Panel Decision for dispute CAC-ADREU-007870

Case number	CAC-ADREU-007870
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Domain names	wte-gmbh.eu

Case administrator

	Lenka Náhlovská (Case admin)

Complainant

Organization	WTE Wassertechnik GmbH

Respondent

Name	Deutsche Bahn AG

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

1. There is no knowledge of other legal proceedings concerning the disputed domain name which are pending or which have been decided. Criminal proceedings initiated by the Complainant concerning attempted fraud using the disputed domain name were terminated since the prosecuting authorities were unable to identify the perpetrators on the basis of the available information.

FACTUAL BACKGROUND

1. The Complainant:

1.1 The Complainant WTE Wassertechnik GmbH is holder of several trademarks and commercial designations and domain names containing the element “wte”.

1.2 The Complainant’s earlier trademarks are inter alia:
German trademarks:
German trademark No. 302009053547 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42,
German trademark No. 30157168 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42.
European Union trademarks:
EUTM No. 017945480 “wte symbio” (wordmark) with priority of 20 August 2018 and protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42,
EUTM No. 017945859 “wte” (combined with a ball as designmark) with priority of 21 August 2018 protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42.
International Registrations:
IR No. 1043696 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42, e.g. with protection in EU and Croatia, Romania,
IR No. 790370 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42, e.g. with protection in EU, Austria, Croatia, Denmark, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia.

1.3 The Complainant’s company name “WTE Wassertechnik GmbH” contains both elements of the domain wte-gmbh.eu: “wte” and “gmbh”.

1.4 The Complainant is owner of several domain names with “wte” alone or in combination with other words. The public will make a connection between the domain “wte-gmbh.eu” and the Complaint’s trademarks, company and domain names as the disputed domain name "wte-gmbh.eu" points directly to the Complainant's web presence "wte.de". Consequently, even the offered goods and services are

identical.

1.5 The Complainant has not given any licence or authorization to the Respondent for using “wte”.

2. The Respondent

2.1 The Respondent did not reply to the Complaint on substance. Instead, the Respondent, a natural person, through his attorneys put forward that he was in no way connected with the disputed domain name, as he had not registered it and was in no way connected to the supposed registrant “Deutsche Bahn AG”. The Respondent credibly put forward that the registration was obtained following an identity theft of his person.

A. COMPLAINANT

1. According to the WHOIS-database of EURID the disputed domain name “wte-gmbh.eu” was registered by “Deutsche Bahn AG” in Aachen and the e-mail-address is mattthomas@gmx.ch. In fact, such a person does not exist and cannot be contacted. The inquiry at EURID legal team revealed that a natural person registered “wte-gmbh.eu” for Deutsche Bahn AG.

2. The Complainant WTE Wassertechnik GmbH is holder of several trademarks and commercial designations and domain names containing the element “wte”.

3. The Complainant’s earlier trademarks are inter alia:
German trademarks:
German trademark No. 302009053547 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42,
German trademark No. 30157168 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42.
European Union trademarks:
EUTM No. 017945480 “wte symbio” (wordmark) with priority of 20 August 2018 and protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42,
EUTM No. 017945859 “wte” (combined with a ball as designmark) with priority of 21 August 2018 protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42.
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IR No. 790370 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42, e.g. with protection in EU, Austria, Croatia, Denmark, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia.

4. These marks are identical or similar to the disputed domain name due to the inclusion of the element "WTE".

5. The Complainant’s company name “WTE Wassertechnik GmbH” contains both elements of the domain wte-gmbh.eu: “wte” and “gmbh”.

6. The Complainant is owner of several domain names with “wte” alone or in combination with other words. The public will make a connection between the domain “wte-gmbh.eu” and the Complaint’s trademarks, company and domain names as the disputed domain name "wte-gmbh.eu" points directly to the Complainant's web presence "wte.de". Consequently, even the offered goods and services are identical.

7. As the Complainant has not given any licence or authorization to the Respondent for using “wte”, the Respondent is not entitled to use “wte” without prior consent of the Complainant and is especially not entitled to register the disputed domain name “wte-gmbh.eu”.

8. Additionally, the disputed domain name “wte-gmbh.eu” has to be considered as having been registered and being used in bad faith. The disputed domain name “wte-gmbh.eu” is (still) linked to the official internet presence of the Complainant: “wte.de”. An unknown person or persons wrote e-mails originating from an account with the e-mail-address “…@wte-gmbh.eu” to a customer of the Complainant giving notice of a change of the bank data. The aim was to receive payments made to settle the Complainant’s invoices in a fake bank account rather than in the Complainant’s bank account. The discovery of this by the Complainant and the Complainant’s customer before any actual damage had occurred was coincidental.

B. RESPONDENT

1. The Respondent did not file a reply other than to put forward that the natural person named in the complaint was in no way involved with the registration which was the result of an identity theft.

DISCUSSION AND FINDINGS

1. According to Article 22 (1) (a) of the Commission Regulation (EC) 874/2004 an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of this Commission Regulation. Article 22 (11) states that if the ADR panel finds that the registration is speculative or abusive as defined in Article 21, the domain name shall be transferred to the Complainant if the Complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4 (2) (b) of Regulation (EC) No. 733/2002. These requirements are fulfilled in the case at hand.

