Panel Decision for dispute CAC-ADREU-008611

Case number	CAC-ADREU-008611
Time of filing	2024-04-29 13:07:31
Domain names	fach.eu

Case administrator

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

Complainant

Name	Sebastian Axel Fach

Respondent

Name	Detlef Baur

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Sebastian Axel Fach, provided evidence that he is a Union citizen (in particular citizen of the Federal Republic of Germany) and his family name is Fach.

EURid confirmed that the disputed domain name was registered on 08 June 2015.

It further results from the undisputed evidence provided by the Complainant that the disputed domain name currently is offered for sale; in particular it resolves to a parking webpage displaying in German language an hyperlink “Diese Domain kaufen”, corresponding to English “Buy this domain”. By clicking to this hyperlink an online form is displayed, by filling out this form is possible to make an offer.

In addition, the undisputed evidence provided by the Complainant proves that the Complainant offered the Respondent to buy the disputed domain name for 50 EURO. The Respondent directly sent an email in reply to the Complainant demanding 1.500 EURO plus VAT for the disputed domain name.

In particular, he stated “meine Preisvorstellung liegt bei 1.500 EUR netto + MwSt. (MwSt. wird ausgewiesen; Angebot freibleibend). Wichtig: 20% Rabatt bei kurzfristiger Abwicklung!” P.S.: Zur Orientierung bzw. besseren Einschätzung meines Angebots lohnt sich ein Blick auf Dnjournal.com: https://www.dnjournal.com/ytd-sales-charts.htm Dort sehen Sie, welche Preise für Domains gezahlt werden“ (corresponding to English “my asking price is EUR 1,500 net + VAT. (VAT will be shown; offer subject to change). Important: 20% discount for short-term processing! P.S.: For orientation and a better assessment of my offer, it is worth taking a look at Dnjournal.com: https://www.dnjournal.com/ytd-sales-charts.htm. There you can see what prices are paid for domains”).

A. COMPLAINANT

Firstly, the Complainant points out that the disputed domain name <fach.eu> is identical to his family name “Fach”, which is protected under section 12 of the civil code of the Federal Republic of Germany.

Secondly, the Complainant contends that the Respondent, Detlef Baur, has no rights or legitimate interests in the disputed domain name. Neither his first nor his last name is in any way similar to the disputed domain name.

Moreover, according to the Complainant, the Respondent is even offering the disputed domain name for sale since 2015. Currently, under the domain name a bidding system is hosted, provided by Sedo. To prevent this dispute in the first place, the Complainant offered the Respondent 50€ for the disputed domain name. However, the Respondent rather asked for 1500€ in return. In the Complainant’s view, this behaviour clearly shows the Respondent’s commercial interest in the disputed domain name: To sell it for the highest offer. This can be seen as evidence for bad faith.

B. RESPONDENT

Firstly, the Respondent contends that “Fach” is a generic German word with several meanings (i.e. pocket, shelf, drawer, subject) and a frequent prefix in a lot of German words.

Furthermore, he contends that the ownership and trading of (generic) domain names is legal.

Finally, the Respondent contends that he never contacted the Complainant to sell the disputed domain name. The Complainant contacted him two times to get an offer. Only after his second inquiry the Respondent sent him an offer.

DISCUSSION AND FINDINGS

According to Recital 17 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 (“the Regulation”), an ADR procedure may be initiated by any party where the registration is speculative or abusive. In the present case, the question is therefore, whether the registration is speculative or abusive.

According to Article 4 (4) of the Regulation and Paragraph B 11(d)(1) of the ADR Rules, the Complainant bears the burden of proving the following:

1. the disputed domain name is identical with or confusingly similar to a name in respect of which a right is established by the national law of a Member State and/or European Union law; and either
2. the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
3. the domain name has been registered or is being used in bad faith.

