Panel Decision for dispute CAC-ADREU-008535

Case number	CAC-ADREU-008535
Time of filing	2024-03-25 15:33:28
Domain names	mensik.eu

Case administrator

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

Complainants

Name	Bc. Petr Menšík
Name	Tomáš Menšík

Respondent

Name	Bohumil Straka

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 CAC already held the proceeding regarding the domain name <mensik.eu>. The Complainant in that case was Mgr. David Menšík, the Respondent was the same (Bohumil Straka). The Complaint was rejected by the panel decision published on February 20, 2023 under case no. CAC-ADREU-008448. The parties of this dispute are not identical (different Complainant), therefore the Panel did not consider this case as refiled.

Panel is not aware of any further proceedings.

FACTUAL BACKGROUND

The Respondent, Mr. Bohumil Straka, based in the Czech Republic, registered the disputed domain name <mensik.eu> on 7 June 2006.

On 21 December 2023, the Complainant, Mr. Petr Menšík, submitted its Complaint to the ADR Court claiming that the Respondent registered the disputed domain name without rights or legitimate interest in the name.

The second Complainant in this case, Mr. Tomáš Menšík, was not active in this proceeding.

After notification of the Panel about deficiencies of the Complaint regarding scope and nature of the remedies sought, the Complainant clarified that he seeks transfer of the disputed domain name to himself (i.e. to the Complainant).

A. COMPLAINANT

The Complainant states that its family name is Menšík and that the disputed domain name <mensik.eu> contains a family name protected by national law which is identical to the surname of the Complainant (Menšík).

The disputed domain name is not used and has been offered for sale for USD 761. The Complainant contacted the Respondent and offered the disputed domain name to be bought for EUR 12. There was no response to such offer from the Respondent.

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name since "Menšík" is neither Respondent's family name nor his company name and has not been used for non-commercial or fair use purposes by the Respondent.

The Complainant also upholds that the disputed domain name was registered in bad faith because the Respondent registered or acquired the disputed domain name primarily for speculative purposes.

The Complainant presented the following evidence:

- photo of Complainant's ID card with the family name Menšík

B. RESPONDENT

The Respondent failed to provide its Response within the required deadline.

DISCUSSION AND FINDINGS

Applicable Regulations and Rules:

- Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 („**Regulation**“);
- Commission Implementing Regulation (EU) 2020/857 of 17 June 2020 laying down the principles to be included in the contract between the European Commission and the .eu top-level domain Registry in accordance with Regulation (EU) 2019/517 of the European Parliament and of the Council („**Implementing Regulation**“);
- .eu Alternative Dispute Resolution Rules (”**ADR Rules**”) applicable to alternative dispute (ADR) resolution procedure under Article 11 of the Implementing Regulation;
- Supplemental ADR Rules of the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic applicable to alternative dispute (ADR) resolution procedure under Article 11 of the Implementing Regulation (“**Supplemental ADR Rules**”).

Legal Grounds for Decision:

Under Article 4(4) of the Regulation and the Article B11(d)(1) of the ADR Rules, the disputed domain name may be revoked, and where necessary subsequently transferred to another party, if it is:

(i) identical or confusingly similar to a name in respect of which a right is established by Union or national law, and where:

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

(iii) it has been registered or is being used in bad faith.

Complainant’s Rights to the Name

Article 4 (4) and Paragraph B11(d)(1)(i) of the ADR Rules requires that the disputed domain name be “identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or European Union law”.

Such rights are listed in Article 9(2) of the Implementing Regulation and Article B1(b)(9) of the ADR Rules and include copyright, trademarks, and geographical indications provided in Union or national law, and, in as far as they are protected under national law in the Member States where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.

The Complainant presented evidence (a copy of his Czech identity card) which shows that his family name is “Menšík”.

