Panel Decision for dispute CAC-ADREU-005388

Case number	**CAC-ADREU-005388**
Time of filing	**2009-04-03 09:08:05**
Domain names	**witzenmann.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Witzenmann GmbH**

Respondent

Organization / Name	**Markus Jank**

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 other legal proceedings which are pending or decided and which would relate to the disputed domain name or to the disputed decision.

FACTUAL BACKGROUND

1. REGISTRATION OF THE DISPUTED DOMAIN NAME

Mr Markus JANK ("the Respondent") has registered the domain name "witzenmann.eu" ("the Domain Name"). Witzenmann GmbH ("the Complainant") requests the transfer of the Domain Name to itself.

2. HISTORY OF THE ADR PROCEEDING

2.1. The ADR proceeding launched by the Complainant was received by the ADR Center for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic ("the Court") on April 1, 2009, and filed two days after.
On April 14, after the Court received the Registry's verification for the Domain Name (in the form of a non-standard communication dated April 10, 2009), it notified to the Complainant deficiencies in the Complaint.

2.2. It appeared that the Complainant had not identified the correct registrar (it mentioned "EURid") and that, as a result of this incorrect identification the Mutual Jurisdiction was improper (the Complainant designated "Afghanistan"). The Complainant was invited to correct these elements. It submitted an amended complaint ("the Complaint") on April 14.
The Complaint was admitted to proceed further on April 16, 2009, the formal date of commencement of the ADR proceeding.
The same day, the Respondent was notified that an ADR Proceeding had been commenced against him. According to the requirements of Paragraph B3 of the ADR Rules and the ADR Supplemental Rules, he was invited to submit a response within 30 working days from the delivery of this notification. The notification mentioned that the Respondent would be considered in default in case he failed to send the Response before the deadline.
On June 1, the Respondent was reminded by the Court that the term for submitting the Response would expire on June 10, 2009.

2.3. The Respondent failed to submit a response. On June 12, 2009, the Respondent was properly notified of his default.

2.4. On June 19, 2009, this Panel was duly appointed.

A. COMPLAINANT

3. The Complainant contends as follows (annexes and references to annexes are not cited in the excerpts of the contentions reproduced below; Paragraphs of the Complaint have been renumbered):

3.0. FACTUAL GROUNDS

3.0.1. “The Complainant is proprietor of the community trademark CTM 002396489 “Witzenmann” for classes 6 to 9, 11, 12, 17,19, 35 to 37 and 39 to 42. The trademark was registered on January 8, 2003 and the registration was published on February 24, 2003.
3.0.2. Further, the Complainant is proprietor of the German mark “Witzenmann” for classes 6 to 9, 11, 12, 17, 19, 35 to 37 and 39 to 42. The German mark was registered on July 12, 2001 and the registration was published on August 16, 2001.
Both marks contain in the list of goods and services inter alia tubes, hoses, bellows and expansion joints, corrugated tubes, etc.
3.0.3. Since both trademarks are effective, the name “witzenmann” is well protected for the Complainant in Germany and all over Europe.
3.0.4. Moreover, the Complainant is one of the worldwide leading manufacturers of flexible metallic components. The domains “witzenmann.com”, “witzenmann.de” and especially “witzenmann.at” (in the home country of the Respondent) are registered in favour of the Complainant for many years and these domains are used by the Complainant for its worldwide business. A google-search for “witzenmann” reveals that on the first two pages of the search result more than 85 % of the links refer to the Complainant.”

3.1. LEGAL GROUNDS

3.1.1. “The domain name “witzenmann” of the Respondent is identical with [sic] the German mark respectively the Community trademark “witzenmann” of the Complainant [sic]. The addition of “.eu” and www. are no necessary or relevant parts of the domain.
The Respondent has registered the disputed domain years after the publication of the above mentioned marks of the Complainant and does not use the disputed domain. The Respondent has “parked” the domain at the Sedo GmbH, a market place for buying and selling domain names. During the “parking” period of the domain on witzenmann.eu links to manufactures and dealers of corrugated tubes, hoses, flat hoses, hoses of metal, special bellows, especially membrane bellows, gaiters and stainless steel bellows, compensators and rubber hoses which are identical with [sic] goods in the list of goods and services for the marks are shown [sic]. “These external links are provided by Sedo GmbH with permission of the Respondent. The domain “witzenmann.eu” is offered for sale, so the Respondent does not plan any use in the future.

