Panel Decision for dispute CAC-ADREU-008753

Case number	CAC-ADREU-008753
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Domain names	diamix.eu

Case administrator

Olga Slanařová (Case admin)

Complainant

Organization	Diamix Europe GmbH

Respondent

Organization	ITtrust Domain Services LTD

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 any other pending or decided legal proceedings which relate to the disputed domain name. The Complainant states that there are ongoing investigations against the former director of Diamix Europe GmbH and Diamix LLC regarding various alleged violations, including "unauthorized activities using the <diamix.eu> domain"; no records of pending legal proceedings, however, has been provided to the Panel.

FACTUAL BACKGROUND

The complainant is Diamix[1] Europe GmbH (the "**Complainant**"), a German company incorporated in 2014, registered in the relevant commercial register and operating, inter alia, in the animal feed additives trade under the trademark "DIAMIX and fig.".

A first complaint was filed on March 11, 2025 and subsequently amended on March 12, 2025 (the "**Complaint**").

Due to a lack of clarity of the Complaint and of indication of the relevance of the attached documents, on May 6, 2025, the Panel filed a non-standard communication requesting the Complainant further clarifications in accordance with Paragraph B(8) of the ADR Rules (the "**Panel Order**"). On May 9, 2025 the Complainant submitted a Clarification pursuant to Paragraph B(8) alongside with some documents (the "**Clarification**").

According to the information furnished by EURid's legal department, the domain name <diamix.eu> (the "**Disputed Domain Name**") was registered on October 25, 2013; the registrant is an Irish company named ITtrust Domain Services LTD., whereas the "On-site contact" organization is OOO Diamix, a company based in Russia whose address is Perevedenovskiy pereulok, d. 13, str.18, 1st floor, premises I, room 32, Moscow, 105082, Ulyanovskaya region, RU.

The Disputed Domain Name redirects to a web site whose content, following some searches conducted by the Panel by virtue of the general powers articulated inter alia in Paragraph B(7)a of the ADR Rules, is referred to a Russian company named Diamix LLC (ООО «Диамикс») whose address coincides with the address of the Russian company indicated as the "On-site contact" organization as per the information provided by EURid's legal department. Indeed, according to the Privacy Policy accessible through the website "diamix.eu" the appointed data protection controller is Diamix LLC., Perevedenovsky Pereulok, 13, Bldg. 18, Floor 1, Office 1, Room 32, 105082, Moscow, Russia". Likewise, in the section entitled "Quality" of the website, there are two certificates addressed to Diamix LLC.

The above findings are also consistent with the allegations of the Complainant who addresses the company Diamix LLC as the respondent.

As a result, it appears clear that the ultimate owner and the entity with the control over the Disputed Domain Name is in fact the Russian company Diamix LLC despite it being indicated just as the "On-site contact". Therefore, the Panel will refer to both companies, ITtrust Domain Services LTD (the nominal respondent) and LCC Diamix, as the Respondent [2].

[1] It should be noted that, following a Panel Order issued on May 6, 2025, the Complainant clarified that the correct name of the company is "Diamix Europe GmbH" and not "Diamax Europe GmbH" as originally indicated in the Complaint.

[2] For a similar decision in a case involving ITtrust Domain Services LTD as the nominal respondent, see WIPO Administrative Panel Decision Case No. DE2020-0031.

A. COMPLAINANT

The Complainant claims to be the legitimate owner of the “Diamix brand in Europe”, without, however, submitting any evidence of the ownership and with no specification as to whether the trademark is registered or unregistered.

Upon a specific request of clarification as to the nature and type of right on which the Complaint was based, the Complainant clarified that the right asserted was its company name, i.e. “Diamix Europe GmbH”, specifying that it constitutes a protected commercial designation under German law (Section 5 of the German Trademark Act).

The Complainant also asserts that the Disputed Domain Name is currently controlled by ITtrust Domain Services LTD which registered it “on behalf of Diamix LLC (ООО «Диамикс»)” and specifies that this company has no ongoing relationship with Diamix Europe GmbH and is now controlling and using the Disputed Domain Name unlawfully.

The Complainant further claims that the former director of the company, Oksana Barabakh, and Diamix LLC continue to engage in unlawful communications with clients and refuse to transfer access to the company’s email archive, creating confusion among customers and damaging Diamix Europe GmbH. According to the Complainant, the Disputed Domain Name is used “for activities unrelated to DIAMIX EUROPE GMBH” and the alleged misleading usage (mainly unauthorized customer communications conducted through the Disputed Domain Name) creates confusion among customers and damages the reputation of the Complainant.

As to the lack of right or legitimate interest of the Respondent, the Complainant emphasizes that, due to the current control of the Disputed Domain Name by Diamix LLC, ITtrust Domain Services LTD is enabling a Russian company, i.e. a non-eligible entity, to use a .eu domain name, in violation of Article 3 of Regulation (EU) 2019/517.

