Panel Decision for dispute CAC-ADREU-008316

Case number	**CAC-ADREU-008316**
Time of filing	**2022-06-13 13:15:55**
Domain names	**ame.eu**

Case administrator

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

Complainant

Organization	

Respondent

Organization	**Your Domain Whois Privacy Limited**

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 pending or decided legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

On 02.06.2006 Your Domain Whois Privacy Limited (hereinafter, the "Respondent") registered the domain name <ame.eu> (hereinafter "the Domain Name" or the "disputed domain name").

Over a period of time spanning from 2020 to 2022, the company AME International GmbH (hereinafter, the "Complainant") inquired several times for the selling price of the disputed domain name, and the Respondent, via its representative, asked a price ranging from 10,000 to 70,000 USD.

On 18.02.2022 the Complainant filed a complaint before the ADR Center for .eu of the Czech Arbitration Court, requesting the transfer of the disputed domain name to AME International GmbH.

On 24.02.2022 the EURid verified that the Respondent is the registrant of the disputed domain name.

After amendment of the details of the Respondent by the Complainant, the Respondent was duly notified of the ADR proceedings by electronic means and then by post on 08.03.2022 to the address provided to the EURid. The registered mail communication received no record of delivery and the Respondent failed to file a response to the Complaint. Therefore, the Center issued a notification of Respondent's default on 05.05.2022.

A. COMPLAINANT

The Complainant contended that:

1) the disputed domain name <ame.eu> is identical or at least confusingly similar to the Complainant’s registered trademarks AME (registered as word and stylized trademarks), as well as its business identifier/name, since it entirely contains this mark.

2) the Respondent’s conduct is a clear indication that the Respondent has no rights or legitimate interest in the disputed domain name and/or has registered or is using the disputed domain name in bad faith.

3) The Respondent lacks rights or legitimate interests in the disputed domain name since it is not commonly known under the mark AME or is using the mark AME in business. In fact, the Respondent does not use the disputed domain name to address its website but only offers to sell the disputed domain name.

4) The Respondent offered on January 10, 2020 to sell the disputed domain name to the Complainant for US$ 15.000; the Respondent “reduced” this offer on January 12, 2020 to US$ 10.000. A new request by the Complainant on November 3, 2020 to buy the disputed domain name was answered by the Respondent on November 11, 2020 as following: “…, kindly provide us with a significant high six figure sum, ….”. A request on February 4, 2022 by the Complainant to buy the disputed domain name was answered by the Respondent (it’s domain broker”): “this client I believe they may be open to negotiations with a mid 5 figure offer". Finally, on February 21, 2022 the Respondent offered to sell the disputed domain name for $ 70.000 to the Complainant.

The Complainant concludes that, taking all the above facts and evidence into consideration, it is clear that the Respondent has no rights or legitimate interests in the disputed domain name and/or the disputed domain name has been registered and/or is being used in bad faith under Paragraph B(11)(d)(1)(ii) and/or (iii) of the ADR Rules.

B. RESPONDENT

The Respondent was declared in default and did not file any Response nor further reply.

DISCUSSION AND FINDINGS

According to Article 21(1) of the Commission Regulation (EC) 874/2004, Regulation (EU) 2019/517 and to Paragraph B11(d)(1) of the ADR Rules, the Complainant must show that: the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law (point A below); and has been registered by its holder without rights or legitimate interest in the name (B); or has been registered or is being used in bad faith (C).

A. Identity or confusing similarity

The Complainant has provided evidence of being the owner of several trademark registrations for the AME word mark or stylized together with the -mostly descriptive- term "international".
The Panel found out that the most relevant trademark registrations, on which the present decision could be based, are the word marks for the term AME alone (i.e. Annexes 1, 4 and 6 to the complaint, from now on "the Trademarks") registered for services in classes 35, 37 and 42 as national, EU and International registrations covering several jurisdictions, including the European Union, Austria and Switzerland together with the company name "AME International GmbH".

In comparing the domain name <ame.eu> to the Trademark, it should be taken into account that the suffixes, including the .eu top-level domain, may be excluded from consideration as being merely a functional component of a domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks, as it incorporates the Trademarks in its entirety.