3.1.2. The Respondent has also no right or legitimate interest in respect of the domain name “witzenmann” according to Article 21(1)(a) of EC Regulation 874/2004. The Respondent has no own right for the domain name and is not commonly known by the domain name “witzenmann”.
A trademark search reveals additionally that the Respondent is not the owner of any Community trademark or any international trademark named “witzenmann”. Further the Complainant puts forward that a google-search for “witzenmann” in connection with “Jank” of March 26, 2009 shows that no results exist for “witzenmann” in connection with “Jank”.
The Complainant bases on the facts outlined above to show [sic] that it is evident that the Respondent has not been commonly known by the domain name “witzenmann”.
Considering the above the Complainant would like to summarize the following:
a) the domain name “witzenmann” is identical to the Complainant’s CTM and German trademark “witzenmann” (see article 21 (1) and article 10 (1) of the EC Regulation no. 874/2004).
b) The domain “witzenmann.eu” has been registered by the Respondent without right or legitimate interest in the name (see article 21 (1) (a) of the abovementioned EC Regulation).
c) The Respondent has not used the domain name “witzenmann” or a corresponding name in connection with the offering of goods or services or has made [sic] demonstrable preparation to do so until now (see article 21 (2) (a) of the Regulation).
d) Further the Respondent has not been commonly known by the domain name “witzenmann” until now, (see article 21 (2) (b) of the Regulation) and the Respondent is not making a legitimate and non-commercial or fair use of the domain “witzenmann” (see article 21 (2) (c) of the Regulation).

3.1.3 Furthermore the domain name ”witzenmann” has been registered by the Respondent in bad faith according to article 21 (1) (b) of the Regulation.
The Respondent has registered the disputed domain “witzenmann.eu” for the sole purpose of selling the domain (see also 2.1.). The offer for selling the domain was clearly correlated to the registration of the disputed domain, since the sale of the domain was offered by the Respondent within 4 weeks or shorter after [sic] the registration. The Respondent was clearly in bad faith when registering the domain, since there was at no time a plan to use the domain.
Further, the domain is “parked” at Sedo GmbH, a market place for selling domain names. During parking the Respondent shows on “witzenmann.eu” external links provided by Sedo GmbH leading to competitors of the Complainant producing and offering identical or clearly similar products to the goods of the Complainant and the Respondent receives compensation by Sedo GmbH for allowing to show [sic] such links.

Potential clients of the Complainant are therefore misled and confusingly redirected to offers of competitors of the Complainant.
The Complainant wants to emphasize the following:
a) The circumstances show that the domain name “witzenmann” was registered by the Respondent primarily for the sole purpose of selling, renting, or otherwise transferring the domain name to the holder of a name (i. e. the Complainant) in respect of which a right is recognized or established by national and/or community law (e. g. community trademark “witzenmann” of the Complainant (according to article 21 (2) (b) of the Regulation)), and
b) the domain name “witzenmann” has been registered by the Respondent in order to prevent the holder of such a name (i. e. the Complainant) in respect of which a right is recognized or established by national and/or community law (i. e. the community trademark “witzenmann” of the Complainant) for [sic] reflecting this name in a corresponding domain name (i. e. the domain “www.witzenmann.eu”) according to article 21 (2)(c) of the Regulation and
c) the domain name “witzenmann.eu” was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website (i.e. the Respondent) or other online location (i.e. home pages of competitors of the Complainant), by creating a likelihood of confusion (links to competitors of Complainant offering products identical or clearly similar to products of the Complainant which are protected by CTM “witzenmann” with a name (i.e. CTM “witzenmann” of the Complainant) on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name (i.e. “parking” of the disputed domain “witzenmann” at Sedo GmbH).
In this context the Complainant wants again to highlight that the Respondent has not used the domain www.witzenmann.eu in a relevant way from the date of the registration until now and since the Respondent wants to sell the domain a relevant use is not planed [sic] in the future.