2. The Complainant is the proprietor of, inter alia, German trademarks No. 302009053547 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42, and No. 30157168 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42; European Union trademarks No. 017945480 “wte symbio” (wordmark) with priority of 20 August 2018 and protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42 and No. 017945859 “wte” (combined with a ball as design mark) with priority of 21 August 2018 protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42, International Registrations: No. 1043696 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42, e.g. with protection in EU and Croatia, Romania, and No. 790370 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42, e.g. with protection in EU, Austria, Croatia, Denmark, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia.

3. The Complainant’s company name “WTE Wassertechnik GmbH” contains both elements of the domain wte-gmbh.eu: “wte” and “gmbh” and the Complainant is the registered proprietor of several domain names with “wte” alone or in combination with other words.

4. The public will make a connection between the domain “wte-gmbh.eu” and the Complaint’s trademarks, company and domain names as the disputed domain name "wte-gmbh.eu" points directly to the Complainant's web presence "wte.de". Since the disputed domain name is (or at least was) pointing directly at the website of the Complainant, the goods and services being offered are also identical.

5. The domain name “wte-gmbh.eu” is highly similar to the aforementioned trademarks registered on behalf of the Complainant. The additional elements “gmbh” which is the indicator of the legal nature of the company and the domain ending “.eu” in the disputed domain name are obviously and clearly generic and descriptive and therefore do not add further distinctive or dominant elements to the disputed domain name. For that reason, the domain name is clearly dominated by the distinctive element “WTE” which must be compared to the earlier rights registered on behalf of the Complainant.

6. This is a recognized principle of the case law in .eu ADR proceedings as can be seen e.g. in the decisions No. CAC 4218 (olympiakos.eu), CAC 4645 (airfrance.eu), CAC 5376 (monstefinance.eu) or CAC 3207 (Allianz-online.eu). The fact that the earlier marks or the contested domain name may contain additional elements, does not change this finding as these are not sufficient to change the distinctive character of the elements of the marks and the disputed domain and to make these dissimilar.

7. The domain name “wte-gmbh.eu” is therefore confusingly similar to the trademarks registered and protected on behalf of the Complainant.

8. The registration of the disputed domain name by the Respondent occurred without the Respondent having any legitimate right or interest in that name. This finding is based on the fact that neither did the Respondent demonstrate the existence of such a legitimate right or interest within the meaning of Article 21 No. 2 of the Regulation (EC) No. 874/2004 of 28/04/2004, nor has such right or interest otherwise been demonstrated or become apparent. More over, the Complainant has not given any license or authorization to the Respondent for using the element “wte” from which the Respondent is barred without prior consent of the Complainant. Therefore, the Respondent was not entitled to register the disputed domain name “wte-gmbh.eu”.

9. The Panel is therefore not required to examine whether the domain name has additionally been registered or used in bad faith in accordance with Article 21 No. 1(b), No. 3 of the Regulation (EC) No. 874/2004 of 28/04/2004. However, the Panel is of the opinion that on the basis of the evidence available to it, such bad faith is established especially given the attempted manipulation by use of emails generated with the email address of the disputed domain and the pointing of the domain to the website of the Complainant with the purpose of inducing customers of the Complainant to make payments to a fake bank account. Additionally, using a stolen identity leading to obviously fake registration details of the Respondent entered into the official database of EURID for the disputed domain is very clear evidence of bad faith.

10. Being a company with registered offices in Germany, the Complainant satisfies the eligibility criteria as set out in Article 4 (2) (b) of Regulation (EC) No. 733/2002.

DECISION

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

the domain name WTE-GMBH.EU be transferred to the Complainant

PANELISTS

Name	**Udo Pfleghar, B.A. (Melbourne)**

DATE OF PANEL DECISION 2020-04-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: WTE-GMBH.EU

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

III. Date of registration of the domain name: 02 April 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. German trademark No. 302009053547 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42,
2. German trademark No. 30157168 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42.
3. EUTM No. 017945480 “wte symbio” (wordmark) with priority of 20 August 2018 and protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42,
4. EUTM No. 017945859 “wte” (combined with a ball as designmark) with priority of 21 August 2018 protection in classes 9, 11, 35, 36, 37, 39, 40, 41, 42,
5. IR No. 1043696 “wte” (wordmark) with priority of 10 September 2009 and protection in classes 35, 36, 37, 40 and 42, e.g. with protection in EU and Croatia, Romania,
6. IR No. 790370 “WTE-Wassertechnik” (wordmark) with priority of 26 September 2001 and protection in classes 11, 19, 35, 37 and 42, e.g. with protection in EU, Austria, Croatia, Denmark, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia.
9. company name: WTE WASSERTECHNIK GMBH

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: None demonstrated or otherwise apparent.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Attempts to induce customers of the Complainant to pay into a fake bank account. Stolen identity used in the process of registration of the

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. Is Complainant eligible? Yes