Panel Decision for dispute CAC-ADREU-005325

Case number	**CAC-ADREU-005325**
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Domain names	**westat.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**WESTAT, Inc**

Respondent

Organization / Name	**MyInternet Media Ltd.**

FACTUAL BACKGROUND

The Complainant is the owner of numerous trademarks for the string “westat”, including Community marks.

The Respondent is using the disputed domain name to point to a page containing commercial links. Neither the page, nor any of the links, have any obvious association with the name “westat”.

A. COMPLAINANT

The Complainant is US Company, established in 1963, and providing research services to agencies of the U.S. Government, as well as businesses, foundations, and state and local governments. The Complainant is well known company in the area of its business activity not only in the US but in the whole world and has several international offices in Beijing (China), San José (Costa Rica), Johannesburg (South Africa) and Bangkok (Thailand).

The Complainant is very closely connected with the name “westat”. First of all, the name “westat” is Complainant’s trade name; secondly the Complainant is the owner of the word Community trademark “WESTAT” n°5916242. When inserting keyword “westat” into the Internet search engine e.g., Google.com, the first link found by the search engine belongs to the Complainant.

The disputed domain name was registered on April 7, 2006. The holder of the disputed domain name is the Respondent - the company MyInternet Media Ltd., a company registered under the laws of Ireland.

The web site under at the disputed domain name is a page of commercial links, and is used for “direct navigation” purposes. The website is not used for publishing any information on the Internet about Respondent’s company or to promote its products and services. The Respondent is not and has never been known under the name “westat” and does not hold any trademark registered within the European Union or company name identical or similar to the name “westat”.

In accordance with the ADR Rules any of the following circumstances shall demonstrate the Respondent’s rights or legitimate interests to the domain name:

(i) prior to any notice of the dispute, 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;

(ii) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;

(iii) 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 in which a right is recognized or established by national law and/or Community law.

The following facts prove that the Respondent does not have any legitimate interest in the domain name.

Ad (i) the Respondent has not used the domain name in connection with the offering of goods or services neither has made demonstrable preparation to do so

The domain name is currently used for direct navigation purposes therefore the sole purpose of Respondent's business is to generate revenues with parking pagers, but not to provide the Internet users with the relevant information.

"Westat" is fantasy name and does not constitute a keyword that could actually be used for searching information by Direct Navigation search method.

Ad (ii) the Respondent has not been commonly known by the domain name
The Respondent does not have any rights to the disputed domain name. It results from the trade mark registers of the European Union, and the WIPO that the company MyInternet Media Ltd. has not registered any trade mark identical or similar to the word "westat". The only person who is the holder of the trade mark “WESTAT” in accordance with databases maintained by OHIM and WIPO is the Complainant. The Respondent is neither the Licensee of any of the Complainant’s trademarks.

The Respondent is not and has never been commonly known by the domain name. No products or services or division of the Respondent seems to be known as "westat", according to our research. The content of the website does not provide the Internet users with any information about the holder of the domain name, or its business activity. In accordance with the search through the Internet search engine google.com and according to the content of the actual web site “westat.eu” there is apparently no demonstrable link between the Respondent and the domain name.

Ad (iii) the Respondent is not making a legitimate and non-commercial or fair use of the domain name. Actual content of the website shows that the domain name is used by the Respondent as the direct navigation system. As said in panel decision No. 02381 of ADR Center for .eu "… the direct navigation system used by the Respondent is generating important incomes so that the panel cannot look upon the Respondent as making a non-commercial use of the Domain Name."

The Respondent does not have any legitimate interest in the domain name, since prior to filing of the Complaint the Respondent was not using the domain name in connection with offering of goods and services and it did not make any demonstrable preparation to do so.

The domain name has been registered without rights and legitimate interest in the domain name.

The Complainant goes on to argue that the domain name was registered in bad faith. For the reasons set forth below, the Panel finds that it need not consider these arguments, so they are not summarized here.

B. RESPONDENT

The Respondent did not reply

DISCUSSION AND FINDINGS

PROCEDURAL ISSUES

The Complainant is not an EU entity and therefore it cannot register a domain name under the top-level domain “.eu”. As a consequence, the Panel could not envisage transferring the disputed domain name to the Complainant. Indeed the Complainant does not request transfer, it requests revocation.