3.1.4. Further the Complainant refers to decisions of the Arbitration Court of October 26, 2007, December 29, 2007 and February 23, 2007 (cases no. 04484, 04700 and 03207). The Respondent in all these cases submitted [sic] is Markus Jank. In all these cases the transfer of the domain at issue was ordered by the Arbitration Court and in all these cases the Respondent did have no rights or legitimate interests in the respective domain.
This also clearly shows, that the Respondent tries to “block” domains and prevent the holder of a name in respect of which a right is recognized by national or community law to reflect this name in a corresponding domain name for the sole purpose of selling the respective domains, especially to the holder of the above mentioned name”.

3.2. REMEDIES SOUGHT

The Complainant requests the transfer of the Domain Name to itself.
It alleges it fulfils the general eligibility criteria for the registration set out in Article 4 (2) (b) of Regulation (EC) no. 733/2002.

B. RESPONDENT

4. The Respondent failed to submit a response.

DISCUSSION AND FINDINGS

5. PRELIMINARY REMARKS ON EVIDENCE BROUGHT BY THE COMPLAINANT.

5.0. The evidence upon which the Complaint is based is mostly questionable, when not void. Before ruling on the merits of the case, it is the Panel’s duty to review each of the pieces of evidence annexed to the Complaint.

5.1. Complainant refers to Annex 1.1 to demonstrate it has rights on Community Trademark 002396489 WITZENMANN for classes 6 to 9, 11, 12, 17, 19 35 to 37 and 39 to 42, since 2003. Annex 1.1 is entirely written in German language, whereas the language of this ADR proceeding is English, in application of Article 22.4 of EC Regulation 874/2004 (“the Regulation”) and Article A3(a) of the ADR Rules. Article A3(c) of the ADR Rules states that “[a]ll documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding”. In accordance with this rule, Article B1(d) of the Supplemental Rules provides that “all relevant parts of the documents submitted as part of the Complaint including any annexes and schedules submitted in languages other than the language of the ADR Proceeding must be accompanied by a translation into the language of the ADR Proceeding. Documents or their parts not submitted in the language of the ADR Proceeding shall not be taken into account by the Panel”. Accordingly, Annex 1.1 should have been translated into English and therefore, the Panel will not take it into account.

5.2. Complainant refers to Annex 1.2 to prove its rights on German trademark WITZENMANN for classes 6 to 9, 11, 12, 17, 19 35 to 37 and 39 to 42, since 2001. This document is in German. That is, not in the language of the proceeding. For the reason mentioned above, it will be similarly disregarded.

5.3. With Annex 1.4.a, Complainant intends to show that it “is one of the worldwide leading manufacturers of flexible metallic components”. The source, nature and date of this document are not specified.
Because:
- this document bears the Complainant’s trademark at the top,
- has the appearance of a webpage,
- its main part is entitled “Witzenmann Profile”,
- this main part describes the company history and gives figures,
the Panel is led to think that it actually is a corporate presentation taken from the Complainant’s own website. If so, the document cannot constitute evidence, as it merely is a statement by the Complainant.
The Panel furthermore observes that this document mentions “a turnover of approximately 400 million Euro”, whereas the following Annex reads: “The Witzenmann group achieves sales of EUR 370 million world wide”. Such discrepancy leads to conclude that one of both pieces of information is not reliable or accurate.
Annex 1.4.a. will be disregarded, as the Panel cannot accept a document inasmuch as its source and nature are unclear and it is undated.

5.4. The following annex (1.4.b.) is a list of 100 results displayed by Google after a search with the query “witzenmann”, which the Complainant relies on to bring evidence that “a google-search for “witzenmann” reveals that on the first two pages of the search result more than 85 % of the links refer to the Complainant”.
Except for results #1, #89 and #96, which are in English, the rest of the document is in German, and must be rejected as such.
Furthermore, Google results in general depend on several factors such as:
- the language of the browser used (only results in this language tend to be displayed),
- the location of the computer used (the search engine takes into account the IP address to return results which are relevant to the user’s supposed expectations),
- the user’s having a Google account or not (results may be customized to suit the user’s profile),
- the preferences saved by the user, etc.
This annex does not mention whether the results are taken from google.de, google.com, or any other URL through which Google’s services are available. The indication “26.3.09” is handwritten at the bottom of the first page. The Panel presumes this date stands for the day the search was made.
Given all these elements, this document can only be regarded as a weak piece of evidence.

