# Panel Decision for dispute CAC-ADREU-008146

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| Case number | **CAC-ADREU-008146** |
| Time of filing | **2021-05-30 22:53:07** |
| Domain names | **bittner.eu** |

## Case administrator

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| Organization | **Denisa Bilík (CAC) (Case admin)** |

## Complainant

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| Organization | |

## Respondent

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| Organization | **mainDo.** |

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 is a resident of Austria whose family name is Bittner.

The Respondent registered the disputed domain name on February 9, 2021. The disputed domain name resolves to a website which offers the disputed domain name for sale.

The Complainant filed the Complaint on April 19, 2021 in German, and when he was notified that the language of the registration agreement, and therefor of these proceedings, is in English on April 21, 2021, the Complainant submitted an amended Complaint in English on the same date. The Respondent timely filed its Response on April 28, 2021.

A. COMPLAINANT

The Complainant put forward that is family name is Bittner and would like to use the disputed domain name which is identical to his family name. The Panel understands that the Respondent asserts that the Respondent has no rights or legitimate interests in the disputed domain name as "Bittner" is neither his family name nor his company name. The Complainant also asserts that the disputed domain name was registered in bad faith because the Respondent did not use it, but rather offered the disputed domain name for sale for an amount of EUR 7,200.

B. RESPONDENT

The Respondent claims to have registered the disputed domain name in good faith, as the mere fact that the disputed domain name is offered for sale is not evidence of bad faith. According to the Respondent he should have had the Complainant in mind when he registered the disputed domain name in order for the registration to be made in bad faith, but he did not know the Complainant who is also not a famous person.

The Respondent also argues that Complainant has not claimed that a family name is a right recognized or established by national or community law, so that the Complaint does not comply with paragraph B1 (b) of the ADR rules.

DISCUSSION AND FINDINGS

Under Article 21 (1) of the Regulation (EC) No. 874/2004 in order to succeed under this dispute resolution procedure the Complainant must show that the disputed domain name:

(i) is identical 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
(ii) has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) has been registered or is being used in bad faith.

Paragraph B.1 (b) under (9) of the ADR Rules requires the Complainant to "[s]pecify the names in respect of which a right is recognised or established by the national law of a Member State and/or European Union law. For each such name, describe exactly the type of right(s) claimed, and specify the law(s) as well as the conditions under which the right is recognised and/or established". Although the Panel infers from the Complainant's assertion that the disputed domain name is identical to his family that the Complainant considers his family name a name in respect of which a right is recognised or established by the national law of a Member State (Austria) and/or European Union law, the Complainant failed to claim, let alone demonstrate, that a family name is a right recognized or established in Austrian and/or Community law. Thus, the Complainant has not complied with the requirement of paragraph B.1 (b) of the ADR Rules which provides that the Complainant states exactly which type of right it is invoking. In view of paragraph B.10 (b) of the ADR Rules the Panel shall draw such inferences therefrom as it considers appropriate. Because of the defect in the Complaint, the disputed domain name cannot be revoked or transferred and the Panel therefore rejects the Complaint (e.g. case CAC 07946 <demol.eu> and case CAC 08074 <florea.eu>).

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 | **Alfred Meijboom** |
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DATE OF PANEL DECISION 2021-05-30

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <bittner.eu>

II. Country of the Complainant: Austria; country of the Respondent: the Netherlands

III. Date of registration of the domain name: February 9, 2021

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: Bittner

V. Response submitted: Yes

VI. Domain name/s is/are [identical/confusingly similar/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. [Yes/No]
2. Why:

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. [Yes/No]
2. Why:

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant:

XII. [If transfer to Complainant] Is Complainant eligible? [Yes/No]