Although there are numerous previous decisions revoking “.eu” domain names when the Complainant is not an EU entity (see for example cases 4655, 4440, 4722, 4882, 2300, 5009), it does not appear that there are any decisions which addressed the preliminary question of whether a non-EU entity has standing to file a Complaint. This Panel will address that issue.

Article 22.1 of EU Regulation 874 states that an ADR procedure may be initiated by any party. However, the Regulation does not explicitly define the term “party”. One might argue that “party” refers only to EU entities, that is, to entities that can apply to register a domain name under “.eu”.

The Panel rejects that argument, for the following reasons. Article 21 of the Regulation is titled “Speculative and abusive registration”. The purpose of this article is to implement “whereas (16)” of the Regulation. That “whereas” states that the Registry should provide for an ADR procedure to ensure that speculative and abusive registrations are avoided as far as possible.

By using the words “as far as possible” and “any party”, the legislator’s intent was to give wide scope to challenges of speculative and abusive registrations, including challenges from parties who cannot register domain names under “.eu”.

Indeed, the remedy of revocation makes sense only for such parties. A party who could register a domain name under “.eu” would request transfer, not revocation. By allowing for revocation, the legislator provided an additional indication that it intended to allow complaints from non-EU entities.

Thus, the Panel holds that non-EU entities do have standing to file Complaints under the ADR Rules for “.eu”.

SUBSTANTIVE ISSUES
The requirements for revocation a the registered domain name under “.eu” are found in Article 21 of the Public Policy Rules, Commission Regulation (EC) No. 874/22004 of 28 April 2004.

For the purposes of the revocation of speculative and abusive registrations, the Complainant has to prove that the Respondent holds the disputed domain name; the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law; and that either

(a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or

(b) the domain name has been registered or is being used in bad faith.

In the present case, the Complainant has shown that the Respondent does hold the disputed domain name and that the Complainant does owns a Community trademark for the string “westat”.

The disputed domain name is obviously identical to that mark.

As the Complainant correctly points out, "westat" is fantasy name and does not constitute a keyword that could actually be used for searching information on the Internet. The Complainant aptly cites decision 2123 of the ADR Center for .eu: "…The Panel finds that the Respondent's explanation regarding the legitimate use of the domain name is not plausible … the keyword ‘unibail’ in the Domain Name does not constitute in the Panel's opinion a keyword that could actually be used for searching information by Direct Navigation search method. " See also decisions 2300 and 4722.

Prevailing case-law regarding domain names holds that use of a domain name to provide a search services may be a legitimate use and create rights for the owner of the domain name. But this is the case only when the domain name consists of generic terms (or a string that is not a trademark) and the web page contains links to products or services directly related to the domain name. As the Overview of WIPO Panel Views puts the matter: “If a respondent is using a generic word to describe his product/business or to profit from the generic value of the word without intending to take advantage of complainant’s rights in that word, then it has a legitimate interest”.

In the present case, the disputed domain name does not consist of generic terms, and the web site at the disputed domain name does not relate in any way to the string “westat”.

Further, in accordance with 10(b) of the ADR Rules, the Panel the Panel shall draw such inferences as it considers appropriate from the Respondent’s failure to reply.

In the present case, the Panel infers from the Respondent’s silence that it has no valid arguments to oppose to the Complainant, and that the Complainant’s allegations are accurate.

Thus, the Panel finds that the Respondent does not have any rights or legitimate interest in the disputed domain 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 WESTAT be revoked

PANELISTS

Name	**Dr. Richard Hill**

DATE OF PANEL DECISION 2009-03-23

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a US company that owns a Community mark. The disputed domain name is identical to that mark.

The disputed domain name is used to point to a web site that contains commercial advertising links. Neither the page nor the links are related to the name in question. The Respondent is not commonly known by that name, nor does it have any other grounds to claim rights or legitimate interests in the disputed domain name.

The Panel held that the Complainant had standing to file a complaint and it revoked the disputed domain name.