# Panel Decision for dispute CAC-ADREU-008744

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| Case number | CAC-ADREU-008744 |
| Time of filing | 2025-04-04 09:25:54 |
| Domain names | ksec.eu |

## Case administrator

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

## Complainant

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| Organization | KSEC Worldwide LTD |

## Respondent

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| Name | Samuel Matos |

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 requests the immediate transfer of the disputed domain name <ksec.eu> to the Complainant in consideration of his prior rights on the term KSEC.

The disputed domain name <ksec.eu> was registered by the Respondent on March 26, 2022.

In addition, it results, from the evidence provided by the Complainant, that the disputed domain name is currently offered for sale; it resolves to a simple parking webpage where it is valued EUR 3.999.

Finally, it results that the domain name in dispute was previously registered in the name of the Complainant (before Brexit).

A. COMPLAINANT

The Complainant, Mr. Kai Castledine, is the owner of the UK trademark no. 3456415 KSEC and the founder of KSEC LTD and KSEC Worldwide LTD, businesses that operate under the KSEC brand.

According to the Complainant, the disputed domain name <ksec.eu> was legitimately owned by the Complainant before Brexit and after Brexit (March 26, 2022) it was registered by the Respondent, Mr. Samuel Matos. The Respondent is not actively using the domain name in dispute but has just listed it for sale at EUR 3.999 on Sedo.com.

The Complainant's view is that the Respondent actions constitute bad faith registration under B(11)(e) ADR Rules, which prohibits speculative domain registrations intended for resale rather than legitimate use.

The Complainant bases its claims upon the following different rights on the term KSEC:

a) UK-registered KSEC trademark (UK00003456415), actively used by KSEC LTD and KSEC Worldwide, which operate in cybersecurity, security consulting, retail, and distribution industries;

b) Brand recognition in EU demonstrated by the previous ownership on the <ksec.eu> domain name (before Brexit) as well as by a pending EU trademark application for KSEC (no. 19151947);

c) Use of the name KSEC LTD and KSEC Worldwide LTD to serve a growing EU customer base, engaging in business transactions, sales, and educational training across multiple EU countries;

d) The circumstance that the KSEC brand is widely recognized in security and security consulting, with ongoing expansion efforts within the EU

market.

In particular, the Complainant outlines that the inability to use <KSEC.eu> disrupts business growth, causes brand confusion among EU customers, and prevents the Complainant from operating under its established brand name in the European Union.

Before the commencement of the present proceedings there was an exchange of correspondence between the parties in which, as stressed by the Complainant, the Respondent had admitted that he checked for trademarks before registering <ksec.eu>. This means, according to the Complainant, that the Respondent was fully aware of the KSEC brand and its prior use.

The Complainant notes that the domain name <ksec.eu> is currently listed for sale at the excessive price of EUR 3.999 on Sedo.com and, in his view, it constitutes bad faith according to the relevant case-law. In particular, the Complainant observes that the Respondent's behavior matches common cybersquatting tactics, where a domain is acquired not for personal or business use but to extract money from the rightful brand owner.

Furthermore, in the Complainant's view, the Respondent has no legitimate interest in the disputed domain since he is not known by the name KSEC and does not operate a business or brand under this name and considering that he has made no attempt to develop or use the domain for any legitimate purpose while it remains simply parked and listed for sale. The Complainant also notes that a simple search for KSEC online immediately shows results for the Complainant's businesses, further proving the Respondent's awareness of its commercial significance and value.

Finally, the Complainant refers to two prior ADR cases where the Respondent was found to have registered domain names in bad faith.

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B. RESPONDENT

The Respondent states that he has been actively engaged in the business of domain name registration and resale since 2020 and that, over this period, he has conducted numerous legitimate transactions in the domain industry. The Respondent's view is that the commercial practice of registering and reselling domains is both recognized and permitted under the applicable legal framework. In particular, the Respondent observes that, according to the relevant case-law, the mere fact that the domain is for sale is not sufficient to prove bad faith on the part of the Respondent as well as that the mere lack of active use of a domain name cannot be interpreted as bad faith use.

