADREU-007659

Case number	CAC-ADREU-007659
Time of filing	2018-09-12 14:07:31
Domain names	waste-edu.eu

Case administrator

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

Complainant

Organization	Alliance of the Producers of Ecological Energy-BG

Respondent

Name	Klaus Schreiner

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 other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant under the Amended Complaint is the Alliance of the Producers of Ecological Energy-BG, an entity based in the Republic of Bulgaria, which is the lead partner in a cross-border project funded by an EU Instrument for Pre-Accession Assistance (IPA) called "Cross-border Partnership for Environmental Protection and Better Quality of Life (Waste EDU)". The project is known by the name Waste EDU. The project was implemented by the Complainant and its project partner, Center for Climate Change-Gevgelija in the Republic of Macedonia (identified as the Authorised Representative in the Amended Complaint).
The Complainant states that the main aim of the Waste EDU project is to increase awareness and knowledge of environmental protection amongst pupils from primary schools in Bulgaria and Macedonia by promoting action in relation to waste management and reducing and recycling waste.
The Complainant asserts that the Authorised Representative purchased the domain name WASTE-EDU from a Macedonian domain registration company, GlobalNet, which failed to renew it after the first year despite the Authorised Representative having paid the renewal fee. The Complainant further asserts that, immediately following expiry of the domain name redemption period, the disputed domain name was immediately registered by the Registrar PDR Ltd and purchased by the Respondent.
During the period when the Authorised Representative owned the WASTE-EDU domain, the domain name was used as the main domain for the project and printed on numerous promotional materials including project leaflets, books and waste bins and distributed to 24 schools in Bulgaria and Macedonia as well as to municipalities and other project stakeholders in both regions.
The Complainant alleges that the disputed domain name now links to a website which reveals explicit adult content that has no connection with the Waste EDU project and should not be accessed by young children who may be led to it by accessing the domain while looking for information in relation to the Waste EDU project. The Complainant requests that access be blocked to the domain name and any explicit content be removed from the website to which the domain name links.
The Panel is not able to replicate the content that the Complainant says is accessed through the domain name and it is conceivable that that content has been removed following the Complainant's Complaint in these proceedings. The disputed domain name currently leads to a holding webpage with various links to listings for waste collection and removal services. The website itself does not appear to be otherwise operational.
The Complainant asserts that is has tried to contact both the Respondent and the Registrar of the disputed domain name directly but has had no success.
The Respondent is Klaus Schreiner, an individual with an address in Germany.
The Complainant issued the Complaint in the present ADR proceedings on 27 April 2018. The Request for EURid verification was answered on 3 May 2018, confirming the identity of the current registrar and registrant of the domain name. A Notification of Deficiencies in Complaint was sent on 10 May 2018 and an Amended Complaint was filed on 11 May 2018. The amended Complaint

inter alia changed the identity of the Complainant (previously Mrs Bojana Stanojevska Pecurovska) to the Alliance of the Producers of Ecological Energy-BG and named the Center for Climate Change-Gevgelija as the Authorised Representative.
The formal date of the commencement of these ADR proceedings was 14 May 2018. As the Respondent did not confirm receiving the notice of the ADR Proceeding by accessing the online platform within the required time frame notice of the ADR proceedings was sent to the Respondent by post on 23 May 2018. The date by which the Respondent was due to submit a response (16 July 2018) passed with no response being submitted and a Notification of Respondent's Default was issued on 20 July 2018. On 1 August, the Panellist was selected and the projected decision date was set as 27 August 2018. The appointment of the Panel and projected decision date were also notified to the parties on 1 August 2018. On 16 August 2018, the Panel invited the parties by Non-standard Communication to make additional submissions in relation to specific issues raised by the Panel and extended the protected decision date to 14 September 2018. The Complainant responded with further submissions (out of time) on 29 August 2018. The Panel has taken note of the Complainant's further submissions but since they do not add anything material in relation to the issues to be decided in this matter, and did not affect the Panel's findings and decision, the Panel did not need to consider whether they should be admitted despite the delay in responding. No further submissions were received from the Respondent.

A. COMPLAINANT

The Complainant seeks a decision blocking access to the website accessed through the domain name, removing the explicit content from the website accessed through the domain name, and revoking and transferring the disputed domain name to the Complainant, the Complainant being an organisation established in Bulgaria.
The Complainant asserts that registration of the domain name by the Respondent is speculative and abusive in accordance with Art 21 of Commission Regulation (EC) No 874/2004 (the "Regulation"), principally, because of the explicit adult content that appears to have been placed on the website accessed through the domain name and the risk that that content could be accessed by children of primary school age.