Moreover, the Complainant states that Diamix LLC has deliberately refused to return access to the company’s corporate email archive, “preventing DIAMIX EUROPE GMBH from accessing critical business correspondence” and resulting in a violation of the “European data protection laws and corporate governance principles”.

B. RESPONDENT

ITtrust Domain Services LTD and Diamix LLC did not submit a formal response, despite timely reminders and the official notification of default to the nominal Respondent.

DISCUSSION AND FINDINGS

According to Article 4(4) of the Regulation (EU) 2019/517 (the "**Regulation**") and Paragraph B11(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.1. Identity or confusing similarity

In the present case, the Complainant first asserted to be the “legitimate owner of the DIAMIX brand in Europe”. The Complainant, however, did not submit any evidence of the ownership of the “Diamix brand” nor specified whether the “Diamix brand” is a registered or unregistered trademark.

In response to the Panel’s request, the Complainant further stated that the right asserted is instead its company name, i.e. “Diamix Europe GmbH”, which constitutes a protected commercial designation under German law (Section 5 of the German Trademark Act[1]). In order to prove the ownership of this company name, the Complainant submitted an excerpt (dated May 8, 2025) from the Commercial Register B of the Local Court of Lüneburg: this document records the incorporation of “Diamix Europe GmbH” on 31.01.2014 as well as the legitimacy of the current CEO, Dimitriy Nurseitov. Furthermore, the Complainant submitted an Audit certification, compiled by the German certification agency OHMI EuroCert GmbH, certifying the business activity of the company and a series of invoices, certifying the commercial use of the Diamix brand in the past (i.e. before the filing of the Complaint).

Considering that the company name is a relevant right both under Article 9(2) of the Regulation (EU) 2020/857 and under Paragraph B1(b)(9) of the ADR rules and in the light of the documents submitted by the Complainant in attachment to the Clarification, the Panel finds that the Complainant showed ownership of a right established by a national law.

As for the similarity between the Disputed Domain Name and the relevant right, this is self-evident: the Disputed Domain Name fully contains the term “DIAMIX”, which is also included in the company name of the Complainant.

Therefore, the first condition set forth under Article 4(4) of the Regulation and Paragraph B11(d)(1)(i) of the ADR Rules is fulfilled.

2. Rights or legitimate interests

The Complainant, according to Paragraph B11(d)(1)(ii) of the ADR Rules, is also required to prove the lack of rights or a legitimate interest of the Respondent in the Disputed Domain Name.

Regarding this requirement, it is necessary to point out that, as a general principle, the burden of proof still lies with the complainant and that a default by the respondent does not mean by itself that the complainant automatically fulfilled this task[2].

However, in accordance with the jurisprudence summarized in the “CAC.EU 2.0 overview” and with the WIPO Jurisprudence[3], it might be difficult for a complainant to prove negative facts because some required information is only within the knowledge of the respondent. Hence, should the complainant be able to make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name, then the burden of proof shifts to the respondent and if the respondent fails to show evidence of rights or legitimate interests, it is deemed to have none.

In the present case, however, the Complainant failed to make even a prima facie case that the Respondent lacks rights and legitimate interests.

First of all, the Complainant has not even expressly claimed that the Respondent lacks right or legitimate interest in the Disputed Domain Name. Indeed, the allegations of the Complainant with reference to this requirement focus on the circumstance that by controlling the Disputed Domain Name ITtrust Domain Services LTD is allowing a non-eligible entity, the Russian company Diamix LCC, to use the Disputed Domain Name. Whereas the non-fulfillment by the domain name holder of the eligibility criteria pursuant to Article 3 of the Regulation may lead the Registry to revocation of the domain name under Article 4 (3) of the Regulation, the fact that a web site is used by a non-eligible entity does not mean that such entity has no right or legitimate interest in the related domain name.

Likewise, the fact that the web site to which the Disputed Domain Name points is “used for activities unrelated to DIAMIX EUROPE GMBH” does not necessarily mean that the company to which the content of the website is referred (namely Diamix LLC) has no right or legitimate interest to use it.

It is true that the Complainant claims that the current use of the Disputed Domain Name by Diamix LLC is unauthorized and that the latter has no ongoing legal or contractual relationship with Diamix Europe GmbH; it is also clear, however, by examining the documents submitted by the Complainant that some kind of relationship existed in the past between the two companies (amongst the others, the letterheads submitted by the Complainant show the contact details of both companies[4]). What is not clear and has not been proved is which one of the two companies is the legitimate owner of a prior right on the name “diamix” which corresponds to the Disputed Domain Name.