Given the similarities between the ADR Rules and the UDRP, the Panel will refer to UDRP jurisprudence, where instructive.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are established by national law of a Member State and/or European Union law

Pursuant to Article 4 (4) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules, the Complainant must, first of all, establish that the disputed domain name is identical or confusingly similar to a name in respect of which a right is established by the national law of a Member State and/or European Union law.

It results from the undisputed evidence (i.e. copy of his identity card) before this Panel that the Complainant’s family name is Fach. According to section 12 of the German civil code (§12 BGB) a family name is a name in respect of which a right is established by national German Law.

The fact that a family name coincides with a generic word (descriptive of a trade and occupation) does not detract from any right that person has in their family name, see “Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition” (“CAC .EU Overview 2.0”), at section II.10. The Panel holds that this is the case here, where the term “Fach” is a generic term which has several descriptive meanings in German language as the Respondent correctly pointed out.

Furthermore, it is the consensus view among the panels that the applicable Top-Level Domain “.eu” may be disregarded in determining identity or confusing similarity, since it is viewed as a standard registration requirement (see CAC .EU Overview 2.0 at section III.1).

Hence, this Panel finds that the disputed domain name is identical to a name in respect of which a right is established by a national law of a Member State so that the Panel will proceed with the examination.

B. Rights or Legitimate Interests

Under Article 4 (4) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules, lack of rights or legitimate interests and registration or use in bad faith are considered alternative requirements for a successful complaint, as explained above. Taking into account that the Panel finds that the domain name has been registered or is being used in bad faith (see next Section), there is no need for the Panel to discuss in depth the second element (rights or legitimate interest).

C. Registered or Used in Bad Faith

It results from the undisputed evidence before the Panel that the disputed domain name has been registered or is being used in bad faith, pursuant to Article 4 (4) of the Regulation and Paragraph B(11)(d)(1)(iii) of the ADR Rules: In fact, the Respondent is offering the disputed domain name for public sale and in particular offered it for sale to the Complainant at a price of 1.500 EUR. This undisputed evidence is sufficient for the Panel to hold that there are circumstances indicating that the disputed domain name was registered primarily for the purpose of selling the disputed domain name to the holder of a name in respect of which a right is recognised or established by national and/or European Union law, or to a public body pursuant to Paragraph B(11)(f)(1) of the ADR Rules.

Finally, the Panel notes that the evidence indicates that the Respondent may have actually registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third persons, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. According to the Complainant’s uncontested allegations, the Respondent has offered the disputed domain name for sale for 1.500 EUR. This Panel finds that this sum is in excess of any out-of-pocket costs directly related to the disputed domain name (see Tosara Pharma Limited v. Super Privacy Service LTD c/o Dynadot / zuhal topuz, WIPO Case No. D2021-4062).

In addition, Panel found that the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered. These circumstances may be evidence of the registration or use of a domain name in bad faith: pursuant to Paragraph B(11)(f)(5) of the ADR Rules.

Hence, this Panel finds that the disputed domain name has been registered or is being used in bad faith.

D. Eligibility

The Complainant has requested the transfer of the disputed domain name to himself. The requested transfer of the disputed domain name to a Complainant can only be granted in case the Complainant is eligible to register .eu domain names according to Article 3 of the Regulation, see also Paragraph B(11)(b) of the ADR Rules. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

It is undisputed that the Complainant is a Union citizen (in particular a citizen of the Federal Republic of Germany). In the light of the above, the Panel holds that the Complainant meets the general eligibility criteria within the meaning of Article 3 of the Regulation and is therefore entitled to obtain transfer of 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 fach.eu be **transferred** to the Complainant.

PANELISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2024-04-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: fach.eu

II. Country of the Complainant: Germany; country of the Respondent: Germany

III. Date of registration of the domain name: 08 June 2015.

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

V. Response submitted: Yes

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

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules): left open

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: Disputed domain name offered for sale for 1.500 EUR.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. If transfer to Complainant] Is Complainant eligible? Yes