B. RESPONDENT

The Respondent did not file a response to the Amended Complaint and did not respond to the Panel's non-standard communication inviting further submissions from both parties on specific issues raised by the Panel.

DISCUSSION AND FINDINGS

The Panel has reviewed and considered the Complainant's Amended Complaint and annexed documents in detail.
Article 22.10 of the Regulation and Paragraph B.10(a) of the ADR Rules provide that if, as in the present case, a party fails to respond within the given deadlines, the Panel shall proceed to a decision on the Complaint, and may consider the failure to respond as grounds to accept the claims of the counterparty.
However the Panel does not consider that the Regulation or the ADR Rules envisage the Panel simply upholding the complaint in all cases where a Respondent fails to respond. Rather, in order for the complaint to succeed, the Complainant must still demonstrate that the requirements of Article 21.1 of the Regulation and paragraph B.11(d)(1) of the ADR Rules are satisfied.
In accordance with Article 21.1 of the Regulation and paragraph B.11(d)(1) of the ADR Rules in order to succeed, the Complainant must establish that:
(a) The disputed domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by national and/or Community law; and either:
(i) The disputed domain name has been registered by the Respondent without rights or legitimate interests in the disputed domain name; or
(ii) The disputed domain name has been registered or is being used in bad faith.
If the Complainant succeeds in this respect, in order to obtain a transfer of the disputed domain name to itself, Article 22.11 of the Regulation further requires that the Complainant applies for the disputed domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002. The remedies which the Panel may otherwise grant would be restricted to revocation of the disputed domain name.
It follows that the Panel has no jurisdiction within the meaning of the Regulation and/or the ADR Rules to block access to the website accessed through the domain name or to grant remedies to that effect.
Turning, first to the question whether the domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by national and/or community law, the Complainant has adduced evidence that it is the lead partner in an IPA project called "Cross-border Partnership for Environmental Protection and Better Quality of Life (Waste EDU)". The Complainant has produced a copy of a subsidy contract under the Instrument for Pre-accession Assistance II dated 17 October 2016 and signed by the Ministry of Regional Development and Public Works and other parties awarding a subsidy to the Complainant for the project. The Complainant further produced copies of other funding documentation and its partnership agreement with the Authorised Representative as further evidence of the use of the name Waste EDU in association with the project. The Complainant has also adduced documents picturing the custom branded waste bins that were ordered as part of the project although it is not clear from the pictures

that the disputed domain name has been printed on the bins. The Complainant further refers to its website at the temporary domain <WASTEEDU.EU> which clearly refers throughout to the name Waste EDU as the name of the cross-border project. The documentation produced by the Complainant also identifies discussions between the Complainant as lead partner and the Authorised Representative as project partner about use of the web portal WASTE@EDU, albeit that this does not appear to be of relevance in the context of these proceedings. There does not appear to be any reference to the domain name itself in the evidence submitted by the Complainant.
Although the Complainant has adduced extensive evidence of use of the name "Waste EDU" in connection with the project, it has not set out in its amended complaint or the supplemental submissions invited by the Panel inter alia on this point and filed by the Complainant on 29 August 2018 which right/s of the Complainant in the name is/are recognised or established under national Bulgarian and/or Community law or that Waste EDU is the name of a public body within the meaning of Art 21(1) and 10(1) of the Regulation. The Panel refers in this regard, in particular to the requirements set out in paragraph B.1(b)(9) of the ADR Rules.
The disputed domain name was previously owned by the Authorised Representative (rather than the Complainant) but, in any event, a former domain name registration is not recognised as a right within the meaning of Art 10(1) of the Regulation if there are no other relevant prior rights.
In circumstances where the Complainant has failed to establish that it is the holder of rights in the name that are recognised or established under national Bulgarian and/or Community law, the Panel does not need to consider whether the Respondent registered the disputed domain name without rights or legitimate interest and/or registered and uses the disputed domain name in bad faith and whether the evidence submitted by the Complainant would support such a finding.

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.

PANELISTS

Name	**Gregor Kleinknecht, LLM MCIArb**

DATE OF PANEL DECISION 2018-09-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: WASTE-EDU.EU

II. Country of the Complainant: Bulgaria, country of the Respondent: Germany

III. Date of registration of the domain name: 8 April 2018

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

V. Response submitted: No

VI. Domain name is neither identical nor confusingly similar to the protected right/s of the Complainant

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

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1.N/A

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: Complainant failed to establish right/s protected by national or EU law