5.5. To emphasize that “[t]he domains “witzenmann.com”, “witzenmann.de” and especially “witzenmann.at” (in the home country of the Respondent) are registered in favour of the Complainant for many years”, the Complainant attached three Whois excerpts in Annex 1.4.c.
The first excerpt is taken from DENIC’s database. This document is in German, and must be disregarded as such, so as will be the third excerpt, which also is entirely in German language.
The second document is in English. The date of the database query is not mentioned. This document shows that the name “witzenmann.com” was last updated on “2006-08-03” and that its expiration date is “2009-04-13”. The Panel observes that the date of the Complaint is April 14, 2009, which may give rise to a doubt as to whether the Complainant still held this domain name when the Complainant was filed, though this question is not an issue in this Proceeding (the Complainant only has to prove it has rights on a name in respect of which a right is recognized or established by national and/or Community law, which is not the case of this domain name).

5.6. With Annex 2.1 Complainant wants to show that “[t]he domain “witzenmann.eu” is offered for sale” and that the Respondent has parked this domain, offering “links to manufactures and dealers of corrugated tubes, hoses, flat hoses, hoses of metal, special bellows, especially membrane bellows, gaiters and stainless steel bellows, compensators and rubber hoses which are identical with goods in the list of goods and services for the marks [of the Complainant]”. This Annex consists of two parts.

5.6.1. It appears from the mentions at the bottom of the first part of this Annex that this first part consists of a printout of the webpage accessible at “http://www.witzenmann.eu” on “04.02.2009”.
This document is entirely in German, except for a very short part of it where one can read:
“Stainless Steel Bellows
Expansion Joint Compensators in Stainless Steel & Special Alloys
www.interflex.co.uk”
The first and third lines are underlined, and are probably clickable.
The Panel may only take into account this part of the document, which complies with the language of the Proceeding.

5.6.2. No date nor source are indicated on the second part of Annex 2.1. It is apparently an excerpt from Sedo’s website. It reads that the domain name “witzenmann.eu” is for sale. There is however no indication as to whom the seller is or the date, etc.

5.7. The Complainant alleges that “a trademark search reveals … that the Respondent is not the owner of any Community trademark of any international trademark named “witzenmann””, and offers Annex 2.2.a as evidence.
The first page of this Annex is in German and will not be taken into account by the Panel. The following six pages are in English. The indication “26.3.09” is handwritten at the bottom of the first page. The Panel presumes this date stands for the day the search was made.

5.8. Annex 2.2.b is a list of Google results for the query “witzenmann jank”. Out of the 26 results, only the 10th and the 18th are in English and, as such, can be taken into account.
The remarks above on the force of Google results as evidence also apply here.

5.9. The Complainant attached to the Complaint copies of three decisions of the Arbitration Center for .EU Disputes (Annex 2.3). All these decisions are in German, their summary being in English. As a consequence, the Panel will only take these abstracts into account.

5.10. Complaint indicates that Annex 2.4 is an extract of the German commercial register. This document is in German, and will be disregarded like all other evidence in this language.

6. THE MERITS

6.0. According to Article 21.1 of the Regulation, a registered domain name shall be subject to revocation when “that 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, such as the rights mentioned in Article 10(1), 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”.

The first question is thus whether the disputed name is confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law.

6.1. Existence of rights on the name WITZENMANN and identity with the Domain Name

6.1.0. The Complainant alleges it has rights on the Community trademark and the German trademark WITZENMANN, and mentions it has registered three domain names – “witzenmann.com”, “witzenmann.de” and “witzenmann.at” – which it uses for its worldwide business. Since these names do not fall into the category of names in respect of which a right is recognized or established by national and/or Community law, the Panel will only address the trademark issue.

