Panel Decision for dispute CAC-ADREU-008733

Case number	CAC-ADREU-008733
Time of filing	2025-06-05 11:06:03
Domain names	flightscope.eu

Case administrator

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

Complainant

Name	Mr Thomas Johnson

Complainant representative

Organization	FlightScope Group Services Pty Ltd

Respondent

Organization	KEY DOMAINS UNIPESSOAL LDA

Respondent representative

Organization	KEY DOMAINS UNIPESSOAL LDA

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

It results from the Complainant's undisputed allegations that it forms part of a group of companies serving customers in more than 100 countries globally and operating amongst others in South Africa and Europe. In particular the Complainant runs a fully owned subsidiary in Poland, i.e. FlightScope Europe sp. z o.o..

Furthermore, the Complainant’s substantiated and undisputed documentation confirmsthat it owns an international portfolio of trademarks consisting of or including the term <FlightScope>, in particular the following two European Union Trademarks:

1. No. 011596525 <FlightScope> (figurative) filed on 22 February 2013 and registered 22 July 2013 for goods and services in classes 9, 28 and 45. This mark has duly been renewed and is in force;

2. No. 019065200 <FlightScope> (verbal) filed on 7 August 2024 and registered 24 December 2024 for goods in class 9.

EURid confirmed that the Respondent registered the disputed domain name on 1 May 2024. The language of the registration agreement is English.

Finally, the record, as supported by the Complainant’s unrefuted evidence, further indicatesthat the disputed domain name resolves to a domain broker service that offers the disputed domain name for sale for 3.250 Euro to the public.

A. COMPLAINANT

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

1. its Complaint is based on its EU-trademark rights dating back to 2013 pointing out that marketing and sales efforts commenced in Europe in the early 2000's. In particular, the Complainant's EU business developed from individual customers, to resellers, to a wholly owned subsidiary business, i.e. FlightScope Europe Sp. Z.o.o. in 2016, and an online store (2021). In addition, the Complainant relies on evidence of active use of its FlightScope-brand in Europe in 2007, 2008, 2011;

2. its efforts over time to acquire the disputed domain name were not successful because at all times it had been registered to another party(ies). Its online store launched in 2021 was therefore forced to adopt an alternative domain name, www.flightscopemevo.eu;

3. customers and potential customers were unable to naturally and reliably access its online store or the company's online resources for information and customer support. Online searches are impeded by the unavailability of the domain name to the Complainant, resulting in lost sales and damage to the Complainant's brand reputation. Complainant further contends that the Respondent's intent is purely to profit from a well-known brand by holding the URL from a reasonable and legitimate user. It considers this to be a clear case of abusive registration.

Consequently, the Complainant requested the transfer of the disputed domain name to itself. Pursuant to the Panel's procedural order of 6 June 2025 seeking clarification as to whether the transfer should be made to it directly or to its Polish subsidiary, the Complainant confirmed that it seeks the transfer to itself.

B. RESPONDENT

The Respondent requests that the ADR Panel dismisses the Complaint in its entirety.

In support of his request, he notably ascertains that:

1. the disputed domain name consists of two ordinary English words ("Flight" + "Scope") frequently combined in aviation, software and scientific contexts, none of which relate to the complainant's golf-technology niche;

2. there is nothing per se wrong in selling domain names and numerous ADR panels, e.g. CAC-ADR.EU-008611, have acknowledged that trading in generic names is a bona fide business model that establishes a legitimate interest. Sedo itself positions domain parking as a legitimate, advertisement-supported interim use. Respondent claims to have offered to reduce the public asking price substantially as a commercial gesture, hardly the conduct of a cybersquatter demanding an "exorbitant ransom." Commentary on UDRP/ADR practice notes that legitimate investors routinely quote market prices for descriptive domains.

3. without prejudice to its rights, Respondent underlines to remain willing to negotiate an amicable purchase price with Complainant on reasonable commercial terms. This open stance undercuts any allegation that the domain name was obtained "primarily" to block or extort the Complainant.

DISCUSSION AND FINDINGS

A. Discussion and Findings

According to Recital 17 of 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.

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:

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

Furthermore, Paragraph B (10) of ADR Rules provides that "[i]f a Party fails to comply with any of the time periods established by these ADR Rules or by the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party."

B. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or Community law

Pursuant to 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 recognized or established by the national law of a Member State and/or Community law.

