Panel Decision for dispute CAC-ADREU-008519

Case number	CAC-ADREU-008519
Time of filing	2023-07-10 12:52:53
Domain names	robologic.eu

Case administrator

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

Complainant

Organization	Rechtsanwaltskanzlei Ellina Adler

Respondent

Organization	Robologic GmbH

Respondent representative

Organization	IT-Kanzlei Twelmeier

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 relate to the disputed domain name.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a Latvian citizen.

The Respondent is a German company with limited liability operating under the name “Robologic GmbH”.

The disputed domain name has been registered with the Complainant on May 29, 2017. However, the disputed domain name was later registered with the Respondent.

A. COMPLAINANT

The Complainant asserts rights according to Article 4 (4) of EC Regulation No. 2019/517. He contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to him.

The Complainant claims to own the EU trademark “ROBOLOGIC” registered on April 14, 2023.

The Complainant contends that on July 8, 2018 he and the company “Robologic OU”, a 100%-shareholder of the Respondent, filed an “agreement on transfer of the domain name ROBOLOGIC.EU”. According to this agreement, the Complainant submitted an authentication code to the Respondent only to move the disputed domain name to the new registrar “United-Domains AG”, in order for the Respondent to be able to redesign its website. The Respondent transferred the domain name to itself without agreement of the Complainant by registering itself as an owner in EURid’s WhoIs Database. The Respondent was not entitled to change the ownership of the domain name. The agreement only allowed the company “Robologic OU” and its affiliated companies to use the domain until July 6, 2023. The Complainant was supposed to remain the owner of the disputed domain name.

B. RESPONDENT

The Respondent claims to be the legitimate owner of the disputed domain name. Moreover, the Respondent is allowed to use the name “Robologic” in a domain name, because it contains its company name. There was no agreement that prevented or restricted a domain registration and transfer. The domain name was, in fact, transferred to the Respondent, so that it could run its own business without restrictions. The Respondent states that the “agreement on transfer of the domain name ROBOLOGIC.EU” between the Complainant and the Robologic OU, which was asserted by the Complainant, is incorrect and unknown to the Respondent. The Complainant, represented by a partner, made the domain name data available for the transfer without any conditions. Business transactions under the “Robologic” mark were also carried out continuously by the Respondent. The Respondent has also paid all invoices for the domain name ownership for years. Furthermore, the Complainant filed an application for his trademark “Robologic” after 2017. The domain name therefore existed before the trademark.

DISCUSSION AND FINDINGS

The Complainant has not, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a name in respect of which the Complainant has rights established by national and/or Union law (within the meaning of Article 4 (4) of EC Regulation No. 2019/517).

A claim for the transfer of the disputed domain name to the Complainant can only be granted in case the requirements of Article 4 (4) of EC Regulation No. 2019/517 are met. In accordance with Article 4 (4) of EC Regulation No. 2019/517 and with the principles and procedures on the functioning of the .eu TLD laid down pursuant to Article 11 of EC Regulation No. 2019/517 a registered domain name shall be subject to revocation, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Union law and 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. ‘Right’ according to Paragraph B (1)(b)(9) of the ADR Rules shall be understood to include, inter alia, copyright, trademarks and geographical indications provided in national law or European Union law, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.

Paragraph B (11)(a) of the ADR Rules instructs this Panel to decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules. Taking the statements and documents submitted by the Complainant and by the Respondent under careful consideration, the Panel concludes that the Complainant has not established all the elements entitling it to relief. The relief shall therefore be denied.

The disputed domain name is not confusingly similar to a name in respect of which the Complainant has rights.

According to the trademark register of the EUIPO attached to the Complaint, the owner of the trademark is “ROBOLOGIC”, not the Complainant. The Complainant does neither argue nor demonstrate that he runs a business under a name identical or confusingly similar to the disputed domain name.

The Panel regards Mr. Vitaliijs Vilims as the Complainant, since the Complaint expressly states that the Complainant is a Union (Latvian) citizen. Mr. Vitaliijs Vilims also explains in a nonstandard communication file that the disputed domain name was registered with him as a “private person”.

This indicates that he cannot refer to a trademark registered to the company “ROBOLOGIC”.

Besides this, the registration of the EU trademark “Robologic” followed years after the registration date of the disputed domain in 2017. Regardless of the legitimacy of the registration, according to the Parties' contentions, the Respondent is currently registered as the domain name holder. The Complainant did not establish prima facie that the domain name has been registered by its holder without rights or legitimate interest.

While a domain name itself is not protected, protection can be granted, if the domain name points to a website which is used as a business identifier or company name. The Respondent argues that it has been using the “Robologic” mark as well as the disputed domain name for its services and as a company name already before the registration of the trademark. Thus, even if the Complainant could refer to the beforementioned trademark, there could also exist opposing rights or legitimate interests of the Respondent in the disputed domain name.

Furthermore, the Parties argue about the legitimacy of the domain name ownership. The Complainant claims that the disputed domain name should be transferred to him, because the Complainant first registered this domain in 2017 and still holds rights to the domain name.

The Respondent, however, considers itself to be the legitimate owner.

The Panel concludes that these arguments and this main subject of the dispute are not suitable to be resolved in accordance with the ADR Proceedings. ADR is a tool designed for cases of speculative and abusive registrations. It is not applicable for all .eu domain name disputes. The ADR Proceedings aim at excluding risks of confusion for a protected right caused by a similar or identical domain name. In contrast to this, the disagreement of the Parties concerns the ownership/holder position of the disputed domain name as well as the fact whether the Respondent was entitled to transfer the disputed domain name to itself and whether an agreement between the Parties about using the domain name existed. There may be relations between the parties which would lead to a different decision before an ordinary civil court, but this cannot be judged by the panel in this kind of proceedings.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B (12) (b) and (c) of the Rules, the Panel orders that the Complaint is denied.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2023-07-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: ROBOLOGIC.EU

II. Country of the Complainant: Latvia, country of the Respondent: Germany

III. Date of registration of the domain name: 29 May 2017

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
1. word trademark registered in EU, reg. No. 018815352, for the term ROBOLOGIC, filed on 21 December 2022 registered on 14 April 2023 in respect of goods and services in class 07

V. Response submitted: Yes

VI. Domain name is neither identical nor confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules): Not applicable (N/A)

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules): N/A

IX. Other substantial facts the Panel considers relevant:

Owner of the relevant EU trademark is not the Complainant. The dispute mainly concerns the ownership/holder position of the disputed domain name as well as the fact whether the Respondent was entitled to transfer the disputed domain name to itself and whether an agreement between the Parties about using the domain name existed. The Panel concludes that this subject is not suitable to be resolved in accordance with the ADR Proceedings.

X. Dispute Result: Complaint denied

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

XII. [If transfer to Complainant] Is Complainant eligible? [Yes/No] N/A