6.1.1. The documents the Complainant meant to rely on to evidence its trademark rights – Annexes 1.1 and 1.2 – have been disregarded. As a consequence, the Panel should consider it has not been provided with proper evidence.
Nevertheless, parts of Annex 2.2, presented by the Complainant as “a trademark search [that] reveals … that the Respondent is not the owner of any Community trademark of any international trademark named “witzenmann”, also show that the sole existing owner of a WITZENMANN trademark is the Complainant. The trademark’s number is 786530, it has been registered in 2001 in Germany, and later on in other States including Czech Republic, Hungary, Poland, Romania and Slovakia, for goods of classes 6 to 9, 11, 12, 17 and 19, and for services of classes 35 to 37 and 39 to 42.

6.1.2. Therefore, the Panel finds the Complainant has rights on the name WITZENMANN under Article 21.1 of the Regulation. The Domain Name is identical to this Complainant’s trademark.

To decide whether or not the second condition is met, the Panel now turns to paragraph (b) of this Article.

6.2. Has the Domain Name been registered or is it being used in bad faith?

6.2.1. Registration in bad faith

6.2.1.1. The Complainant contends that “[t]he Respondent has registered the disputed domain “witzenmann.eu” for the sole purpose of selling the domain”, and that “the domain name “witzenmann” has been registered by the Respondent in order to prevent the holder of such a name (i.e. the Complainant) [from] reflecting this name in a corresponding domain name”. These two allegations may seem

contradictory (if the Respondent has registered the name for the SOLE purpose of selling it, it could not be ALSO for preventing its registration by a third party). Since the Complainant only offers evidence to sustain its first contention, the Panel will only address this one.

6.2.1.2. As seen above (at § 5.6), the Complainant's evidence is questionable. The Panel can only infer from it that the Domain Name has been for sale, but has no clue as to why, when and for how long it has been for sale, and ignores above all whether it has been for sale from the day of its registration. The Complainant merely writes that "the sale of the domain was offered by the Respondent within 4 weeks or shorter after the registration".

6.2.1.3. The Panel is thus not in position to conclude that the Domain Name has been registered in bad faith.

6.2.2. Use in bad faith

6.2.2.1. The Complainant alleges that the Domain Name "is "parked" at Sedo GmbH" and that "[d]uring parking the Respondent shows on "witzenmann.eu" external links provided by Sedo GmbH leading to competitors of the Complainant producing and offering identical or clearly similar products to the goods of the Complainant … and the Respondent receives compensation by Sedo GmbH for allowing to show such links". Since the Panel, which disregarded most of Annex 2.1, can only observe that there was one commercial link for a company which promotes "Expansion Joint Compensators in Stainless Steel & Special Alloys" on February 4, 2009, the Panel cannot be convinced that there actually were more than one link pointing to more than one of the Complainant's competitors.

6.2.2.2. The Panel nevertheless observes that verification by the Registry (mentioned above at § 2.1) shows that nameservers used for the Domain Name are ns1.sedoparking.com and ns2.sedoparking.com. This verification, dated April 10, shows that the disputed name was presumably still used for parking after the Proceeding was initiated (but however does not indicate which kind of links were displayed).

As there is no striking evidence that the Domain Name is being used in bad faith, the Panel has to turn to paragraph (a) of Article 21.1 of the Regulation, to decide whether or not the Domain Name has been registered by the Respondent without rights or legitimate interest in the name.

6.3. Has the Domain Name been registered by the Respondent without rights or legitimate interest in the name?

6.3.1. Did the Respondent have rights in the name when he registered it?

It appears from the Registry verification that the Domain Name was registered on January 4, 2009. Evidence brought by the Complainant show that, after this date, the Respondent was not the owner of any trademark exactly identical to the Domain Name (Annex 2.2.a). Whether the Respondent might have had a right at the time of the registration is a question that will remain unanswered, as the Respondent chose not to answer to the Complaint.

6.3.2. Did the Respondent have a legitimate interest in the name when he registered it?

6.3.2.1. The Complainant contends that "the Respondent has not been commonly known by the domain name "witzenmann" until now". It grounds said contention on a Google search which allegedly shows "that no results exist for "witzenmann" in connection with "Jank"" and refers to Annex 2.2.b. Not only is this evidence weak for the reasons underlined above at § 5.8, but it also limits to show that there is no clue of this "connection" on the sole web pages that Google has indexed. Such an online search is not sufficient to demonstrate that there is absolutely no connection between "witzenmann" and "Jank": Google does not reflect the whole world.

