Panel Decision for dispute CAC-ADREU-008320

Case number	**CAC-ADREU-008320**
Time of filing	**2022-05-06 18:18:42**
Domain names	**ufer.eu**

Case administrator

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

Complainant

Organization	

Respondent

Organization	**DomainProfi 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

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

According to the copy identity card produced with the Complaint, the Complainant is a private individual of German nationality with the surname “Ufer”.

The Respondent appears to be a German-registered company, registered in the Amtsgericht Osnabrück under number HRB 202497. The Respondent registered the disputed domain name on 28 August 2020.

The Complainant submitted the Complaint in German on 23 February 2022, and when it was informed on 28 February 2022 that the Complaint had not been submitted in the language of the registration contract as confirmed by EURID, namely English, the Complainant submitted an amended version in English on 28 February 2022. On 28 February 2022, the Czech Arbitration Court conducted a formal compliance review in respect of the amended Complaint and found it to be in compliance. Accordingly, the formal date of commencement of the ADR Proceeding was 28 February 2022 and a Notification of Commencement of ADR Proceeding was issued to the Respondent on that date. This stated that a Response was to be submitted within 30 working days. On 8 March 2022, the Czech Arbitration Court filed a nonstandard communication noting that the Respondent had not logged on to the online platform within 5 days of its sending notice of the ADR Proceeding by email and that notice of the ADR Proceeding had therefore been sent to the Respondent by post on 8 March 2022. No formal Response was filed by the deadline of 4 May 2022.

A. COMPLAINANT

The Complainant seeks a decision transferring the disputed domain name to the Complainant, asserting that the disputed domain name consists of his surname, together with the Top-Level Domain “.eu”.

The Complainant notes that the disputed domain name is offered for sale via the Respondent’s website at "www.domainprofi.com" and was also offered at a website associated with the disputed domain name itself, although the latter was taken down after a price enquiry was made. The Complainant states that the price offered was EUR 1,500, excluding VAT.

The Complainant asserts that the Respondent has no legitimate interests in the disputed domain name or in the name “Ufer”, adding that it is neither a trademark or a company name, nor the Respondent’s surname.

The Complainant draws attention to previous decisions of the Czech Arbitration Court which it says involve a surname, adding that the result of such decisions was the transfer of the domain name concerned to the bearer of the surname, even if such surname was also a

generic term.

The Complainant produces an image of his official German identification card to vouch for his surname and two screenshots, first of the website at "www.domainprofi.com" and secondly of the website at the disputed domain name, both showing the disputed domain name listed along with similar domain names beside a button marked “REQUEST OFFER”.

B. RESPONDENT

The Respondent did not file a formal Response to the Complaint. However, in an informal email dated 16 March 2022, an individual stated on behalf of the Respondent that the Respondent registered the disputed domain name on 28 August 2020, that from the date of registration to date it was unaware of any violation of registered trademarks or personal rights and noted that it believed that this was a case of reverse domain name hijacking.

DISCUSSION AND FINDINGS

1. Preliminary - No Response

The Respondent has not filed a Response to the Complaint. In such an eventuality, the effect of the provisions of Paragraph B10(a) of the ADR Rules is that the failure may be considered by the Panel as grounds to accept the claims of the Complainant. However, this does not mean a Complaint will automatically be upheld whenever a Respondent fails to respond; the Complainant is still required to demonstrate that the provisions of Paragraph B11(d)(1) of the ADR Rules are satisfied.

2. Applicable provisions

This Complaint is brought under the auspices of Regulation (EC) 874/2004 (“Regulation 874”) and the ADR Rules. Article 22(1)(a) of Regulation 874 allows any party to initiate an ADR procedure where the registration is speculative or abusive within the meaning of Article 21.

Article 21(1) states that a registered domain name may be subject to revocation where that 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, such as the rights mentioned in Article 10(1), and where it:

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

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

Article 21(2) provides examples whereby the Respondent's legitimate interest may be demonstrated (echoed in Paragraph B11(e) of the ADR Rules), while Article 21(3) provides examples whereby bad faith may be demonstrated (similarly echoed in Paragraph B11(f) of the ADR Rules).

Article 10(1) states that:

"[…]

'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works."

Article 22(11) states that in the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. Furthermore, the domain name is to be transferred to the complainant if the complainant applies for it and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002 (“Regulation 733”) as amended by Articles 20 and 22 of the Regulation (EU) 2019/517.

Article 4(2)(b) of Regulation 733 as amended provides the following general eligibility criteria:

(i) a Union citizen, independently of their place of residence;

(ii) a natural person who is not a Union citizen and who is a resident of a Member State;

(iii) an undertaking that is established in the Union; or

(iv) an organisation that is established in the Union, without prejudice to the application of national law.

Paragraph B11(d)(1) of the ADR Rules provides as follows:

"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 recognized or established by the national law of a Member State and/or Community 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."

It is clear from the applicable provisions that the burden of proving that the .eu domain name registration in question is speculative or abusive lies with the Complainant. Accordingly, the first question for the Panel in the present case is whether the Complainant has proved 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.

3. Rights - identical or confusingly similar

Article 21(1) of Regulation 874 and paragraph B11(d)(1)(i) of the ADR Rules require that the disputed domain name be identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law. The Complainant submits that he has rights in his surname or family name and references previous decisions under the Policy in support thereof including cases involving rights claimed by German nationals in their respective family names. Family names are formally listed as relevant rights in Article 10(1) of Regulation 874 “in as far as they are protected under national law in the Member-State where they are held” (see also paragraph 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 Complainant has the surname “Ufer”, which grants him a naming right under German national law, namely Section 12 of the German Civil Code (see the discussion in Raschke v. DomainProfi GmbH, CAC 6653).

