Panel Decision for dispute CAC-ADREU-008771

Case number	CAC-ADREU-008771
Time of filing	2025-06-16 19:20:46
Domain names	spehar.eu

Case administrator

Olga Slanařová (Case admin)

Complainant

Name	Miroslav Spehar

Respondent

Organization	DREAMSCAPE NETWORKS LIMITED

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

None of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant is a Croatian national, who provides an address in Vienna.

The domain name <spehar.eu> (the "Domain Name") was registered, on 9 July 2011.

According to information provided by EURid, the registrant of the Domain Name is a company with an address in Cyprus. The Cyprus Company Registry does not record any company with the current name Dreamscape Networks Limited, but there is a company with the name Dreamscape Networks Europe Limited (registration number HE 296178), which adopted that name in January 2012.

No active website operates from the Domain Name.

A. COMPLAINANT

The entirety of the substantive text of the Complaint initially filed by the Complainant was as follows:

"Looking into the domain, it seems that the domain is registered, but unused. And it was registered first time in 2011.

As mentioned here (https://eurid.eu/en/manage-your-eu/domain-name-disputes/), speculative purposes are one of the reasons for disputes."

Following receipt of EURid's verification response, and having been invited to do so by the Czech Arbitration Centre, the Complainant filed an Amended Complaint as follows:

"Firstly, the disputed domain name <spehar.eu> is identical to my family name

SPEHAR" written in ascii (in non ascii charset there is a specific croatian letter that is in westen countries used as S). As mentioned in case CAC-ADREU-008246 family name is expressly listed as a protected rights in Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration (hereinafter referred to as The Policy Regulation) at art. 10.

Secondly, in eurid information, address from respondent has a word "sales" in the name (sales@dreamscapenetworks.ae) is mentioned as a contact address, yet there is no response when trying to contact them. Address currently does not point to any active website. Internet investigation does not show any other EU relevance for the respondent or the link of the name spehar connected to respondent. It looks as there

is no legitimate interest from respondent in this domain.

Thirdly, there have been at least one case where a domain was registered in bad faith with CrazyDomains (WIPO Case No. D2015-0773).”

B. RESPONDENT

No Response was filed in these proceedings.

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

Initially, the grounds upon which a Complainant might be brought were set out in detail in EU law, and in particular Commission Regulation (EC) No 874/2004 as amended (the “Old Regulation”).

However, Regulation No 874/2004 was repealed and replaced by Regulation (EU) 2019/517 (the “New Regulation”).

Article 4 (4) of the New Regulation states:

"A domain name may … be revoked, and where necessary subsequently transferred to another party, following an appropriate ADR or judicial procedure, ... where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith."

Article 11 of the New Regulation requires inter alia for the contract between the Commission and the Registry to provide for an ADR policy. The current ADR Rules are those for that policy and the requirements of Article 4 (4) of the New Regulation are repeated in paragraph A.11(d)(1) of the ADR Rules.

Article 21(2) and (3) of the Old Regulation contained a non-exhaustive list of examples of circumstances which might demonstrate the existence of a legitimate interest and bad faith. These provisions were not replicated in the New Regulation, but essentially that same list is now to be found in paragraphs A.11 (e) and (f) of the ADR Rules promulgated pursuant to the New Regulation.

Paragraph B.10 of the ADR Rules provides that:

"(a) If a Party fails to comply with any of the time periods established by these ADR Rules or 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) If 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. Unless otherwise provided for in these ADR Rules, if a Party fails to comply with any provision of or requirement under these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.”

However, this does not mean that a complainant is entitled to a default judgment in a case, such as this, where no response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the complainant to prove that the requirements of Article 4(4) of the New Regulation are satisfied.

With this in mind the Panel turns to each of the three constituent parts of Article 4(4) of the New Regulation.

IDENTICAL OR CONFUSINGLY SIMILAR

Although both the Old and New Regulations, refer to “a name in respect of which a right is established by Union or national law”, Article 21 of the Old Regulations also expressly provided that these rights included the “prior rights” identified in Article 10 of the Old Regulations. This stated that:

"‘Prior rights’ shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works”

Accordingly, it was clear under the Old Regulation that “family names” might constitute relevant rights in .eu ADR proceedings, but only insofar as they were protected under national law.

