Panel Decision for dispute CAC-ADREU-007930

Case number	CAC-ADREU-007930
Time of filing	2020-09-22 13:47:14
Domain names	hart.eu

Case administrator

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

Complainant

Organization	

Respondent

Organization	Clarivate Analytics (Deutschland) GmbH

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

There are no other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant’s family name is HART.

The owner of the disputed domain name is a US entity. The disputed domain name, registered in 2006, has never been used.

A. COMPLAINANT

The disputed domain name <hart.eu> was registered for the company "Clarivate Analytics (Deutschland) GmbH" according to EURid information by "MarkMonitor International Limited" based in the UK. As there has been an interest in the domain for several years, the use of the domain was tracked and it has not shown any activity since the beginning of the investigation (there have been no DNS records for use of solely e-mails as well).

Since there was interest in the domain based on the right to my name and an intended use within my family, several e-mails have been sent to the provided e-mail address "ccops@markmonitor.com". Solely after setting a deadline to start an ADR a reply from a company named "Hart inc." based in the US was sent out. The e-mail contained the information that the company "Hart inc." is the owner of the domain and that there are no plans to sell the domain.

The e-mail reply clearly demonstrates a use in bad faith by a US based company. According to Chapter II Section 1 Article 3 of REGULATION (EU) 2019/517 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL I would suggest to demand the registrant to show a legitimate interest in the use of the disputed domain name <hart.eu>.

With this complaint the Complainant claims the right to its name since it is the holder of the family name Hart and can confirm this by means of its identity card and demand a transfer of the domain.

The right to a name (see ADR 04484 GREENTEAM) is a right protected under Article 10(1) of Regulation (ECU No 874/2004. The right to a name is also mentioned as such a right in Article 10(1)(2) of Regulation (EU) No 874/2004.

B. RESPONDENT

The Respondent did not reply.

DISCUSSION AND FINDINGS

The requirements for revocation of a registered domain name under ".eu" are found in Article 21 of the Public Policy Rules, Commission Regulation (EC) No. 874/22004 of 28 April 2004.

For the purposes of the revocation of speculative and abusive registrations, the Complainant has to prove that the Respondent holds the disputed domain name; that the domain 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; and that either:

(a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or

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

The Complainant presents evidence showing that his family name is HART. According to Art. 10.1 of Commission Regulation (EC) No 874/2004, the holder of a family name is eligible to register a domain name that is identical or confusingly similar to the family name. Accordingly, the Complainant is eligible to register the disputed domain name (this is confirmed by the precedents cited in II.9 of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition ("CAC .EU Overview 2.0").

The disputed domain name is identical to the Complainant's family name.

The registrant of the disputed domain name is "Domain Administrator, Clarivate Analytics", a German entity. Evidence presented by the Complainant shows that the registrant is, as the name suggests, merely an administrative contact, whereas the name is actually owned by the US entity Hart, Inc., Costa Mesa, California, USA.

According to Art. 3 of Regulation (EU) 2019/517 a company that is not established in the European Union is not eligible to register a domain name under ".eu". In the instant case, the registrant is established in the European Union, whereas the owner is not.

The following "whereas" of the cited Regulation are relevant for the instant case:

"(5) The .eu TLD, which is a clear and easily recognisable label, should provide a clearly identifiable link with the Union and the European market place. It should enable undertakings, organisations and natural persons within the Union to register a domain name under the .eu TLD. … "

"(6)Domain names in the .eu TLD should be allocated to eligible parties, subject to availability."

According to I.21 of the cited Overview, "it is the common understanding of the Panels that a Respondent would have submitted a respond stating his or her legitimate rights or interests if the Respondent had any." See also IV.5 of the cited Overview: "If the respondent fails to show evidence of rights or legitimate interests it is deemed to have none." And IV.8: "In the absence of the response of the Respondent the Panels often regard factual allegations which are not inherently implausible as being true and consider the default of the respondent as an indication of the lack of rights and legitimate interests, and/or of the bad faith of the respondent."

The Respondent (who did not reply) has not explained why it has rights or legitimate interests in the disputed domain name.

While the Respondent is eligible to register the disputed domain name, the Panel finds that it does not have rights or legitimate interests in the disputed domain name because the actual owner is not a European Union undertaking and there is no indication that its activities have a link with the Union or the European market place.

A finding that the Respondent lacks rights or legitimate interests is dispositive (see V.7 of the cited Overview). However, in the instant case, the Panel also finds that the disputed domain name has been registered and is being used in bad faith.

The Complainant alleges that the disputed domain name has never been used since it was registered in 2006. The Respondent (who did not reply) does not contest this allegation. Pursuant to Art. 10(a) of the ADR Rules, the Panel may consider the failure to reply as ground to accept the Claimant's allegation. This approach is confirmed by the precedents cited in I.20 of the cited Overview. Accordingly, the Panel finds that the disputed domain name has never been used.

According to Art. 11(f)(2)(ii) of the ADR Rules, the fact that a domain name has not been used in a relevant way for at least two years from the date of registration may be evidence of bad faith registration or use. Accordingly the Panel finds that, in the instant case, the

lack of use of the disputed domain name is sufficient to find bad faith registration. This is consistent with the precedents cited in V.3 of the cited Overview: “Most panels think of nonuse as of a proof of bad faith. … Nonuse for at least two years from the date of registration is mostly seen as proof of bad faith …”.

Thus, the Panel finds that the Respondent does not have any rights or legitimate interest in the disputed domain name, and that the disputed domain name has been registered in bad faith.

DECISION

For all the foregoing reasons, in accordance with Art. 11(b) and (d) of the Rules, the Panel orders that the disputed domain name <HART.EU> be transferred to the Complainant.

PANELISTS

Name	**Dr. Richard Hill**

DATE OF PANEL DECISION 2020-09-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: HART.EU

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

III. Date of registration of the domain name: 7 April 2006

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

V. Response submitted: Yes

VI. Domain name/s is identical 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. Yes
2. Why: the actual owner is a US entity

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the disputed domain name has never been used

IX. Other substantial facts the Panel considers relevant: NA

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: NA

XII. If transfer to Complainant, is Complainant eligible? Yes