Panel Decision for dispute CAC-ADREU-008197

Case number	**CAC-ADREU-008197**
Time of filing	**2021-11-02 10:31:40**
Domain names	**avionix.eu**

Case administrator

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

Complainant

Organization	**AVIONIX ENGINEERING sp.z o.o.**

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 pending or decided between the same parties and relating to the disputed domain name.

FACTUAL BACKGROUND

The Complaint has been filed on behalf of two Complainants, i.e. AVIONIX ENGINEERING sp.z o.o. and Ralf Heckhausen. It results from the undisputed evidence submitted that AVIONIX ENGINEERING sp.z o.o. is a company located in Kraków, Poland and registered in the Commercial Register on 25 November 2010; software activities are the subject of its predominant activity. It also uses the website www.avionix.pl focusing on adaptable, complex, user-friendly and reasonable systems in the aviation area. Mr Ralf Heckhausen is a shareholder of AVIONIX ENGINEERING sp.z o.o., holding 70% of the shares and he is also the chairman of the board.

According to EURid's verification, the disputed domain name < avionix.eu > has been registered on 23 September 2020.

The disputed domain name does not currently resolve to an active website.

A. COMPLAINANT

The Complainants seek a decision transferring the disputed domain name to AVIONIX ENGINEERING sp.z o.o..

They contend that they requested personal information about the domain holder and tried to contact him by email but without receiving any reply. Moreover, they contend that they would like to use the disputed domain name as main domain name for the company. The current domain holder seems to have no relation to the disputed domain name and uses the page to display explicit adult content, which is disturbing for the Complainant as customers might try to look the Complainant up by the domain name.

B. RESPONDENT

The Respondent has not filed a response to the Complaint.

DISCUSSION AND FINDINGS

A. General

According to Article 22 (11) of the Commission Regulation (EC) No 874/2004 ("the Regulation") an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21. According to this disposition and Paragraph B 11 (d) (1) of the ADR.eu Alternative Dispute Resolution Rules (the "ADR Rules") the Complainant bears the burden of proving the

following:

(a) the disputed domain name is identical with 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

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

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

Furthermore, Article 22(10) of the Regulation provides that “failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty”.

The Panel has reviewed and considered the Complainant, together with the annexed supporting documents, in detail.

B. Procedural aspects

The Panel notes that Complaints can successfully be filed by related co-complainants due to practical reasons (see the references at point I.13. in 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 Panel further notes that while Complaint was submitted in English, the Annex “Extract from Commercial register” was submitted in a language (presumably Polish) which is different from the proceeding language (i.e. English).

Therefore, on 21 October 2021 the Panel issued a NON-Standard communication setting a term until 26 October 2021 for the Complainants to provide a translation of the “Extract from Commercial register” into English under A3(c) ADR Rules and asking confirmation that the trade names and the company names are protected under national Polish law where they are held. In addition, the Panel also set a term until 31 October 2021 for the Respondent to submit its observations in reply. Finally, the Panel considered it necessary to postpone the due decision date to 5 November 2021.

On 25 October 2021 the Complainants submitted the requested translation. They did, however, not comment on the protection of company names under national Polish law. The Responded did not file any observations.

C. Relevant Rights

Pursuant to Article 21 (1) of the Regulation, a Complainant must first of all establish rights - such as the rights mentioned in Article 10(1) of the Regulation - and secondly establish that the disputed domain name is identical or confusingly similar to these rights. Company names, trade names and business identifiers are formally listed as relevant rights. Panels have therefore accepted such names and identifiers as relevant rights in ADR procedures, see the references at point I.8 of “CAC .EU Overview 2.0”.

AVIONIX ENGINEERING sp.z o.o. is a company name protected under national Polish law where it is held, pursuant to Article 10(1) of the Regulation. In the light of the above, the company name AVIONIX ENGINEERING sp.z o.o. can be a valid basis for this ADR procedure.

D. Confusing Similarity

Pursuant to Article 21 (1) of the Regulation, the Complainants must now establish that the disputed domain name is identical or confusingly similar to the company name AVIONIX ENGINEERING sp.z o.o..