The family names enjoy protection according to the Section 77(1) of the Czech Civil Code based on which “The name of an individual is composed of his given name and surname and his other names, where applicable, and surname at birth which pertain to him on the basis of a statute. Every individual has the right to use his name in legal transactions, as well as the right to the protection of and respect for his name” as well according to the Section 78(1) of the Czech Civil Code based on which “An individual who is affected by having the right to his name disputed or who has suffered harm due to an unlawful interference with this right, in particular by unauthorized use of the name, may claim that the unlawful interference be refrained from or its consequence remedied”.

The Panel therefore concluded that the Complainant has established that (i) his family name is Menšík and (ii) such family name is protected by the laws of Czech Republic and could be deemed as protected right within the meaning of the Article 9(2) of the Implementing Regulation and Article B11(b)(9) of the ADR Rules.

Identity and/or Confusing Similarity to the Name

As the Complainant family name is fully incorporated within the disputed domain name, the Panel therefore concludes that the disputed domain name is identical with the Complainant’s family name. Czech diacritics in the family name of the Complainant cannot reverse such conclusion since the domain names are customarily registered without diacritics or special characters of a particular language and are commonly limited to the standard ASCII character set.

For sake of completeness, the Panel asserts that the top-level suffix in the disputed domain name (i.e. the “.eu”) must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a name in respect of which a right is established by Union or national law (of the EU Member State) to which the Complainant has rights (within the meaning of Article 4, paragraph 4 of the Regulation and Paragraph B11(d)(1)(i) of the ADR Rules).

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Registration of Disputed Domain Name without Rights or Legitimate Interest

The Article B11(e) of the ADR Rules lists circumstances that may demonstrate Respondent's rights to or legitimate interests in the disputed domain name (for the purposes of Paragraph B11(d)(1)(ii) of ADR Rules).

The Complainant's assertions that the Respondent (whose family name is Straka) is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name.

However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph Article B11(e) of the ADR Rules).

Given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by ADR Rules.

Therefore, in the light of the foregoing, the Panel holds that the Respondent registered the disputed domain name without rights or legitimate interest within the meaning Article 4(4) of the Regulation and the Article B11(d)(1)(ii) of the ADR Rules.

Registration and Use of Disputed Domain Name in Bad Faith

Since the Complainant has satisfied the requirements of the Article 4(4) of the Regulation and the Article B11(d)(1)(ii) of the ADR Rules, the Panel finds the Complaint as justified.

Consequently, it is not necessary to examine further whether the "disputed domain name has been registered or is being used in bad faith" pursuant to Article 4(4) of the Regulation and the Article B11(d)(1)(iii) of the ADR Rules.

Eligibility of the Complainant

The Complainants, Mr. Petr Menšík and Mr. Romáš Menšík, are Union citizens as well as residents of EU member state (Czech Republic) and thus they satisfy the general eligibility criteria for registration set out in Article 3 of the Regulation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <mensik.eu> be transferred to the Complainant, Mr. Petr Menšík.

PANELISTS

Name	**Jiří Čermák**

DATE OF PANEL DECISION 2024-03-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: mensik.eu

II. Country of the Complainant: Czech Republic, country of the Respondent: Czech Republic

III. Date of registration of the domain name: 7 June 2006

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
family name: Menšík

V. Response submitted: No

VI. Domain name is identical to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. No
2. Why:

The Complainant's assertions that the Respondent (whose family name is Bohumil Straka) is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by ADR Rules.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name.

However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph Article B11(e) of the ADR Rules).

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Not discussed
2. Why:

Since the Complainant has satisfied the requirements of the Article 4(4) of the Regulation and the Article B11(d)(1)(ii) of the ADR Rules, the Panel finds the Complaint as justified. Consequently, it is not necessary to examine further whether the "disputed domain name has been registered or is being used in bad faith" pursuant to Article 4(4) of the Regulation and the Article B11(d)(1)(iii) of the ADR Rules.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

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

XII. Is Complainant eligible? Yes