Panel Decision for dispute CAC-ADREU-008449

Case number	CAC-ADREU-008449
Time of filing	2022-12-09 09:49:08
Domain names	www.maro.eu

Case administrator

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

Complainant

Organization	Fabryka Mebli Biurowych MARO sp. z o.o.

Respondent

Organization	Evolution Media e.U.

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

FACTUAL BACKGROUND

On 25 October 2011, Respondent registered the domain name <maro.eu> (hereinafter the “Domain Name”).

On 9 December 2022, Complainant filed a complaint before the ADR Center for .eu attached to the Czech Arbitration Court, in which it requests the transfer of the Domain Name (hereinafter the “**Complaint**”).

The ADR proceedings needed initially to be conducted in Dutch. Complainant requested to change the language of the proceedings into English, which was accepted by Respondent. By decision of 2 March 2023, the then appointed ADR Panel decided that the ADR proceedings can be conducted in English.

On 4 April 2023, Respondent filed its response to the Complaint (hereinafter the “**Response**”).

On 18 April 2023 the present ADR Panel was appointed in order to decide on the dispute.

A. COMPLAINANT

Complainant contends that it (i) is a polish manufacturer of office furniture (desks, cabinets, reception counters, conference tables and pedestals) and (ii) sells its products via dealerships and authorised partners in: Poland, Germany, Austria, Holland, Switzerland, Italy, UK and Ireland.

Complainant also contends that it is the owner of the word/figurative trademark “MARO” registered in Poland (registration number R.078854) (hereinafter the “Complainants’ Trademark”).

Complainant further contends that it is focusing on European expansion and that it is successfully starting exporting to other European countries (e.g. France, Romania, Hungary, Czech Republic, Slovakia, Lithuania, Latvia, Estonia and Germany). According to Complainant, having a top level .eu domain would help to become a more ‘European’ brand. According to Complainant, it actually operates a website under the domain name <maro.pl>, which is translated in five European languages and facilitates browsing for its customers.

Complainant further contends that (i) it is interested to buy the Domain Name on market terms, but that Respondent offers the Domain Name for sale at a price of 4,999 EUR and (ii) it could not find any connection of Respondent to the sign “MARO”. Therefore, Complainant believes that Respondent has no legitimate interest in the Domain Name and that the Domain Name is used in a bad faith.

Complainant requests the Domain Name to be transferred.

B. RESPONDENT

Respondent contends that it is in the business of domain name trading.

According to Respondent, Complainant has failed to provide evidence to support its Complaint, in terms that Complainant did not present any arguments concerning the absence of legitimate interest or presence of bad faith. The mere assertion that the registration of the Domain Name is speculative because it is offered for sale is not substantial. Therefore, Respondent concludes that Complainant did not make a prima facie case and that the burden of proof is still on Complainant.

Regarding the legitimate interest, Respondent contends that it can show a legitimate interest in using the Domain Name. According to Respondent, using a domain name to sell the same domain name is also using the domain name in connection with offering of goods. In relation to Complainant's assertion that it wants to buy the Domain Name on market terms, Respondent contends that price of 4,999 EUR is a fair market price, hereby referring to an example of other four-letter domain names that are offered for higher sales prices.

Regarding bad faith, Respondent contends that it is not using the Domain Name in bad faith, given (i) the mere fact of offering a domain name for sale does not constitute bad faith and the (ii) business of selling domain names is perfectly legal as far as it does not try to benefit from the goodwill of someone's trademark.

DISCUSSION AND FINDINGS

Pursuant to Paragraph B. 11 (d) (1) of the ADR Rules, the ADR Panel can only decide to transfer the Domain Name to Complainant if Complainant proves that:

- The 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
- The Domain Name has been registered by Respondent without rights or legitimate interest in the name; or
- The Domain Name has been registered or is being used in bad faith.

Regarding the first condition, the ADR Panel concludes that the Domain Name is confusingly similar to Complainants' Trademark.

Regarding the second and third condition, the ADR Panel concludes that Complainant has been extremely brief in submitting arguments and accompanying evidence supporting its demand. While it is generally accepted that it is impossible to provide 'negative evidence', it is also generally accepted that Complainant should make a prima facie case (See: CAC-ADREU-008448; CAC-ADREU-007159). Complainant simply asserts that (i) it is interested to buy the Domain Name on market terms, but that Respondent offers the Domain Name for sale at a price of 4,999 EUR and (ii) it could not find any connection of Respondent to the sign "MARO". These two elements should, according to Complainant, lead to the conclusion Respondent has no legitimate interest in the Domain Name and that the Domain Name is used in a bad faith. The ADR Panel finds that the mere fact that the Domain Name was offered at a certain price would per definition result in (i) the absence of legitimate interest or (ii) the presence of bad faith of Respondent. The ADR Panel finds that the mere fact that the Domain Name is offered at a certain price is as such not sufficient to conclude that there would be (i) absence of legitimate interest or (ii) bad faith. In addition, it does not result from the case file that Complainant attempted to contact Respondent, prior to filing the Complaint, with the request to obtain transfer of the Domain Name, e.g. at a price corresponding to the cost of registering and renewing the Domain Name, and that such request has been refused by Respondent. Under these circumstances, the ADR Panel finds that it is not the role of the ADR Panel to present the claim on Complainant's behalf and that .eu ADR proceedings cannot be seen and/or used as a substitute for standard commercial negotiation over the price of domain names between interested parties (See also: CAC-ADREU-008448).

DECISION

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

PANELISTS

Name	Gunther Meyer

DATE OF PANEL DECISION 2023-05-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: maro.eu

II. Country of the Complainant: Poland, country of the Respondent: Austria

III. Date of registration of the domain name: 25 October 2011

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
1. Word/figurative trademark registered in Poland, reg. No. R.078854, for the term "MARO", filed on 30 June 1992, registered on 16 April 1994 in respect of goods and services in classes 6, 20, 37.

V. Response submitted: Yes

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

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. Yes
2. Why: Complainant did not present a prima facie case concerning the absence of legitimate interest.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: Complainant did not present a prima facie case concerning the presence of bad faith.

IX. Other substantial facts the Panel considers relevant: The ADR Panel finds that the mere fact that the Domain Name was offered at a certain price would per definition result in (i) the absence of legitimate interest or (ii) the presence of bad faith of Respondent. In addition, it does not result from the case file that Complainant attempted to contact Respondent, prior to filing the Complaint, with the request to obtain transfer of the disputed domain name, e.g. at a price corresponding to the cost of registering and renewing the disputed domain name, and that such request has been refused by Respondent. Under these circumstances, the ADR Panel finds that it is not the role of the ADR Panel to present the claim on Complainant's behalf and that .eu ADR proceedings cannot be seen and/or used as a substitute for standard commercial negotiation over the price of domain names between interested parties (See also: CAC-ADREU-008448).

X. Dispute Result: Complaint denied.

XI. Procedural factors the Panel considers relevant: N/A