# Panel Decision for dispute CAC-ADREU-004195

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| Case number | **CAC-ADREU-004195** |
| Time of filing | **2007-01-25 13:33:47** |
| Domain names | **danahermotion.eu** |

## Case administrator

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| Name | **Tereza Bartošková** |

## Complainant

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| Organization / Name | **Danaher Motion GmbH** |

## Respondent

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| Organization / Name | **D-5 Ltd., Kurt Janusch** |

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

none

FACTUAL BACKGROUND

The Complainant is a limited liability company named “Danaher Motion GmbH” and based in Düsseldorf, Germany. The Complainant uses the domains danahermotion.com and danahermotion.de for commercial purposes.
The Respondent name of firm is D5 LTD and registered the domain name “danahermotion.eu” on 7 April 2006. He showed no use of the disputed domain neither commercial nor non profit.
On 25 January 2007, the Complainant initiated ADR proceedings. The Complainant, represented by CMS Hasche Sigle law office, Dr. M. Steinhilber LL.M., submitted a complaint against the Respondent claiming that the Respondent registered the “danahermotion.eu” domain name without rights or legitimate interest in the “danahermotion” name and in bad faith and that, therefore the registration should be declared speculative and abusive within the meaning of Article 21 of EC Regulation No. 874/2004 (hereinafter “Public Policy Rules”).
The ADR Court did not receive any Respondent’s communication confirming its consent with the termination of the ADR proceedings within the deadline and the Respondent was finally notified to submit its Response. The Respondent did not provide any communication in this regard.
According to the ADR Rules, Paragraph B3 f) the Respondent and Complainant were informed by the case administrator of the default. Even so the following five days after receiving this notification the respondent did not react (challenge the notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules).

A. COMPLAINANT

- The disputed name is the Complainant’s name of firm and is also used as a trade name. Hence, “DANAHERMOTION” is a name for which the following rights are recognised within the German legal system. The protection of trade names is granted under §§ 5, 15 Markengesetz (Trade Marks Act) whereas the registered name of a company is protected by §§ 17 et seqq. of the Handelsgesetzbuch (German Com-mercial Code).
- the term in question is distinctive and fulfills the function of a name. In this regard, distinctiveness means that the firm name is capable of creating the association with a specific company amongst others (Baumbach/Hopt, HGB, § 18, No. 4). Because of its imaginative character, the word “DANAHERMOTION” is of substantial distinctiveness.
- The Complainant is a limited liability company registered in the German companies´ registry of the civil court Düsseldorf under No. HRB 35844 and is the user of the domains danahermotion.com and danahermotion.de for company purposes.
- As per the excerpt from the commercial register, the Complainant’s company firm name “DANAHER MOTION GMBH” has been registered in 2003 and it still exists.
- The Respondent registered the disputed domain name on the first day after the phased registration without rights and legitimate

interest in the name and established a website without relevant content, elaborated according to Paragraph B.1. (b) (10) of the ADR-Rules
- The present complaint is based on the fact that the domain name “DANAHERMOTION” is identical to the name “DANAHERMOTION” which is protected under German law. Even if the full name “DANAHER MOTION GMBH” would have to be considered, the domain name would still be confusingly similar to the name “DANAHER MOTION GMBH”. The use of identical or similar terms cause a substantial danger of confusion between the enterprises in question.
- legitimate interests just to the name "DANAHERMOTION” cannot be concluded from the Respondent’s name D-5, Ltd. It is also not apparent that the Respondent has used the domain name in connection with the offering of goods or services or has made demonstrable preparations to do so prior to any notice of this dispute.
- The Complainant insists that the Respondent registered the domain name without rights and legitimate interest and in bad faith and that, therefore, such registration is speculative and abusive within the meaning of Article 21 of the Public Policy Rules. Intention of the Respondent to sell the domain is obvious.
- To the Complainant is no reliable information as to the Respondent detectable, no matter whether the company itself or the field of activity is concerned.
- the contact person of the Respondent, Mr. Kurt Janusch, his contact e-mail address, sergiuliano@yahoo.com, and his physical address also appeared in case no. 02219 Altova GmbH vs. Altra NS Ltd. They are the same as the details of the Respondent in that case.

B. RESPONDENT

The Respondent failed to provide its Response within the required deadline and did not respond in any way.