Amongst the Panels it is the consensus view that for assessing identity or confusing similarity the.eu suffix has to be disregarded (see CAC .EU Overview 2.0 at point III.1. for further references), since it is a technical necessity for the purpose of registering a domain name. Therefore, in the case at hand the test of confusing similarity consists of a comparison between the disputed domain name’s second level domain < avionix > and the registered company name AVIONIX ENGINEERING sp.z o.o.. for which a right is established by the national law in the EU Member-State Poland.

The Panel is satisfied that the domain name < avionix.eu > is confusingly similar to the registered company name, AVIONIX ENGINEERING sp.z o.o., in which one of the Complainants has rights recognised by the law of the Republic of Poland by virtue of its registration as a company under that name (s. Rainbow Medical Engineering Ltd, Professor Luigi Martini v. Eklectica Media Consultants Ld, Leslie Kett, CAC 6624, <rainbowmedical.eu>). In fact, the disputed domain name incorporates the dominant feature of the company

name, i.e. AVIONIX, which is distinctive. The omission of the terms “ENGINEERING sp.z o.o.” in the disputed domain name (that are part of one of the Complainants’ company name, while not a dominant element) do not prevent a finding of confusing similarity.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1). The Complainants are therefore deemed to have satisfied the element set forth in Article 21 (1) of the Regulation.

E. Bad faith

The Panel is satisfied that the Respondent registered and used the disputed domain name in bad faith pursuant to Article 21 (1) (b) of the Regulation. Article 21 (3) of the Regulation contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s bad faith.

The disputed domain name does not currently resolve to an active website. In this regard, the Panel notes that the current passive holding does not preclude a finding of bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name’s registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) The disputed domain name is constituted by the dominant feature of the Complainant’s company name, which is distinctive and fanciful so that nobody could legitimately choose this term, unless seeking to create an association with the Complainant’s activities; (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; (3) the Respondent originally used a privacy service hiding its identity; (4) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Overview 3.0” at section 3.3).

The Complainants are therefore deemed to also have satisfied the element set forth in Article 21 (1) (b) of the Regulation.

Under Article 21(1) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules, lack of rights or legitimate interests and registration or use in bad faith are considered alternative requirements for a successful complaint, as explained above. Since the Panel has found that the Respondent registered and used the disputed domain name in bad faith there is no need for the Panel to discuss if the Respondent additionally lacks rights or legitimate interests in the disputed domain name.

E. Eligibility

The Complainants have additionally requested the transfer of the domain name to AVIONIX ENGINEERING sp.z o.o.. The requested transfer of the disputed domain name to a Complainant can only be granted in case the Complainant is eligible to register .eu domain names according to Article 22 (11) of the Regulation and Article 4 (2 (b) of Regulation (EC) No. 733/2002 (see also Paragraph B.11(b) ADR Rules) as amended by art. 20 of Regulation (EU) 2019/517. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

Since AVIONIX ENGINEERING sp.z o.o. is a registered company located in Kraków, Poland, the Panel holds that AVIONIX ENGINEERING sp.z o.o. meets the general eligibility criteria within the meaning of Article 22 (11) of the Regulation and Article 4 (2) (b) of Regulation (EC) No 733/2002 as amended by art. 20 of Regulation (EU) 2019/517 and is therefore entitled to obtain revocation and transfer of the disputed domain name.

DECISION

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

the domain name AVIONIX.EU be transferred to the Complainant AVIONIX ENGINEERING sp.z o.o.

PANELISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2021-10-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: AVIONIX.EU

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

III. Date of registration of the domain name: 23 September 2020

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

company name: AVIONIX ENGINEERING sp.z o.o.

V. Response submitted: No

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. [Yes/No] -----
2. Why: Since the Panel has found that the Respondent registered and used the disputed domain name in bad faith there is no need for the Panel to discuss if the Respondent additionally lacks rights or legitimate interests in the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: (1) The disputed domain name is constituted by the dominant feature of the Complainant's company name, which is distinctive and fanciful so that nobody could legitimately choose this term, unless seeking to create an association with the Complainant's activities; (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; (3) the Respondent originally used a privacy service hiding its identity; (4) the implausibility of any good faith use to which the disputed domain name may be put

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: The Panel notes that Complaints can successfully be filed by related co-complainants due to practical reasons. In addition, the Panel issued a NON-Standard communication setting a term for the Complainants to provide a translation of the "Extract from Commercial register" into English.

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