Panel Decision for dispute CAC-ADREU-008117

Case number	**CAC-ADREU-008117**
Time of filing	**2021-05-17 23:32:56**
Domain names	**waldbronn.eu**

Case administrator

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

Complainant

Organization	**Körperschaft des öffentlichen Rechts**

Respondent

Name	**Ulrike Blechschmidt**

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 which are pending or decided concerning the domain name in dispute.

FACTUAL BACKGROUND

The Complainant is Waldbronn, a German municipality. As a public corporation, Waldbronn holds its own naming rights pursuant to German law.

The disputed domain name <waldbronn.eu> has been registered by Ms. Ulrike Blechschmidt, as evidenced by EURid. In the web site bearing the above domain name, explicit material was visible at the time the complaint was filed with the ADR court. The disputed domain name <waldbronn.eu> is currently devoid of any content.

It was not possible for the Complainant to contact the domain holder for clarifying the matter prior to filing the complaint.

The Complainant has filed a complaint, requesting the transfer of the disputed domain name. Initially, the complaint was mistakenly drafted in German, with four documents attached: A power of attorney by the Mayor of Waldbronn; a copy of EURid's Legal Department certificate, dated from 17/12/2020, confirming that the Respondent has been registered as the holder of the disputed domain name; a copy of the Municipality of Helgoland, stating that the Respondent was not found in the address given to EURid; a copy of explicit material hosted under the website, whose domain name is the one under dispute in the present proceedings.

Following the control by the case administrator on 28/1/2021, the Complainant was requested to submit an amended complaint in English. The Complainant filed the amended complaint on 4/2/2021, this time without any explicit material, given that the Respondent had removed any content from the web site.

With Nonstandard Communication on the same day, the Complainant referred to the domain <waldbronn.eu> as the official website of Waldbronn, adding that the use of the disputed domain name to advertise pornographic content is abusive and damaging to its reputation. Following Nonstandard Communication by the ADR court, the Complainant supplemented the specific request for the transfer of the domain name on 5/2/2021.

The ADR court proceeded to the notification of the complaint to the Respondent. The latter failed to send back any response. As a result, the ADR court issued a notification on the Respondent's default on 15/4/2021. The Panelist was selected on 23/4/2021. The Notification of Appointment of the ADR Panel and Projected Decision Date was issued on 26/4/2021. The Transmission of Case File to the ADR Panel occurred on 29/4/2021.

A. COMPLAINANT

Initially, the complainant filed a complaint in German. Following examination of the file by the ADR Court, the complainant filed an amended complaint in English, which is the language of these proceedings.

The municipality of Waldbronn, legally represented by Mr. Dirk Benjowsky, a German Rechtsanwalt, owns the naming rights to the domain <waldbronn.eu>. The Complainant initiated a complaint against the domain holder, i.e. Ms. Blechschmidt. Based on the information received by EURid and the Municipality of Helgoland, the complainant presumes that this person probably does not exist, and that the registered address details are incorrect.

According to the Complainant, at the time the complaint was filed, the disputed domain name <waldbronn.eu> was being redirected to other 'dubious' domains with pornographic content.

B. RESPONDENT

As stated in the Factual Background section, the Respondent did not reply to the notification of the ADR court, and generally failed to state any defense.

DISCUSSION AND FINDINGS

The dispute in question is a typical cybersquatter case. The Respondent, whose registered whereabouts are obviously fictitious, has not been found in the address registered by EURid. The efforts made by the Complainant to trace the Respondent remained fruitless. A response to the complaint has not been filed with the court.

All necessary steps in accordance with the ADR Rules have been taken by the ADR court:

- The communications were delivered pursuant to Article A.2 ADR Rules;

- The language of the proceedings is the one selected and mentioned in the registration agreement pursuant to Article A.3 ADR Rules;

- The fees to the Provider have been duly paid pursuant to Article A.6 ADR Rules;

- The amended complaint has been checked by the ADR court, and the commencement of the proceedings has been announced pursuant to Article B.1 and B.6 ADR Rules;

- The notification of the complaint was effected duly pursuant to Article B.2 ADR Rules;

According to Article B.10 ADR Rules [Default]

(a) In the event that a Party does not comply with any of the time periods established by these ADR Rules or by the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

(b) Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In addition, according to Article B.11 ADR Rules [Basis for Decision]

(a) The Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.

(b) The remedies available pursuant to an ADR Proceeding where the Respondent is the Domain Name Holder in respect of which domain name the Complaint was initiated shall be limited to the revocation of the disputed domain name(s) or, if the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002 as amended by articles 20 and 22 of the Regulation (EU) 2019/517, the transfer of the disputed domain name(s) to the Complainant.

(d) The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves:

(1) in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was

initiated that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union law and; either

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

(iii) The domain name has been registered or is being used in bad faith.

From the factual background and the default of the Respondent, it is clear that all three conditions are met.

Special reference needs to be made to the protection of names of public bodies, such as cities or municipalities. Notwithstanding the fact that the Complainant failed to provide any evidence with respect to the legal framework providing protection to the domain name in question, the Panel is allowed to engage in his own investigation for ascertaining the factual situation and supporting his decision.

It is beyond any doubt that names of public bodies are protected in Germany on the basis of § 12 of the German Civil Code (BGB) [see BGH (German Supreme Court), Ruling from 9 June 2005, AZ: I ZR 231/01, published in: NJW 2006, 146]. The latter applies in cases where the domain holder has not proven the existence of any rights to the name in question [ibid, referring to further rulings of the German Supreme Court: BGHZ 149, 191, 198 f. – shell.de; BGHZ 155, 273, 275 f. – maxem.de; BGH, Ruling from 9.9.2004 – I ZR 65/02, GRUR 2005, 430 = WRP 2005, 488 – mho.de].
In the case at hand, the Complainant's rights to the domain name under dispute emanate from German law, and have not been challenged by the Respondent. Hence, the remedy requested may be granted by virtue of the provisions aforementioned, and the lack of any rights proven by the Respondent.

According to Article B.11 (f) of the ADR Rules

(f) For purposes of Paragraph B11(d)(1)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, may be evidence of the registration or use of a domain name in bad faith:

(1) Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognised or established by national and/or European Union law, or to a public body.

The pattern followed by the Respondent is a well known method of cybersquatting. The Respondent has registered a domain name with the sole intention to attract the rightful owners of the name in question. The additional posting of explicit material is an aggravating circumstance, used as an extortion tool against the name owner.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the disputed domain name <waldbronn.eu> be transferred to the Complainant

PANELISTS

Name	Apostolos Anthimos

DATE OF PANEL DECISION 2021-05-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: waldbronn.eu

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

III. Date of registration of the domain name: 5 July 2020

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

12. other: Rights in a name of a public body.

V. Response submitted: No

VI. Domain name is identical to the protected right of the Complainant

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

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Circumstances indicating that the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the holder of a name, in respect of which a right is recognised or established by national law to a public body.

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: Default of Respondent.

XII. [If transfer to Complainant] Is Complainant eligible? Yes