Further, there is also a reference to “family names” in paragraph. B (1)(b)(9) of the ADR Rules. This paragraph states that any complaint shall:

“Specify the names in respect of which a right is recognised or established by the national law of a Member State and/or European Union law. For each such name, describe exactly the type of right(s) claimed, and specify the law(s), as well as the conditions under which the right is recognised and/or established (e.g. copyright, trademarks and geographical indications provided in national law or European Union law, and, insofar 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”The Panel, therefore accepts, that even though there is no longer any express reference in the New Regulation to family names, that they can still constitute relevant rights for the purposes of ADR proceedings. But as the wording of Article 4(4) of the New Regulation still makes clear, this is dependent upon these being

recognised as rights under relevant national law.

Section 9 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"), states that "[f]amily names are formally listed as relevant rights". As this document pre-dates the New Regulation the words "formally listed" appear to be a reference to the list in Article 10 in the Old Regulation. However, that section of the Overview unhelpfully omits to mention that Articles 21 and 10 of the Old Regulation and Article 4(4) of the New Regulation all require any family right relied upon to be recognised under relevant national or EU law.

Previous cases where it was considered whether family names provide such rights include:

(i) Helmut Eichhorn v. EURid, CAC-ADREU-2796, where the panel referred to family names being protected in Germany in accordance with Section 12 of the German Civil Code;

(ii) Heinrich Leifeld GmbH, Herr Heinrich Werner Leifeld v. Yellow Network Limited, IT Admin, CAC ADREU 6701, where the issue of what was the national law in respect of which rights were recognised was not expressly addressed but one of the Complainant's was a German national with that name;

(iii) Krisztian Poos v Bernadette Selim Abou Zakhm CAC-ADREU-008340, where the panel was satisfied that the complainant had relevant rights in his family name where the complainant had an address in Hungary and had relied upon rights under sections 2.42 and 2.43 of the Hungarian Civil Code;

(iv) Jorge Miguel Dias Almeida Rodrigues Soares v Domain Administrator CAC-ADREU-008356, in which the panel rejected a claim based upon rights in a family name where the complainant failed to provide evidence that family names were protected under Portuguese law;

(v) Mgr. David Menšík (Mgr. David Menšík) v Bohumil Straka CAC-ADREU-008448 where the panel was satisfied that relevant rights in a family name existed in the Czech Republic by reason of Section 77(1) of the Czech Civil Code;

(vi) JUDr. Petr Kadlec v Bohumil Straka CAC-ADREU-008467 where the panel was satisfied that relevant rights in a family name existed by reason of Section 77(1) of the Czech Civil Code;

(vii) Dr. Maja Brkan v Remal Uellen CAC-ADREU-008472, in which the Panel was satisfied that the complainant had proved rights in her name by reason of the Personal Name Act of Slovenia. The complainant also appears to have argued in that case that she had such rights by reason of rights under the General Data Protection Regulation, but the panel did not decide the case on that basis;

(viii) Bc. Petr Menšík, Tomáš Menšík v Bohumil Straka CAC-ADREU-008535 where the panel was satisfied that rights in a family name existed by reason of Section 77(1) of the Czech Civil Code;

(ix) Sebastian Axel Fach v Detlef Baur CAC-ADREU-008611, which referred to family names being protected in Germany in accordance with Section 12 of the German Civil Code;

(x) Adrian WILLEY v Luc BIGGS (Key Domains Unipessoal Lda) CAC- ADREU 008622, in which the panel rejected a claim based upon rights in a family name where the complainant failed to provide evidence to the effect that family names were protected under Spanish law. The panel also observed that the guidance provided by Section 9 of the CAC .EU Overview 2.0 in this respect was incomplete, in that it failed to record that for family names to constitute such rights, they needed to be protected under national law; and

(xi) Rami Hleihel v Evolution Media e.U. CAC-ADREU-008625, in which the complainant appears to have referred to legislation in Netherlands, Germany, France and Slovenia including so far as Netherlands is concerned, Article 1:5 of the Civil Code (BW), but the complaint failed because the name in which rights were claimed was a first name only.

All of these decisions are, therefore, consistent with a reading of both the Old and New Regulations that where rights in a family name are relied upon, a complainant must point to a relevant national law pursuant to which such rights are said to exist.

