Panel Decision for dispute CAC-ADREU-008467

Case number	CAC-ADREU-008467
Time of filing	2023-01-04 09:33:47
Domain names	kadlec.eu

Case administrator

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

Complainant

Name	JUDr. Petr Kadlec

Respondent

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 and the name under which Complainant has been performing his commercial activities is KADLEC.

The disputed domain name <kadlec.eu> has been registered on 9 August 2007.

The Complainant requests the disputed domain name <kadlec.eu> to be transferred to the Complainant.

A. COMPLAINANT

The Complainant states that its family name is Kadlec and that it has been performing its commercial and professional activities as attorney in law (specialized EU law) registered in the Czech Republic under its family name.

Based on the above arguments, according to the Complainant, the disputed domain name <kadlec.eu> is formed up by a name (Kadlec) protected by national and law of the European Union as personal and company name.

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name since "Kadlec" is neither his family name nor his company name and has not been used for non-commercial or fair use purposes by the Respondent.

The Complainant also asserts that the disputed domain name was registered in bad faith because the Respondent registered or acquired the disputed domain name primarily for speculative purpose since (i) it has been displayed as a domain name for sale at the website placed on the webpage to which the disputed domain name resolves, and (ii) the Respondent offered the Complainant sale of the disputed domain name for EUR 599.

The Complainant presented the following evidence:

- Links to the webpages displaying professional and commercial activities of the Complainant performed under the name Kadlec,
- Extract from the Czech Bar Association showing that the Complainant is registered as attorney in law under its family name Kadlec,
- Extract from the Czech Trade Licensing Register showing that the Complainant's registered commercial name under which he is performing his commercial activities is Kadlec,
- Reply from the EURid Register to the Complainant's request for the Respondent personal data,
  Screenshot from the webpage placed on the disputed domain name displaying no content other than a link to another website with the information that the disputed domain name <kadlec.eu> is for sale for EUR 899, and
- Email conversation between the Complainant and the Respondent showing the Complainant's interest in purchasing the domain name for EUR 100 and the Respondent counterproposal of the purchase prince in the amount of EUR 599.

B. RESPONDENT

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The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

Under Article 4(4) of Regulation (EU) 2019/517 (the **Regulation**) and the Article B11(d)(1) of the .eu Alternative Dispute Resolution Rules (the **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 has been registered by its holder without rights or legitimate interest in the name; or
- It 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 evidence from different Czech public registers which shows that its family name is KADLEC and that the Complainant is performing its business activities under such name which is used as its commercial name as well.

The name Kadlec therefore enjoys protection according to the Section 77(1) of the Czech Civil Code based on which "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 according to the Section 78(1) of the Czech Civil Code based on which "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".

Furthermore, the name Kadlec also enjoys legal protection as commercial name used by a Complainant according to Section 422 of the Czech Civil Code base on which "An entrepreneur who does not have a business name shall legally act in his business under his own name."

The Panel therefore concluded that the Complainant has established the fact that its 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.

As the Complainant family name is fully incorporated within the disputed domain name, the Panel therefore concludes 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.

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.

The Complainant is not aware that the Respondent has ever been known by the disputed domain name and argues that the Respondent has neither been making a legitimate and non-commercial or fair use of the domain name.

Therefore, the Respondent does not appear to have a legitimate interest in the disputed domain name.

Consequently, and in the absence of a Response, the Panel finds that the second condition as stated in the Article B1(b)(10)(i) of the ADR Rules has been proved.

Registration or Use in Bad Faith

According to the Panel, the argument of the Complainant 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 EUR 599 is not sufficient to prove registration and use of the disputed domain name in bad faith.

The Panel finds that in this case, 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 must be described in more details and supported by solid evidence to be accepted by the Panel since:

(i) the disputed domain name has been registered several years ago (in particular on 9 August 2007) and until now the Complainant who has been using its family name for its private as well as commercial activities even before registration of the disputed domain name has not actively seek its transfer or revocation; and

(ii) the family name Kadlec, on which the Complaint asserts to have rights, is a usual family name in the Czech Republic and not exceptional in any way.

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.

Since the Complainant has satisfied the requirements of the Article 4(4) of the Regulation and the Article B1(b)(10)(i) of the ADR Rules, the Panel finds the Complaint as justified.

DECISION

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

PANELISTS

Name	**Hana Číslerová**

DATE OF PANEL DECISION 2023-03-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: kadlec.eu

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

III. Date of registration of the domain name: 9 August 2007

IV. Rights relied on by the Complainant on which the Panel based its decision:
10. family name: KADLEC

V. Response submitted: No

VI. Domain name is identical to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent:
1. No
2. Why: No prior use of the disputed domain name, any relation of the domain name and the name of the Respondent.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. No
2. Why: No evidence nor sufficient arguments submitted by the Complainant

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: N/A

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