Furthermore, the Respondent observes that the term KSEC is generic and descriptive. This, in the Respondent's view, is evidenced by the existence of other companies and domain names operating under the term KSEC across Europe. Such widespread usage, according to the Respondent, supports the conclusion that KSEC is not exclusively associated with any single entity and does not inherently create consumer confusion or harm the goodwill of another party.

The Respondent also outlines that, at the time of the registration of the domain name in dispute, it was available for registration and that the same Respondent had no prior knowledge of any existing trademark for KSEC. The Respondent, as part of his due diligence, has also conducted a comprehensive search of European trademark registers and this search did not reveal that KSEC was a protected trademark within the European Union. Therefore, the Respondent decided to proceed with the registration of <ksec.eu> having considered KSEC as a generic and available name.

The Respondent, in consideration of the above arguments, denies the Complainant's assumption that he had knowledge of the Complainant's UK trademark since said assumption is not substantiated by any concrete evidence. Furthermore, according to the Respondent, the Complainant's UK trademark, registered post-Brexit, does not extend protection across the European Union.

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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 circumstances:

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 disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or
3. the disputed domain name has been registered or is being used in bad faith.

The Complainant based the complaint upon the following previous rights:

a) UK-registered KSEC trademark (UK00003456415)

b) Brand recognition in EU demonstrated by the previous ownership on the <ksec.eu> domain name (before Brexit) as well as by a pending EU trademark application for KSEC (no. 19151947)

c) Use of the name KSEC LTD and KSEC Worldwide LTD in European Union

Now, with reference to the UK registered trademark KSEC No. UK00003456415, as noted by the Respondent, it is not a right established by the European Union or a national law of the Member States.

With reference to the alleged brand recognition in the European Union, it must be carefully noted that the mere previous ownership of the domain name <ksec.eu> is absolutely insufficient in order to demonstrate the brand recognition in the European Union as well as the pending EU trademark application KSEC No. 19151947.

Coming to the above-mentioned EU trademark application (filed in name of Mrs. Marina Castledine, an employee of the company KSEC Worldwide), it must be stressed that said application may not be considered per se as a valid earlier right according to Article 4 (4) of the Regulation and Paragraph B 11(d)(1) of the ADR Rules for different reasons.

Firstly, it is not a trademark but only a simple published application for which opposition period is still pending and secondly it was applied for only on March 5, 2025 meaning almost three years after the registration of the domain name in dispute and immediately before the filing of the Complainant here considered.

With reference to the use of the term KSEC in the European Union invoked by the Complainant it must be considered Article 9 (2) of Regulation (EU) 2020/857 of 17 June 2020 ("the Implementing Regulation") since it lists the rights on which the complaint may be based as follow: "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".

Paragraph B 1(b)(9) of the ADR Rules states that: "the complaint shall specify the names in respect of which a right is recognized or established by the national law of a Member State and/or Community law. For each such name, describe exactly the type of right(s) claimed, specify the law or law(s) as well as the conditions under which the right is recognized and/or established".

Now, in the absence of a clear indication by the Complainant, it is possible to consider that he is basing the Complaint on a trade name, a business identifier a company name or an unregistered trademark.

Considering the above, it is the Panel's view that while the trade names, the business identifiers, unregistered trademarks and company names may be considered as relevant rights, that is only the case “as far as they are protected under national law in the Member-State where they are held”. In the Panel’s view, therefore, in order to rely on trade names, business identifiers, company names or on unregistered trademarks as constituting relevant rights, the Complainant is required to (i) prove to have said relevant right and (ii) establish that said relevant right is protected under the law of a Member State. However, the Complainant has not mentioned any applicable law in any Member State. Therefore, the Complainant has neither precisely identified the type of right claimed nor the law and conditions under which the right is recognized or established, while, the onus to do so, is obviously on the complainant side (see CAC Case No 07951 Philippe Dumas v. Naden Badalgogtapeh).