It is established by the Complainant's uncontested documentary evidence before this Panel that the Complainant is the registered owner of European Union Trademark No. 011596525 <FlightScope> (figurative) registered 22 July 2013. It is further the registered owner of a second European Union Trademark No. 019065200 <FlightScope> (verbal) filed on 7 August 2024 and registered 24 December 2024. This trademark is, however, younger than the disputed domain name, which was registered by the Respondent on 1 May 2024.

Several panels have held that a figurative trademark/service mark may constitute a relevant right, if a word can be clearly separated and distinguished from the other elements constituting said mark. The question of whether a figurative mark holds relevant rights to a specific domain name must be assessed under the criterion of "Identity or confusing similarity" (see section II. 4 of the 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"). In the present case, the Panel finds that the verbal component "FlightScope" is clearly discernible and distinguishable from the figurative elements of European Union Trademark No. 011596525 for the purposes of evaluating the first element, and thus concludes that it is confusingly similar to the disputed domain name.

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

C. 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. Therefore, once the Panel determines that one of these two elements is satisfied, it is not required to examine the remaining element. Taking into account that the Panel finds that the disputed domain name has been registered or is being used in bad faith (see next Section), the Panel will not discuss the second element (rights or legitimate interest).

D. 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 offered the disputed domain name for public sale at a price of 3.250 Euro. In its Response, the Respondent emphasized that it remains willing to negotiate an amicable purchase price with the Complainant on reasonable commercial terms. It is true, as the Respondent points out, that there is nothing per se wrong with selling domain names and, therefore, an offer to sell is not necessarily proof of bad faith. However, it can be an indication of bad faith when combined with other circumstances indicative of bad faith (see section V. 6 CAC .EU Overview 2.0). In the present case, the Panel holds 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.

These additional circumstances are, in particular, the following:

1. the lack of use of the disputed domain name;
2. the disputed domain name being identical to the Complainant's distinctive verbal sign "FlightScope", which is also part of its company name;
3. the Respondent using "FlightScope" as a sign since more than 25 years, i.e. since approximately 1999 and in Europe the early 2000's;
4. the requested price amounting to valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name (see Sebastian Axel Fach vs. Detlef Baur, CAC-ADREU-008611).

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

In the light of the above, the Complainant is therefore deemed to also have satisfied Paragraph B(11)(d)(1)(iii) of the ADR Rules.

E. Eligibility

The Complainant has expressly requested that the disputed domain name be transferred to itself. However, such a transfer may only be granted if the Complainant satisfies the eligibility requirements for .eu domain name registration as set out in Article 3 of the Regulation, see also Paragraph B(11)(b) of the ADR Rules. Where these requirements are not met, the Panel's authority is limited to ordering revocation of the domain name; a transfer cannot be granted.

Article 3 of the Regulation stipulates that eligibility for registering a .eu domain name is limited to:

a. a Union citizen, independently of their place of residence;
b. a natural person who is not a Union citizen and who is a resident of a Member State;
c. an undertaking that is established in the Union; and
d. an organisation that is established in the Union without prejudice to the application of national law.

In the present case, the Complainant has confirmed - pursuant to the Panel's procedural order requesting clarification - that it seeks the transfer of the disputed domain name to itself, namely to an undertaking established in South Africa, and not to its Polish subsidiary. However, the Complainant does not satisfy any of the eligibility conditions listed above.

Consequently, and in accordance with Paragraph B(11)(b) of the ADR Rules, the Panel is not empowered to order a transfer and is instead limited to ordering revocation 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 disputed domain name <flightscope.eu> be revoked.

PANELISTS

Name	Tobias Malte Müller

DATE OF PANEL DECISION 2025-06-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: flightscope.eu

II. Country of the Complainant: South Africa; country of the Respondent: Portugal

III. Date of registration of the domain name: 1 May 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 EU, reg. No. 011596525 <FlightScope> filed on 22 February 2013 and registered 22 July 2013 for goods and services in classes 9, 28 and 45. This mark has duly been renewed and is in force.

V. Response submitted: Yes

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

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules): Not discussed

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes:

2. Why: Respondent is offered the disputed domain name for public sale at a price of 3.250 Euro. Furthermore, the Panel took into consideration the following additional circumstances:

1. the lack of use of the disputed domain name;
2. the disputed domain name being identical to the Complainant's distinctive verbal sign "FlightScope", which is also part of its company name;
3. the Respondent using "FlightScope" as a sign since more than 25 years, i.e. since approximately 1999 and in Europe the early 2000’s;
4. the requested price amounting to valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: None