This uncertainty is particularly blatant in the light of the fact that, as a result of some searches conducted by the Panel by virtue of the general powers articulated inter alia in Paragraph B(7)a of the ADR Rules, Diamix LLC appears to be the owner of international trademark registration n. 1192656 for “DIAMIX and fig.” registered on November 22, 2013 for products in classes 1, 3, 5,31 and 40 designating the EU, Belarus and Ukraine. Moreover, the company name of Diamix LLC also includes the name “diamix” likewise the Complainant’s company name.

In conclusion, though the Respondent failed to submit a response, the Panel finds that the Complainant did not show a prima facie evidence of lack of right or interest of the Respondent in the Disputed Domain Name and therefore it is not possible to consider the lack of response of the Respondent as grounds to accept the claims of the Complainant. As a result, the Complainant has not lifted the burden of proof of the second requirement under Paragraph 11(d)(1)(ii) of the ADR Rules.

3. Bad Faith

In order to meet the other alternative requirement under Paragraph B11(d)(iii) of the ADR Rules, the complainant must prove that the domain name was registered or used in bad faith.

Although the Complainant does not specifically address any of the codified cases of bad faith, its allegations deserve attention, considering that both the Paragraph B11(f) of the ADR Rules and the jurisprudence of the CAC[5] establish that bad faith is not limited to the codified circumstances.

The allegations of the Complainant regarding the bad faith of the Respondent focus on the following circumstances:

- the Disputed Domain Name is currently being used by Diamix LLC to conduct commercial activities not related to Diamix Europe GmbH, damaging the reputation of the latter;
- the former director of the company, Oksana Barabakh, and Diamix LLC continue to engage in unlawful communications with clients and
- refuse to transfer access to the company’s email archive, creating confusion among customers and damaging Diamix Europe GmbH.

The allegations, however, are very generic and no reference to specific bad faith conduct may be found in the Complaint whereas, in the lack of any explanation by the Complainant of their relevance, none of the various documents submitted by the Complainant prove the above allegations.

Therefore, The Panel concludes that the requirement of bad faith under Article 4(b) of the Regulation and Paragraph 11(d)(1)(iii) of the ADR Rules has not been proven.

4. Complainant’s requests.

The remedies sought by the Complainant are the following:

1) Order the transfer of the Disputed Domain Name to the Complainant;

2) require the correction or deletion of any incorrect registration details to prevent unauthorized control over the Disputed Domain Name

3) Impose a hold on any changes to the Disputed Domain Name registration or transfer to third parties until the conclusion of this ADR proceeding.

The Panel must point out that only the first claim can be granted in this proceeding, as the second one falls outside the scope of this proceeding, such a remedy not being provided for under the ADR Rules. As for the third request, although this Panel again considers that such authority does not fall within their powers, it is nevertheless noted that, according to the current WHOIS domain name registration information, the Disputed

Domain Name is already on hold.

[1] According to the official English translation on the German Federal Ministry of Justice' website, The German Trademark Act, Section 5 states as follows: "(1) Company signs and titles of works shall enjoy protection as commercial designations; (2) Company signs are signs used in trade as a name, company name or special designation of a business operation or an enterprise. Business signs and other signs intended to distinguish the business operation from other business operations which are regarded as signs of the business operation within affected trade circles shall be deemed equivalent to the special designation of a business operation; (3) Titles of works are the names or special designations of printed publications, cinematic works, music works, stage works or other comparable works" (https://www.gesetze-im-internet.de/englisch_markeng/englisch_markeng.html).

[2] CAC.EU Overview 2.0, p. 46

[3] See, inter alia: WIPO Administrative Panel Decision Case No. DEU2020-0015; WIPO Administrative Panel Decision Case No. DEU2020-0031; WIPO Administrative Panel Decision Case No. D2021-2742.

[4] This past relationship is, after all, confirmed by the Complainant itself in the e-mail sent to the EURid legal Team.

[5] See CAC .EU Overview 2.0, p. 57.

DECISION

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

Name	Ilaria Carli

DATE OF PANEL DECISION 2025-05-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: diamix.eu

II. Country of the Complainant: Germany, country of the Respondent: Ireland and Russia

III. Date of registration of the domain name: October 25, 2013

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

V. Response submitted: No

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):
1. No prima facie case lack of rights or legitimate interests of the Respondent
2. Why: The is the owner of international trademark registration n. 1192656 for "DIAMIX and fig." registered on November 22, 2013 for products in classes 1, 3, 5,31 and 40 designating the EU, Belarus and Ukraine. Moreover, the company name of the Respondent also includes the name "diamix" likewise the Complainant's company name.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. No
2. Why: The allegations are very generic and no reference to specific bad faith conducts may be found in the Complaint whereas, in the lack of any explanation by the Complainant of their relevance, none of the various documents submitted prove the bad faith allegations.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Complaint denied

XI. Procedural factors the Panel considers relevant: Lack of clarity of the Complaint and lack of indication of the relevance of the attached documents

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