As highlighted by other panels (see CAC Case No 03239 Euro Suisse International Ltd, Mr Disby Tang v. Lehigh Basin Ltd), paragraph B 11 (d) of the ADR Rules makes it clear that ultimately the burden of proving the requirements of Article 4 (4) of the Regulation rests upon the complainant. In other words, the complainant must at a bare minimum put forward a prima facie case to the effect that a domain name should be subject to revocation. It is not sufficient for a complainant merely to assert that the requirements of the above-mentioned Article 4 (4) have been satisfied and to leave it to the panel to investigate whether this is correct.

The Complainant asserts that he has established rights within the European Union on the term KSEC. However, the Complainant has not provided any evidence of the ownership of said rights. Furthermore, the Complainant has not described exactly the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established. It is a common view that a simple allegation of the ownership of a right is not sufficient to meet the first requirement of Article 4 (4) of Regulation (see CAC Case No 06801 Crispin Chung v. M Jank).

Furthermore, it is the Panel's view that the Complainant is in the process of preparing for the use of the KSEC mark in the European Union. Actually, in his allegation the Complainant informs, by submitting a document dated March 12, 2025, that, as part of KSEC’s strategic growth, they have initiated plans to expand their physical presence within the European Union, including research in Brussels, Belgium, for a potential EU office location. This Panel's view is strengthened by the circumstance that the EU application for the trademark KSEC has been filed only last month (March 2025).

Now, being in the process of starting a business in the European Union is something different from having established rights in the European Union which implies the fact that, in some way, the right is recognizable by European Union consumers and in any case such recognizability must be demonstrated by the Complainant. In general, according to the Panel, the fact that the Complainant has failed to demonstrate the recognizability of its right in the European Union means that he has not satisfied his onus probandi.

Therefore, the Panel finds that the Complainant has failed to show evidence that he is the holder of a valid prior right in the European Union on the name KSEC, has not provided a clear reference to the type of right claimed, nor has he specified the law or laws as well as the conditions under which the right would be recognized and/or established.

In circumstances where the Complainant has failed to establish that he is the holder of rights in the name that are recognized or established under national and/or European Union law, the Panel does not need to assess whether the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and/or has been registered or is being used in bad faith (see CAC Case No. 07817 Stephan Man-Ngai Langmaack v. Yellow Network Limited, IT ADMIN).

For the above reasons, the Panel finds that the Complainant has not satisfied the requirements of Article 4 (4) of the Regulation.

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

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| Name | **Guido Maffei** |

DATE OF PANEL DECISION 2025-04-04

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <ksec.eu>

II. Country of the Complainant: United Kingdom, country of the Respondent: Portugal

III. Date of registration of the domain name: 26 March 2022

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
1. UK Trademark "KSEC" (word mark) filed on January 20, 2020 and registered on August 8, 2020 for goods and services included in classes 9, 16, 37, 38, 41, 42 and 45

2. EU Trademark application "KSEC" (word mark) filed on March 5, 2025 for goods and services included in classes 9, 16, 35, 38, 41, 42 and 45

3. unregistered trademark: "KSEC"

4. business identifier: "KSEC"

5. company name: "KSEC"

V. Response submitted: Yes

VI. Domain name/s is/are [identical/confusingly similar/neither identical nor confusingly similar] to the protected right/s of the Complainant: not applicable, because no evidence of any protected right, any description of the type of right claimed, any specification of the applicable law or laws, nor any condition under which the right is recognized and/or established have been provided.

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules): the issue was not assessed due to the fact that the first requirement of Article 4 (4) of the Regulation was not satisfied.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules): the issue was not assessed due to the fact that the first requirement of Article 4 (4) of the Regulation was not satisfied.

IX. Other substantial facts the Panel considers relevant: -

X. Dispute Result: Complaint denied