The first requirement of Article 21(1) of the Commission Regulation (EC) 874/2004, Regulation (EU) 2019/517 and of § B11(d)(1)(i) of the ADR Rules is therefore met.

B. Rights or legitimate interest to the Domain Name

According to the evidence at hand, prima facie it does not seem that the Respondent has any rights or legitimate interest to the Domain Name.

In particular, prior to notice of the dispute, and at least since year 2020 when evidence is presented that the Domain Name was offered for sale within a parking page, the Respondent has not used the Domain Name in connection with the offering of goods or services, nor has made demonstrable preparation to do so.

There is also no prima facie evidence that the Respondent has been commonly known by the Domain Name.

The Panel therefore concludes that, on the balance of probabilities, the Domain Name was registered by the Respondent without rights or legitimate interest in accordance with Article 21(1) of the Commission Regulation (EC) 874/2004, Regulation (EU) 2019/517 and of § B11(d)(1)(ii) of the ADR Rules.

C. Bad faith

Although the literal text of the Commission Regulation (EC) 874/2004, Regulation (EU) 2019/517 and of the ADR Rules does not mandate to examine the Respondent's bad faith requirement once the lack of rights or legitimate interests requirement is satisfied, the Panel will now also examine the requirement of bad faith, in order to make a complete assessment and in line with the best practices in the matter.

As far as the bad faith in the use of the disputed domain name is concerned, the Panel took into consideration evidence submitted by the Complainant (Annexes 12-15 to the complaint) which shows that the Respondent has offered to sell the Domain Name to the Complainant for amounts which varied over time from 10'000 USD to 70'000 USD, and therefore were always in figures well above any out-of pocket costs.

These are circumstances which the Panel believes are indicating that the Domain Name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the Domain Name to the Complainant.

Moreover, and in particular because prima facie it appears that the Domain Name has not been used in a relevant way for at least the last two years, the Panel assumes that the Domain Name has been registered in order to prevent the Complainant in from reflecting this name in a corresponding domain name.

The third requirement of Article 21(1) of the Commission Regulation (EC) 874/2004, Regulation (EU) 2019/517 and of § B11(d)(1)(iii) of the ADR Rules regarding bad faith of the Respondent is therefore, on the balance of probabilities, also met.

For AME International GmbH is a company with registered offices in Austria as evidenced in Annex to the complaint, the Complainant satisfies the eligibility criteria as set out in Article 4(2)(b) of Regulation (EC) 733/2002.

DECISION

For all the foregoing reasons, in accordance with §§ B12 (a) and (b) of the ADR Rules, the Panel orders that the domain name AME.EU be transferred to the Complainant.

PANELISTS

Name	**Avv. Giovanni Orsoni, LLM**

DATE OF PANEL DECISION 2022-06-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: AME.EU

II. Country of the Complainant: Austria, country of the Respondent: Ireland

III. Date of registration of the domain name: 02 June 2006

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Austria, reg. No. 209682, for the term AME, filed on 19 September 2002, registered on 14 April 2003 in respect of goods and services in classes 35, 37, 42;
2. word EUTM, reg. No. 002850295, for the term AME, filed on 12 September 2002, registered on 14 October 2005 in respect of goods and services in classes 35, 37, 42;
3. word International Registration, reg. No. 808078, for the term AME, filed on 14 April 2003, registered on 14 April 2003 in respect of goods and services in classes 35, 37, 42;
4. company name: AME International GmbH, incorporated in Austria since 9 March 1995.

V. Response submitted: No.

VI. Domain name 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. No
2. Why: evidence the Domain Name has not been used for the offering of goods and services, but only been put for sale within a parking page at least for the last two years; no prima facie evidence the Respondent has been commonly known by the Domain Name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: evidence that the Respondent has offered to sell the Domain Name to the Complainant for amounts well above any out-of pocket costs, and has not been used in a relevant way for at least the last two years.

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 the Respondent.

XII. Is Complainant eligible? Yes.