# Panel Decision for dispute CAC-ADREU-008448

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| Case number | **CAC-ADREU-008448** |
| Time of filing | **2022-12-09 09:12:04** |
| Domain names | **mensik.eu** |

## Case administrator

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

## Complainant

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| Organization | **Mgr. David Menšík** |

## Respondent

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| Name | **Bohumil Straka** |

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 legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant's family name is MENŠÍK.

The disputed domain name <mensik.eu> has been registered on June 7, 2006. The Complainant requests that the disputed domain name <mensik.eu> shall be transferred to the Complainant.

A. COMPLAINANT

The Complainant was very brief and stated that the disputed domain name **<mensik.eu>** contains a family name protected by national law and is equivalent to the surname of the Complainant (Menšík). The disputed domain name is not used and is for sale on the domain market sedo.com for EUR 599. The Complainant contacted the Respondent and the Respondent offered the disputed domain name to be sold for 10.000 CZK. The price was unfair according to the Complainant, because of clear speculative intention. The Complainant offered 10x the registration value of the .eu domain, but the Respondent did not reply.

The Complainant presented evidence – photo of his ID card with the family name MENŠÍK, screenshot of the webpage of the domain market with the offer of the disputed domain name and the email conversation between the Complainant and the Respondent (in Czech language).

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

Under Article 4(4) of Regulation (EU) 2019/517 ("**Regulation**") and the Article B11(d)(1) of the .eu Alternative Dispute Resolution Rules ("**ADR Rules**"), the disputed domain name is subject to revocation if it is identical or confusingly similar to a name in respect of which a right is established by Union or national law, 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.

Identical and/or Confusingly Similar

The Complainant must first establish a right that is established by Union or national law. These rights are listed in Article 9(2) of the Commission Implementing Regulation (EU) 2020/857 ("**Implementing Regulation**") and contain copyright, trademarks, and geographical indications provided in Union or national law, and, in **as far as they are protected under national law in the Member States where they are held:** unregistered trademarks, trade names, business identifiers, company names, **family names**, and distinctive titles of protected literary and artistic works; see Article B1(b)(9) of the ADR Rules as well.

The Complainant presented photocopy of the official ID card issued by the Czech Republic and proved that his family name is MENŠÍK. But while the family names are "formally listed" as relevant rights, that is only the case "as far as they are protected under national law in the Member-State where they are held". In the Panel's view, therefore, in order to rely on his family name as constituting a relevant right, the Complainant is required to establish that family names are protected under the law of Czech Republic. However, the Complainant has not mentioned any applicable Czech law, or even claimed that Czech law protects family names at all (he only declared "family name protected by national law" without specification of the relevant Member-State law).

However, as the panelist is the resident of the Czech Republic and the attorney-at-law practicing in the Czech Republic, he is aware of the Section 77(1) of the Czech Civil Code "The name of an individual is composed of his given name and surname and his other names, where applicable, and surname at birth which pertain to him on the basis of a statute. Every individual has the right to use his name in legal transactions, as well as the right to the protection of and respect for his name" as well as Section 78(1) of the Czech Civil Code "An individual who is affected by having the right to his name disputed or who has suffered harm due to an unlawful interference with this right, in particular by unauthorized use of the name, may claim that the unlawful interference be refrained from or its consequence remedied".

**The Panel therefore concluded that the Complainant has established the fact that his family name is protected by the laws of Czech Republic** and could be deemed as protected right within the meaning of the Article 9(2) of the Implementing Regulation and Article B1(b)(9) of the ADR Rules. Although the Complainant's family name contains diacritics and the disputed domain name does not, the diacritics should be disregarded for the purposes of assessing identity or confusion, as diacritics are usually removed when used in domain names.

**The Panel therefore concluded that the disputed domain name is identical with the Complainant's family name. Therefore, the Panel concludes that the first condition set forth under Article 4(4) of the Regulation and the Article B11(d)(1) of the ADR Rules has been fulfilled**. This conclusion could not be affected by the existence of the suffix ".eu" as a part of the disputed domain name, as this suffix is not relevant for the consideration of the identity and similarity of the domain names.

However, the identity or confusing similarity is not the only one condition that must be proved in order to issue a decision in the favor of the Complainant. Under Article B1(b)(10)(i) of the ADR Rules the Complainant must describe

- why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint; or
- why the domain name should be considered to have been registered or to be being used in bad faith.

