

## Entscheidung der Schiedskommission for dispute CAC-ADREU-001622

Case number **CAC-ADREU-001622**

Time of filing **2006-06-06 11:59:04**

Domain names **bitronic.eu**

### Case administrator

Name **Tereza Bartošková**

### Complainant

Organization / Name **BITRONIC Holdng GmbH, Peter Weilmünster**

### Respondent

Organization / Name **LehighBasin.com, Domain Handler**

MACHEN SIE ANGABEN ZU ANDEREN ANHÄNGIGEN BZW. BEREITS ENTSCHEIDENEN RECHTLICHEN VERFAHREN, VON DENEN DIE SCHIEDSKOMMISSION WEISS, INSOWEIT DIE STREITIGEN DOMAINNAMEN BETROFFEN SIND

N/A

#### SACHLAGE

The Complainant asked in its Complaint for transfer of the disputed domain name "bitronic" to the Complainant. The Respondent applied for the domain name "bitronic" in so called "Landrush Period" and the domain name was registered on April 7, 2006 which was the date of the start of the general registration. EURid activated and registered the respective domain name for the Respondent according to its rules.

#### A. BESCHWERDEFÜHRER

The Complainant requested the disputed domain name "bitronic" to be transferred to the Complainant. This request is based namely on legal argumentation concerning business name of the Complainant and also trademark protection of the word "bitronic" according to German and European laws. The Complainant stated that "bitronic" is part of the Complainant's business name and is also used as a trade name (BITRONIC Holding GmbH). Such a company name is protected by §§ 17 and following of the German Commercial Code (Handelsgesetzbuch). The protection of trade names is granted also under §§ 5, 15 of the Trade Marks Act (Markengesetz) because it constitutes a part of the Complainant's trade name and his registered firm name at the same time.

The Complainant also argued that there is a substantial distinctiveness of the name and also it has an imaginative character.

The Complainant further argued that the domain name "bitronic" has been registered by its holder LehighBasin.com, the Respondent, without rights or legitimate interests and the Respondent did not prove its legitimate interests to the domain name as requested by different .eu rules.

#### B. BESCHWERDEGEGNER

The Respondent even being repeatedly asked according to the ADR Rules did not submit its Response.

#### WÜRDIGUNG UND BEFUNDE

1. All procedure requirements for .eu dispute resolution (ADR) were met.
2. The main question for the decision is whether the Complainant has proven that the registered 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 member state and; the domain name has been registered by the Respondent without its rights or legitimate interest in the name.

It is also important for the decision whether the Respondent is/was able to prove that it has/had rights or legitimate interest to the domain names according to § B11 of the ADR Rules.

3. It has to be stressed that the Respondent did not comply with its obligation under the ADR Rules and therefore § B10 Default may be used to justify the decision of the Panel.

§ B10 of the ADR Rules clearly says that the Panel may consider the failure of the Respondent to comply with its obligation and time periods under the ADR Rules as grounds to accept the claims of the other Party, the Complainant in this case. The above paragraph also clearly states that if the Party does not comply with any provision of or requirement under these ADR Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

4. The Panelist carefully reviewed all issues concerning the case and relevant rules and by-laws, namely Commission Regulation (EC) No. 874/2004 and Commission Regulation (EC) No. 733/2002, including relevant provisions of the ADR Rules.

There is no doubt that general basic principles shall to be obeyed at the same time taking into account the public policy rules as described by Commission Regulation (EC) No. 874/2004.

5. Article 22 of the Commission Regulation (EC) No. 874/2004 in its Article 1 clearly says that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of the above Regulation.

6. Article 21 of the above Regulation says that a registered domain name shall be subject to revocation where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith (which means it has also been registered with the aim to be used in bad faith).

7. Article 21 of the above Regulation stipulates what shall be understood a legitimate interest and how a legitimate interest can be demonstrated.

It has to be stated that the Respondent did not demonstrate neither did prove any legitimate interest according to the said Article 21 of the above Regulation.

8. The Panel/the Panelist therefore came to the following conclusions:

The Panel/the Panelist is of the opinion that the justice shall always rule over the formalistic approach and technical means of communication.

Even the Panel/the Panelist is not of the opinion that Paragraph B10 of the ADR Rules shall be always applied for, it has to be taken into consideration when the party, in this case the Respondent, is not willing and does not fulfill its obligation under the ADR Rules. It was the case here and the Respondent did not communicate with the ADR Center at all.

It was proven by the Complainant that his firm name (in German the "Firma") is "Bitronic" and it is also proven that the German law (i.e. the national law according to Article 21 of the Commission Regulation (EC) No. 874/2004 and Article 10 of this Regulation) recognizes the trade names as so called prior rights under which the Complainant has been even able to apply for this domain name under the Sunrise Rules.

It was proven from public sources that a domain name "bitronic.de" is registered and used by the Complainant.

To conclude, the Complainant has proven that the registered 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.

It was proven by the Complainant and from public sources that the Complainant satisfied the general criteria for registration set out in § 4 (2) (b) of Regulation (EC) No. 733/2002.

At the same time, it is not proven by the Respondent that the Respondent registered the domain name in its legitimate interest. The reason for that is also the fact that it was stated by the Complainant but it was also verified by the Panelist from the public sources that there is no evidence on trademark registered in favour of the Respondent, the company is not listed on different search engines like Google or others. It rather seems that LehighBasin.com company and website is a vehicle to register different domain names probably with a speculative aim.

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#### ENTSCHEIDUNG

For all the foregoing reasons, in accordance with Paragraphs B12 of the ADR Rules and B11 (b) of the ADR Rules, the Panel/Panelist orders that the domain name "bitronic" shall be transferred to the Complainant, i.e. the company BITRONIC Holding GmbH with its registered seat Strahlenberger Weg 16, Frankfurt, Germany. This decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction.

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#### PANELISTS

Name	<b>Vit Horacek</b>
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DATUM DER ENTSCHEIDUNG DER SCHIEDSKOMMISSION 2006-09-01

#### Summary

EINE ENGLISCHSPRACHIGE KURZFASSUNG DIESER ENTSCHEIDUNG IST ALS ANLAGE 1 BEIGEFÜGT

The Complainant requested the disputed domain name "bitronic" to be transferred to the Complainant. The Respondent applied for the domain name "bitronic" in so called "Landrush Period" and the domain name was registered on April 7, 2006. The Complainant argued that the domain name "bitronic" has been registered by its holder – the Respondent without rights or legitimate interests and therefore shall be transferred to the Complainant. The major argument was that the word "bitronic" is part of the Complainant's business name and is also protected under the German Trademarks Act as a part of the business name. The Respondent was in default according to § 10 Default of the ADR Rules and therefore did not fulfill its obligation and did not take its possibility to protect its legitimate interests. The Panel/the Panelist reviewed namely public sources and discovered that the Complainant or its group exists from the year 1990 and has registered and used properly the German domain name "bitronic.de". The Panel/the Panelist finally decided to transfer the domain name to the Complainant, namely because of the fact that no legitimate interest of the Respondent (the disputed domain name holder) was proven and demonstrated.

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