Panel Decision for dispute CAC-ADREU-008454

Case number	**CAC-ADREU-008454**
Time of filing	**2023-01-04 10:26:19**
Domain names	**eures-europa.eu**

Case administrator

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

Complainant

Organization	**European Labour Authority**

Complainant representative

Organization	**Bříza & Trubač, s.r.o., advokátní kancelář**

Respondent

Name	**Leon Bernstein**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The disputed domain name was registered on 21 August 2021; the Respondent is the Registrant of the disputed domain name.

The Complainant is the owner of the European Union word trade mark EURES registered with the EUIPO on 14 August 2007, Reg. No. 4113437, for goods and services classes 9, 16, 35, 38, 41 and 42.

The Complainant provides on its website, among other services, for a job search and matching service for a range of career opportunities in the EU Member States, Switzerland, Iceland and Norway. The online portal has been launched in 1994.

The Respondent provided on its website, addressed by the disputed domain name, job search services similar to those of the Complainant.

A. COMPLAINANT

1. The Complainant has been established by Regulation (EU) 2019/1149 to help Member States and the European Commission to ensure that EU rules on labour mobility and social security coordination are enforced in a fair, simple and effective way. The Complainant has also an important role to play in facilitating and ensuring effective labour mobility in Europe, in particular by supporting activities of European Employment Services (EURES).

2. In 2021, the Complainant took over from the European Commission the management of the EURES European Coordination Office. The tasks and responsibilities of this Coordination Office are regulated in Regulation (EU) 2016/589 on EURES.

3. The European Employment Services (EURES) is a European cooperation network between the European Commission, the European Labour Authority (the complainant), the national public and other admitted employment services in all the EU countries, Iceland,

Liechtenstein, Norway and Switzerland. EURES facilitates the free movement of workers by providing information and employment support services to workers and employers, and by enhancing cooperation and information exchange between its member organisations.

4. The Complainant is the owner of the European Union word trade mark registered with the European Union Intellectual Property Office on 14 July 2007 under No. 004113437 EURES for goods and services classes 9, 16, 35, 38, 41 and 42.

5. In line with Article 8 of the EURES Regulation, the Complainant is the system owner of the EURES portal: domain <eures.ec.europa.eu>, in cooperation with the European Commission. On the website, the Complainant provides, among other services, for a job search and matching service for a range of career opportunities in the EU Member States, Switzerland, Iceland and Norway. The EURES portal has been launched in 1994.

6. The disputed domain was registered on 21 August 2021. The Respondent provides on its website job search services similar to those of EURES.

7. Pursuant to the Article 4(4) of the Regulation (EU) 2019/517 ("Regulation"), a registered domain name shall be subject to revocation and transfer to another party, using an appropriate extra-judicial or judicial procedure, 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 Union 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.

8. The disputed domain name is identical or confusingly similar to the earlier registered EURES Trade Mark, i.e. a right recognised or established by Union law.

9. The disputed domain name has been registered by its holder without rights or legitimate interest in the name. The Respondent should be considered as having no right or legitimate interests with respect of the disputed domain name for the following reasons:

   - First, the Respondent is not known, as a private individual or company, by the term "Eures".
   - Second, the Complainant is not linked to the Respondent in any way. The Respondent has received no authorization, license or right from the Complainant to register the term EURES as a domain name.

10. None of the circumstances under which a Respondent may prove rights or legitimate interests on the disputed domain name are present in this case. In light of the above elements, the Respondent should be considered as having registered the disputed domain name without rights or legitimate interest, by virtue of Article 4 (4)(a) of the Regulation.

11. Although it is not mandatory to check the existence of bad faith given the considerations above, the disputed domain name also satisfies the condition set forth in Article 4 (4)(b) of the Regulation as it has been registered or is being used in bad faith for the following reasons:

    - First, the Complainant submits that, at the time of the registration of the disputed domain name, the Respondent was not in a position to ignore the prior rights of the Complainant related to the EURES Trade Mark. Indeed, a simple search on an Internet search engine shows numerous results related to the Complainant. Consequently, the Respondent cannot argue that they had no knowledge of the use of EURES by the Complainant on the day of the registration of the disputed domain name. At the very least, the Respondent knew or should have known that, by registering the disputed domain name, it would do so in violation of the Complainant's earlier rights.

    - Second, the fact that the Respondent put itself in a situation to unduly benefit from the Complainant's authority in its field, is clearly a factor of bad faith registration of the disputed domain name.