Rights or Legitimate Interests

While the overall burden of proof in domain names disputes is on the complainant, proving a respondent's lacks rights or legitimate interests in a disputed domain name may result in the often impossible task of "proving a negative" information that is often primarily within the knowledge or control of the respondent. It is therefore generally accepted, that where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

**But in this case, the Complainant failed to make out a prima facie case, as he didn't mention anything about the lack of Respondent's rights of legitimate interest at all**. It is not the role of the Panel to find or infer for the Complainant the allegations and arguments which the Complainant should have presented in support of his claim, **and the Panel therefore concludes that the second condition as stated in the Article B1(b)(10)(i) of the ADR Rules has not been proved**.

Registration or Use in Bad Faith

The Complainant may still succeed if the disputed domain has been registered or is being used in bad faith. As stated in Section I, paragraph 17 of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd edition, the Complainant must prove and substantiate its allegations with evidence on the balance of probabilities that the Respondent has registered or used the domain in bad faith.

However, the Complainant didn't mention if he refers to the Respondent's bad faith during the registration or during the use of the disputed domain name as he didn't mention the bad faith at all. The only argument of the Complainant was that the disputed domain name was not used and was for sale on the domain market and when the Complainant contacted the Respondent, the Respondent offered the disputed domain name to be sold for 10.000 CZK. However, an offer to sell (including the unsolicited sale proposal addressed to the Complainant on the basis of the Complainant's explicit request to propose a price of the disputed domain name) is not necessarily a proof for bad faith.

The need to assert that the Respondent's conduct (registration or use of the disputed domain name) is to be considered as in bad faith and to clearly describe what that is so also arises, in this case, from the fact that the Complainant's alleged right is based on a family name which is not exceptional (as far as the Czech Republic is concerned) and is, moreover, generally associated with a well-known already died actor rather than with the Complainant.

It is not (again) the role of the Panel to present the claim on Respondent's behalf. Moreover, the Panel cannot help feeling that the Complainant attempted to purchase the disputed domain name and only when he was not satisfied with the price requested by the Respondent, he did attempt to obtain the disputed domain name through these ADR proceedings. However, this proceeding is not intended as a substitute for standard commercial negotiation over the price of the domain names between the parties.

**The Panel therefore concludes that the Complainant didn't prove the third condition as stated in the Article B1(b)(10)(i) of the ADR Rules**.

The Complainant has not satisfied the requirements of the Article 4(4) of the Regulation and the Article B11(d)(1) of the ADR Rules as he proved only that the disputed domain name is identical to a name in respect of which a right is established by Union or national law and did not proved that the disputed domain name has been registered without rights or legitimate interest or has been registered or used in bad faith. **Therefore,**

**the Panel finds the Complaint as unjustified**.

DECISION

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

## PANELISTS

| Name | **Petr Hostaš** |
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DATE OF PANEL DECISION 2023-02-20

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: MENSIK.EU

II. Country of the Complainant: Czech Republic, country of the Respondent: Czech Republic

III. Date of registration of the domain name: 07.06.2006

IV. Rights relied on by the Complainant on which the Panel based its decision: 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:
1. No
2. Why: The Complainant has not addressed the issue of lack of Respondent's rights or legitimate interests in respect of the domain name when registering the disputed domain name at all.

VIII. Bad faith of the Respondent:
1. No
2. Why: The Complainant has not addressed the Respondent's bad faith during the registration or use of the disputed domain name.

IX. Other substantial facts the Panel considers relevant: The only argument of the Complainant was that the disputed domain name was not used and was for sale on the domain market and when the Complainant contacted the Respondent, the Respondent offered the disputed domain name to be sold for 10.000 CZK. An offer to sell (including the unsolicited sale proposal) is not necessarily a proof for bad faith. Moreover, the Complainant's alleged right is based on a family name which is not exceptional and is generally associated with a well-known already died actor rather than with the Complainant. The Panel further cannot help feeling that the Complainant attempted to purchase the disputed domain name and only when he was not satisfied with the price requested by the Respondent, he did attempt to obtain the disputed domain name through these ADR proceedings. However, the ADR proceeding is not intended as a substitute for standard commercial negotiation over the price of the domain names between the parties and it is not the role of the Panel to find or infer for the Complainant the allegations and arguments which the Complainant should have presented in support of his claim.

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: None