The Panel accepts that there is small number of cases that suggest otherwise. In particular, in Mr Seamus Francis MacBride v IT Admin CAC-ADREU-008287, the Complainant was an Irish national who resided in Poland. In that case the panel stated as follows:

> "The Panel notes that the Complainant does not point to any specific rule of Irish law protecting his family name. The Panel is not persuaded in this regard that the common law tort of "passing-off" is relevant to the protection of a family name. However, the Panel notes that the Complainant is evidently entitled to use the name MACBRIDE and the Panel is prepared in the circumstances to follow what may now be regarded as an established line of cases indicating that Article 10(1) of the Regulation itself recognises family names as protected rights (see, for example, ADR Case 07741, Foti -v- Evolution Media <FOTI.EU>; ADR Case 06895, Guggenheim -v- Marcus J <GUGGENHEIM>EU>; and ADR Case 06915, Mulder -v- Jank <MULDER.EU>; see also ADR Case 07861, Kirpestein -v- Yellow Network <KIRPESTEIN.EU>)"

However, with the greatest respect to the panellist in that case, this Panel disagrees with that analysis. As has already been discussed above, Article 10(1) did not grant rights in family names divorced from national law. Further, none of the cases cited when properly considered provide a reasoned justification for such a general rule. In particular:

a. Guggenheim -v- Marcus J CAC-ADREU-006895 does use language that suggests there may be rights in a family name independent from national law, but offers no legal justification for that assertion. Further and in any event, the complainant in that case appears to have been an individual in Germany and as set out above, there have been numerous cases in which it has been held that there are rights in a family name under German law;
b. Mulder -v- Jank CAC-ADREU-006915 again uses language that suggests there may be rights in a family name independent from national law but provides no legal justification for that assertion. Further and in any event, the complainant in that case appears to have been an individual in the Netherlands, where other panels have concluded that local law provides relevant rights;
c. Mauro Foti v Evolution Media eU CAC-ADREU-007741 was a decision by the same panellist who decided the Mulder case supra and

the decision sets out no reasoning as to why rights in a family name are sufficient beyond citing (i) the earlier decisions set out above, and (b) the decision of Thomas Krekele v M. Jank CAC-ADREU-006741, which is a case where the panellist did not assert a wider general rule but expressly relied upon Section 12 of the German Civil Code; and

d. Roy Kirpestein v IT Admin (Yellow Network Limited) CAC-ADREU-007861, where rights in a family name were held to exist under Article 1.8 of the Dutch Civil Code.

Also, the Complainant expressly refers to and relies upon the decision in Dr. Marin Lujak v Ulrich Max Georg Roesl CAC-ADREU-008246. Significantly, this case also involved a Croatian citizen, albeit one who was residing in Spain. The Panel held that rights existed in this case. However, the basis for that conclusion was the text of Section 9 of the CAC .EU Overview 2.0, which for reasons the Panel has already explained is problematic. It is also notable that the circumstances of the Lujak case were extreme and very different from the present case; involving what appears to be the use of the full name and the deliberate targeting of the complainant.

In the circumstances, for the Complainant to show that it has relevant rights in his family name in this case it is necessary for him to identify what those rights are in what jurisdiction and how it is said they come to arise. Given the Complainant's nationality and address, the obvious possible candidates here are rights under the national laws of Croatia or Austria. But no such rights are identified or claimed in the Complaint.

In the circumstances, the Complainant has failed to establish the requirements of the first part of Article 4 of the New Regulation and paragraph A.11(d)(1)(i) of the ADR Rules.

RIGHTS AND LEGITIMATE INTERESTS AND BAD FAITH

Given the finding in this case as to lack of relevant rights, it is not necessary to consider the issue of lack of rights and legitimate interests or bad faith.

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	Matthew Harris

DATE OF PANEL DECISION 2025-06-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings where it alleged rights in a family name, where the domain name took the form of that family name in conjunction with the .eu ccTLD.

The Panel was not prepared to accept that the Complainant had rights in the family name alleged where the Complainant had failed to identify the Member State in which those rights were alleged to exist, either in the Member State where the Complainant was a national, or the Member State in which the Complainant resided.

In this respect the Panel held that the requirement upon a Complainant to demonstrate such rights under the law of a Member State, was clear both under Commission Regulation (EC) No 874/2004 as amended and Regulation (EU) 2019/517 that replaced it.

In this respect the Panel concluded:

(i) that the requirement to show rights under the law of a Member State was consistent not only with the language of the relevant Regualtions but also with the overwhelming majority of .eu ADR cases considering this issue;

(ii) that Section 9 of the CAC .EU Overview 2.0 unhelpfully failed to record that requirement;

(iii) that the conclusion to the contrary Seamus Francis MacBride v IT Admin CAC-ADREU-008287 that this was not required was not consistent with either the wording of the relevant Regulations or previous case law on this issue; and

(iv) that it would not follow the decision in Dr. Marin Lujak v Ulrich Max Georg Roesl CAC-ADREU-008246, in circumstances where the panel in that case appeared to have solely relied upon the language in Section 9 of the CAC .EU Overview 2.0.

In the circumstances, the Panel ordered that the Complaint be Denied.