Panel Decision for dispute CAC-ADREU-008667

Case number	CAC-ADREU-008667
Time of filing	2024-10-24 12:28:50
Domain names	tvaruzky.eu

Case administrator

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

Complainant

Organization	A.W. spol. s r.o.

Complainant representative

Organization	ADVOCADO legal s.r.o.

Respondent

Name	Thomas Becker

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 is a company engaged in the production of a traditional cheese named “tvarůžky“, in particular “Olomoucké tvarůžky“.

In connection with its business, the Complainant uses its trade name and the phrase “pravé olomoucké tvarůžky“. On 10 July 2024, the Complainant learned that the domain name, "tvaruzky.eu", previously registered by the Complainant, had expired. When it sought to renew the registration, it was discovered that the domain name <tvaruzky.eu> had been registered by an unknown third party. The Complainant believes that the misuse of this domain could cause damage to the Complainant's personal rights, mislead consumers, or have other possible negative effects.

The Complainant therefore decided to protect its rights by using ADR proceedings before the Czech Arbitration Court (CAC). According to the Complainant, the claim relates only to a single domain name that has an obvious connection to the complaining's party business.

The Complainant is the proprietor of a Czech national registered combined word and device mark No. 204220, which includes the words Pravé olomoucké tvarůžky AW, has a priority date of 6 December 1993 and is valid until 6 December 2033.

A. COMPLAINANT

The Complainant contends that the domain name in question, <tvaruzky.eu>, is only one of a series of domain names used by the Complainant. The domain name in question is currently registered with the registrar Porkbun LLC. The Complainant argues that it continues to have rights to the domain names <tvaruzky.cz> or <olomoucketvaruzky.cz>. These domain names are directly derived from the combined trademark owned by the complaining party. On 10 July 2024, the Complainant learned that its domain had expired, and as soon as it wanted to renew it, it found out that the domain name <tvaruzky.eu> had been registered by an unknown third party.

B. RESPONDENT

The Respondent failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding to file an administratively compliant response. In fact, no response was filed at all.

DISCUSSION AND FINDINGS

The Panel accepts that the information provided by the Complainant shows that the Complainant holds rights to the name "tvaruzky" in the Czech Republic, where the word will be understood to refer to a particular type of cheese only manufactured in the Czech Republic according to a traditional recipe and which is entered in the Register of Protected Geographic Indications and Protected Designation of Origin by decision of 4 August 2010.

The term "Tvarůžky" is a proper noun and the name of the very cheese manufactured by the Complainant. This is confirmed by the translation provided by the platform Bing®. This shows that a link can be established to the above meaning of the term outside the Czech language as well.

The Complainant is also the proprietor of the registered domain name <tvaruzky.cz> which is used for the company website, thus also giving the Complainant rights in this name. The compound trademark of the Complainant translates as "Real Olomouc Tvarůžky" according to DeepL. The name in question therefore clearly refers to the cheese described above. The registered trademark and the trade names predate the registration of the disputed domain name by the Respondent after its lapse.

According to the Whois information available for the disputed domain name, the Respondent is a Mr. Thomas Becker residing at a given Munich address. The Respondent is not known or in any way related to the Complainant and is not authorized to use the trademark or trade names.

The disputed domain name is not actively linked to a website and a brief internet search did not retrieve any information about a person with the name of the Respondent residing at the given address.

On the basis of these facts, the Panel shall decide whether the conditions of Paragraph B(11)(d)(1) of the ADR Rules are satisfied and whether the disputed domain name should be transferred to the Complainant or not.

1. EARLIER RIGHTS

Paragraph B(11)(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”.

The Panel finds that the rights in the Czech domain name <tvaruzky.cz> and in the Czech national trademark registration "Pravé olomoucké tvarůžky AW" have been substantiated by the Complainant. Since the trademark is registered, it must be considered to be valid and enforceable against third parties. As the registered domain name and the trademark predate the registration of the disputed domain name, the Panel finds that the Complainant has successfully demonstrated prior rights to the name.

2. IDENTITY OR CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME

The disputed domain name consists of the element “tvaruzky” and the Top-Level Domain “.eu”.

This domain name is found to be highly similar to the earlier rights, based on the established practice that the addition of a Top-Level Domain to a trademark (in this case “.eu”) does not prevent a finding of confusing similarity.

This also applies to the Country Level Domain (in this case .cz) which makes the two domain names identical as the remaining element is the common word “tvaruzky”. The earlier trademark consists of a generic term for "original" and a geographic term "Olomoucké", leaving the elements "tvarůžky" and "AW" (the Complainant's company name) as the dominant and distinctive elements in the sign. The domain name <tvaruzky.eu> contains the distinctive element "tvaruzky" in its entirety. Despite the omission of the letter combination AW in the disputed domain name, this is a sufficiently strong overlap to come to a finding of similarity.

The Panel therefore finds that the disputed domain name is highly similar and thus confusingly similar to the Complainant’s trademark and for all practical purposes identical to the earlier domain name.

3. LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

Paragraph B(11)(d)(1)(ii) of the ADR Rules requires that the disputed domain name be “registered by the Respondent without rights or legitimate interest in the name."

According to Paragraph B(11)(e) of the ADR Rules, the legitimate interest condition is considered as fulfilled inter alia when the following conditions are met:

Circumstances including in particular, but not limited to, the following, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights to or legitimate interests in the domain name for the purposes of Paragraph B11(d)(1)(ii):
(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(2) the Respondent, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or European Union law;
(3) the Respondent is making legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in respect of which a right is recognised or established by national law and/or European Union law.

It is generally accepted that the overall burden of proof under the above provision rests with the Complainant, i.e. to establish that the

Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name. If the Respondent fails to answer such a case, the Complainant is deemed to have satisfied its burden of proof.

The Complainant has put forward that the Respondent does not have any rights or legitimate interests in the disputed domain name, and that it never authorized the Respondent to use its tradename as part of the disputed domain name. The Respondent is also not known by the disputed domain name.

The Respondent has not denied the Complainant's assertions, nor brought forward any information or evidence for demonstrating any rights or legitimate interests.

The Respondent therefore has not shown any rights or legitimate interests in the disputed domain name.

4. BAD FAITH

As it has been found that the Respondent has not established any rights or legitimate interests in the domain name, it is not necessary to examine whether the domain name has been registered or is being used in bad faith in accordance with Paragraph B11(d)(1)(iii) of the ADR Rules.

Having said that, it should be pointed out that any, even the most cursory internet search for the word "tvaruzky" whether with or without knowledge of the Czech language provides overwhelming references to the cheese in question, meaning that it cannot be assumed that the Respondent was unaware of the existence of this meaning when registering 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 <tvaruzky.eu> be transferred to the Complainant.

PANELISTS

Name	**Udo Pfleghar B.A. (Melb.)**

DATE OF PANEL DECISION 2024-10-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. Disputed domain name: tvaruzky.eu

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

   III. Date of registration of the domain name: 12 July 2024

   IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
   1. combined trademark registered in the Czech Republic, reg. No. 204220, for the term Pravé olomoucké tvarůžky AW, filed on 6 December 1993.
   other: Czech domain name tvaruzky.cz

   V. Response submitted: No

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

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

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

2. Other substantial facts the Panel considers relevant: -
3. X. Dispute Result: Transfer of the disputed domain name

XII. Is Complainant eligible? Yes