    - Third, it is very likely that the Respondent chose the disputed domain name precisely due to the European Union authority and its similarity to the earlier trademarks of the Complainant, in an attempt to defraud the internet users of average attention. Consequently, the Respondent is benefitting from the earlier rights of the Complainant for financial gain. Such use of the disputed domain name is necessarily a use in bad faith.

12. It follows that the disputed domain name was registered and is being used in bad faith.

B. RESPONDENT

The Respondent did not submit a Response.

DISCUSSION AND FINDINGS

Following paragraph B 11 (d) (1) of the ADR Rules it is necessary for a complainant for making out a successful case to prove that:

(i) The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union law and; either

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

(iii) The disputed domain name has been registered or is being used in bad faith.

(i)

The Complainant submitted evidence, which clearly establishes rights in the mark EURES.

It is this Panels view that for assessing identity or confusing similarity the .eu suffix has to be disregarded. Concerning confusing similarity, the panel´s review consists of a comparison between the disputed domain name and the name for which a right is recognized or established by national and/or community law by the Complainant.

This Panel moreover follows the consensus view of other panels that domain names which include a name for which a right is recognized or established by national and/or community law combined with descriptive or generic terms are confusingly similar to that name, especially in situation where the descriptive or generic term is a geographical term as it is in the present case ("europa").

In the present case the Complainant is the owner of the registered EU word trade mark EURES for goods and services classes 9, 16, 35, 38, 41 and 42. The descriptive term “europa” used as suffix to EURES will not prevent a finding of confusing similarity.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant’s trademark EURES and the Complainant therefore has satisfied Paragraph B 11 (d) (1) (i) of the ADR Rules.

(ii)

Any registered trademark that is recognized and/or established by either community law or national law in a Member State is sufficient to initiate an ADR procedure. Following the assertions in the Complaint the Complainant is the owner of the registered EU word trade mark EURES.

The Complainant asserts that the Respondent has no legitimate rights or interests in the disputed domain name; it is not known as a private individual or company by the term EURES and did not receive any authorization, license or right from the Complainant to register the term EURES as a domain name or use it in any other manner. The Respondent did not contest this assertion.

While the overall burden of proof is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied its burden of proof.

Since the Respondent did not contest the lack of legitimate interest or delivered proofs to the contrary it brings the Panel to the conclusion that the Complainant has made out an undisputed prima facie case so that the conditions set out in Paragraph B 11 (d) (1) (ii) of the ADR Rules have been met by the Complainant.

(iii)

Although there is no need to show bad faith if there is no legitimate interest to make out a successful case for the Complainant this Panel wants to point out that this case also shows bad faith: Although it is not necessary to prove both registration and use in bad faith (it is sufficient if evidence illustrates one of the two elements), in this case both elements are present:

The Complainant is the owner of the registered trademark EURES since 2007, long before the registration of the disputed domain name. Moreover, the Complainant has a strong internet presence under its trademark EURES. It is inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant’s rights in the mark EURES, which leads to the necessary inference of bad faith.

This finding is supported by the fact that the disputed domain name incorporates the Complainant’s EURES trademark entirely and only adds the geographic descriptive term "europa"; moreover, the Respondent used the disputed domain name to resolve to website on which the Respondent provided services similar to those of the Complainant.

All these facts lead the Panel to the conclusion that the Respondent registered and has been using the disputed domain name in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel orders that the domain name <eures-europa.eu> be transferred to the Complainant.

PANELISTS

Name	**Burgstaller Peter**

DATE OF PANEL DECISION 2023-03-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: eures-europe.eu

II. Country of the Complainant: Slovak Republic, country of the Respondent: Austria

III. Date of registration of the domain name: 21. August 2021

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
EU word trademark, Reg. No. 4113437, for the term until 11. November 2024, filed on 11. November 2004, registered on 14. August 2007 in respect of goods and services in classes 9, 16, 35, 38, 41, 42

V. Response submitted: No

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

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. No
2. Why: Respondent did not submit a Response and therefore did not claim any rights. The Respondent has received no authorization, license or right from the Complainant to register the term EURES as a domain name or use it in any other manner.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: The Respondent must have been aware of the Complainant and its rights in the term EURES because of the strong internet presence of the Complainant for years and the fact that the Respondent provided on its website job search services similar to those of the Complainant's.

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: None

XII. Is Complainant eligible? Yes