6.3.2.2. The Complainant alleges that "the Respondent is not making a legitimate and non-commercial or fair use of the domain "witzenmann"". At first stake, this contention is out of scope, since the issue relates to the registration of the Domain Name, instead of its use. Though Article 21.2(c) states that a legitimate interest may be demonstrated where the holder of a domain name 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 recognized or established by national and/or Community law, this provision explains how the Respondent can prove such legitimate interest. It cannot be interpreted a contrario to allow a Complainant to demonstrate the absence of a legitimate interest at the time of the registration by reference to the current use by a Respondent.

6.3.2.3. The Complainant alleges that "The Respondent has not used the domain name "witzenmann" or a corresponding name in connection with the offering of goods or services or has made demonstrable preparation to do so until now" [sic]. The same remark can

be made: The issue is the registration, not the use.

6.3.3.4. Although there is no evidence brought by the Complainant of the lack of legitimate interest on the part of the Respondent, it is hard for the Complainant to prove a negative fact (see Case 4950 – “gbo.eu”; Case 3149 – “edscha.eu”; Case 4089 – “bancointesa.eu”; Case 3125 – “basler-haarkosmetik.eu” & “baslerhaarkosmetik.eu”). As the Respondent did not bring any contradictory evidence, the Panel, taking into consideration Article B7(b) of the ADR Rules, uses the power derived from Article 22.10 of the Regulation and Articles B10(a) and B11(a) of the ADR Rules to consider that the Respondent accepted the claims of the Complainant in choosing to remain silent (which he did not do in two out of three of the other cases brought against him before this Court, as shown in Annex 2.3: Cases 4484 – “greenteam.eu” and 3207 – “allianz-online.eu”).

Conditions of Article 21.1 of the Regulation being met, the Domain Name is subject to revocation.

6.4. Transfer of the Domain Name

6.4.0. Under Article 22.11, the Panel decides that this name must be revoked. Can it go further and order the transfer of the name, as requested by the Complainant? According to the same provision, the Complainant must satisfy the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

6.4.1. By reference to paragraph (i) of this Article 4(2)(b), the Complainant states that it is an undertaking having its registered office, central administration or principal place of business within the Community, and uses as evidence an extract of the German commercial register, which the Panel had to disregard (see § 5.10). The sole admissible evidence in which the Panel can gather useful information regarding the address of the Complainant are:
- the excerpt of the Whois database for “witzenmann.com”,
- and the information related to Complainant’s trademark 786530.

6.4.2. The Whois is not the most accurate source of information, since it is purely declarative. Nevertheless, it shows an address which is identical to the information gathered in the Madrid Express database regarding the trademark holder. For these reasons, the Panel believes that the Complainant has its registered office at this address, hence in the Community.

The Panel decides that the Domain Name can be transferred to the Complainant.

7. For all these reasons, the Panel is satisfied that the Complainant has proved that the Domain Name is identical or confusingly similar to its trademark WITZENMANN in respect of which a right is established by national law, that this Domain Name has been registered by the Respondent without legitimate interest, and that the Complainant is eligible to request the transfer of said 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 WITZENMANN be transferred to the Complainant.

PANELISTS

Name	**Cedric Manara**

DATE OF PANEL DECISION 2009-07-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Witzenmann Gmbh, is a company which holds a trademark, WITZENMANN, registered in at least one of the European Union. It seeks transfer of the domain name “witzenmann.eu”, held by a natural person alleged to have registered it without rights or legitimate interest, and to have both registered and used it in bad faith.
As it disregarded most of the evidence presented by the Complainant, the Panel had to reject the claims based on said evidence.
The Panel nevertheless found that the disputed domain name has been registered without legitimate interest, basing on the fact that the Respondent kept silent to conclude that he accepted the claims of the Complainant.
The Panel also found the Complainant is eligible to request the transfer of the disputed name to its own profit.