DISCUSSION AND FINDINGS

1. Default
According to the ADR Rules, Paragraph B3 f) the Respondent and Complainant were informed by the case administrator of the default. Even so the following five days after receiving this notification the respondent did not react (challenge the notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules).
Therefore the Panel shall decide according to Paragraph B10 (a) of the ADR Rules if the default comply as grounds or is a reason to accept the claims of the other party.

The Panel decides in this case yes, it is a reason to accept the claim of the other party.

2. Alleged Registration of Domain Name without Rights and Legitimate Interest
With respect to the alleged registration of the Domain Name without rights or legitimate interest, the Panel holds as follows:
A. Rights
The Respondent did not prove any formal or other positive right to a DANHERMOTION denomination. The registration itself is no right and creates none without perceptible use or preparing measures.
B. Legitimate Interest

According to Article 21, paragraph 2 of the Public Policy Rules a legitimate interest may be demonstrated where (a) prior to any notice of the ADR proceedings, the Respondent has used the domain name, or a name corresponding to the domain name, in connection with the offering of goods or services, or has made demonstrable preparation to do so; (b) the Respondent, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law; (c) the Respondent is making a legitimate and non-commercial, or fair, use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

The Panel consulted short the www.danahermotion.eu website which could not be retrieved. So there were no references to the goods or services offered by the Respondent.

With regard to letter (b) in the preceding paragraph above, as far as the Panel is aware, the Respondent, D5 LTD, is not commonly known under the disputed domainname.

Therefore, the Panel holds that the Respondent registered the danhermotion.eu domain name without rights or legitimate interest. within the meaning of Article 21, paragraph 1, letter a) of the Public Policy Rules.

3. Alleged Registration and Use of Domain Name in Bad Faith
The Complainant also argues that the Respondent registered the disputed domain name in bad faith, namely, in order to sell the domain name.

The Panel would like to point out that the danahermotion.eu domain name was registered by the Respondent represented by Mr. Kurt Janusch (this name appears in all relevant databases including EURid and Adr.eu case 02219). But in fact in this case is no evidence shown that the Respondent offered the disputed domain.

4. Conclusion
The Complainant attached to its Complaint relevant documentation supporting and proving its arguments.
The complainant is not the owner of danahermotion.de but user. According to the whois of the Registrar Denic e.G. the Complainant is complementary of the owner called “Danaher Motion GmbH & Co. KG” based at the same address. The ownership of danahermotion.com could not be verified shortly via whois of the Registrar Networksolutions Inc. A short proof was necessary in this case because there was only information of one party.

Given the foregoing, the Panel holds that indications and evidence exist that the disputed domain name was registered without rights or legitimate interest in the name and without regarding in this case probably in bad faith.

As a remedy sought under the Complaint, the Complainant requires the disputed domain name to be transferred from the Respondent to the Complainant. The Complainant has proved satisfaction of the general eligibility criteria set out in Article 4, paragraph 2, letter b) of EC Regulation No 733/2002. Moreover, the Complainant provided the Panel with evidence proving that the Complainant uses a company name identical to the disputed domain name and that it owns the “DANHERMOTION” German trade-marks-act protected company- and websitename and German Commercial Act (through the company name).

DECISION

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

the domain name DANAHERMOTION be transferred to the Complainant

## PANELISTS

| Name | **Harald von Herget** |
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DATE OF PANEL DECISION 2007-04-19

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a Complaint against the Respondent claiming that the Respondent registered for the “danahermotion.eu” without rights or legitimate interest in the name. The Respondent failed to provide its Response.
The Panel holds that there are indications and evidence that the disputed domain name has been registered without rights or legitimate interest in the name and without regarding in this case probably in bad faith.
As the Complainant (i) applied for the transfer of the domain name, (ii) meets the requirements as defined within Article 22, paragraph 11 of the Public Policy Rules and, consequently, in Article 4, paragraph 2, letter b) of EC Regulation No 733/2002 and also (iii) provided evidence that substantiates the formal rights of the Complainant with regard to the disputed domain name (the Complainant uses a company name identical to the disputed domain name and owns the “Danahermotion” German trade-marks-act protected company- and websitename), the Panel orders the transfer of the domain name danahermotion.eu from the Respondent to the Complainant