In the present case, the Complainant produces an image of his personal German identity card clearly stating his given names and the surname “Ufer” along with an expiry date of 7 September 2026. The Respondent has not sought to contest the authenticity of this image or the underlying document. Paragraph II(9) of the CAC .EU Overview 2.0 states that panels have seen a personal ID as sufficient proof for a relevant right in a domain name. In all of these circumstances, the Panel is satisfied that the Complainant has a relevant right in the family name Ufer.

Turning to a comparison between the Complainant’s family name and the disputed domain name, the Panel finds the former to be alphanumerically identical to the latter, disregarding the .eu suffix as is customary (see the consensus view in paragraph III(1) of the CAC .EU Overview 2.0).

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to a name in respect of which a right is recognised by EU law in accordance with Article 21(1) of Regulation 874 and paragraph B11(d)(1)(i) of the ADR Rules.

4. Respondent's Rights or Legitimate Interest

The Complainant has asserted that the disputed domain name has been registered without the Respondent having any rights or legitimate interest in it. Article 21(2) of Regulation 874 and paragraph B11(e) of the ADR Rules provide non-exhaustive examples of how a respondent may demonstrate a legitimate interest. These may be summarised as where (a) prior to notice of the dispute the respondent has used (or made demonstrable preparations to use) the domain name in connection with the offering of goods or services; (b) the respondent has been commonly known by the domain name; or (c) the respondent is making a legitimate, non-commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under

national or EU law.

The Complainant focuses on the fact that the disputed domain name is being offered for sale and produces screenshots of two websites that demonstrate this. This use does not correspond to any of the non-exhaustive examples above and indeed suggests that the registration of the disputed domain name is speculative. The Respondent's informal email likewise does not disclose any rights or legitimate interests which it might have claimed in the disputed domain name.

Accordingly, the Panel finds that there are no circumstances corresponding to those in Article 21(2) of Regulation 874 and paragraph B11(e) of the ADR Rules nor any other facts or circumstances in the present case which are suggestive of any notion that the Respondent might have any rights or legitimate interest in the disputed domain name. The disputed domain name registration is therefore speculative or abusive, and should be subject to revocation under Article 21(1)(a) of Regulation 874 and in accordance with paragraph B11(d)(1)(ii) of the ADR Rules. It is not strictly necessary for the Panel to consider whether the disputed domain name is also subject to revocation under Article 21(1)(b) of Regulation 874 and the corresponding paragraph B11(d)(1)(iii) of the ADR Rules (which require a finding that the disputed domain name has been registered or is being used in bad faith). However, for completeness, the Panel will consider this issue.

5. Registration or use in bad faith

The issue of bad faith is expressed in Article 21(1)(b) of Regulation 874 and paragraph B11(d)(1)(iii) of the ADR Rules as an alternative to a lack of rights or legitimate interest which may be proved by the Complainant. Registration in bad faith or use in bad faith may be proved by the Complainant. Article 21(3)(a) to (e) of Regulation 874 and the corresponding paragraph B11(f)(1) to (5) of the ADR Rules provide non-exhaustive examples which may be evidence of bad faith registration or use.

In the present case, the Complainant provides evidence showing that the disputed domain name is being offered for sale. The Respondent has not directly addressed the issue in its informal response other than to allege that it is unaware of any violation of registered trademarks or personal rights. Given that both of the Parties are based in Germany, and that there is uncontested evidence before the Panel indicating that the disputed domain name is being offered for sale and comprises a surname, in respect of which rights are established under German national law, the Panel considers that there are circumstances present indicating that the disputed domain name was registered or acquired primarily for the purpose of selling it to the holder of a name in respect of which a right is recognised or established by national law. In terms of Article 21(3)(a) of Regulation 874 and paragraph B11(f)(1) of the ADR Rules, this may be evidence of the registration or use of the disputed domain name in bad faith, and the Panel so finds.

In all of these circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith in accordance with Article 21(1)(b) of Regulation 874 and paragraph B11(d)(1)(iii) of the ADR Rules.

Based on the fact that the Complainant appears to be a Union citizen, who furthermore resides in a Member State of the European Union, so that he is entitled to register an "eu" domain name on the basis of Article 4(2)(a) of Regulation (EC)) 733/2002, as amended by Regulation (EU) 517/2019, the Panel shall order transfer of the disputed domain name to the Complainant, all in accordance with Article 22(11) of Regulation 874 and paragraph B11(b) of the ADR Rules.

DECISION

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

PANELISTS

Name	**Andrew D S Lothian**

DATE OF PANEL DECISION 2022-04-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: UFER.EU.

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

III. Date of registration of the domain name: 28 August 2020.

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

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: The record showed no indication of any rights or legitimate interests on the part of the Respondent in the disputed domain name and the Complainant had made out a prima facie case based upon submissions and evidence that the disputed domain name consisted of a family name and was being offered for general sale. There was no evidence before the Panel that the Respondent had any legitimate connection to said family name and none was claimed by the Respondent in its informal response.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why: The Panel found it to be established on the record that the Respondent registered the disputed domain name 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 recognized or established by national and/or Community law.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: Transfer of the disputed domain name to the Complainant.

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes.