

**ADR.eu - .eu Alternative Dispute Resolution Panel decision related to the request to change the language of ad
proceeding (decision)**



ADR Center for .eu attached to the Czech Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (Czech Arbitration Court)

**PANEL DECISION RELATED TO THE REQUEST TO CHANGE THE
LANGUAGE OF ADR PROCEEDING (DECISION)
§ A3 (b)(6) of the .eu Dispute Resolution Rules (ADR Rules)**

Case No.: *07471*

Administrative Contact: *Aneta Jelenová*

Complainant 1: *Milwaukee Electric Tool Corporation*

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Complainant 2: *Techtronic Industries GmbH*

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Respondent: *Andrzej Macyra*

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Domain Name(s): *EMPIRELEVEL.EU*

Case File:

English summary of the decision: English summary of this Decision is hereby attached as Annex 1

Factual Background:

[1] Having commenced the dispute against the domain name EMPIRELEVEL.eu, the Complainants filed with the Czech Arbitration Court in Prague ('the CAC') a request, pursuant to §A3(b)(1) of the .eu Dispute Resolution Rules ('the ADR Rules'), to change the language of ADR proceeding from Polish into English on March 23, 2017.

[2] The EURid's verification report with regards to the disputed domain name was issued on March 29, 2017. Further, the acknowledgement of receipt of the request to change the language of the ADR proceeding was submitted on March 30, 2017, where the CAC outlined deficiencies in the Complainants' request, therefore the Complainant was requested to amend the request by indicating the Respondent's e-mail address according to verification previously provided by EURid. On the same day (March 30, 2017) the Complainants submitted a correction of the abovementioned deficiency as instructed. The CAC issued a notification of request to change the language of ADR proceeding and commencement of the language trial on April 3, 2017 and submitted it in the ADR proceeding online platform on April 4, 2017.

[3] Despite the notification sent to the Respondent on April 10, 2017, no record of delivery was received by the CAC, thus on April 27, 2017 the CAC notified that the Complainant's request along with its reasoning as well as the notification of ADR proceeding commencement and information how to access the ADR proceeding online platform were deemed delivered on April 24, 2017 pursuant to §A2(e)(3) of the ADR Rules.

[4] The Respondent did not file any observation in reply within prescribed period of time.

[5] On May 19, 2017, the appointed Panelist, Ms. Dorota Rzazewska, submitted her statement of acceptance and declaration of impartiality and independence. Pursuant to §A3(b)(6) of the ADR Rules the Panel shall issue a decision whether or not to allow the requested change of the language of the ADR Proceeding within twelve (12) days from the date of its appointment.

[6] The Panel is not aware of any other language, which has been agreed between the parties neither aware, nor other language for the ADR Proceedings is specified in the Registration Agreement. Therefore, the proper language of the ADR Proceeding is Polish.

Parties' Contentions:

Complainant:

The Complainants reasoned their request to change the language of the ADR proceeding that neither of the Complainants understands Polish. The Complainants contend accordingly, if the ADR Proceeding were to proceed in Polish, the Complainants would have to spend additional time arranging for documents to be translated and incur significant additional costs in employing the services of a translator. The Complainants therefore request that the language of the ADR Proceeding be changed to English, which is one of the official EU languages.

Additionally, the Complainants stated that the Respondent appears to be a member of Marshalltown – an American company and that it is clear from the attached correspondence between the Complainant 1 and the Respondent that the Respondent understands and is conversant in English. Therefore, the Complainants infer that the Respondent would not be prejudiced by the language of the proceedings being changed to English.

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Respondent:

The Respondent did not submit any observations in reply within prescribed period.

Discussion and Findings:

Pursuant to §A3(a) the language of the ADR Proceeding must be one of the official EU languages. Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the ADR Proceeding shall be the language of the Registration Agreement for the disputed domain name. In the absence of an agreement between the Parties, the Panel may in its sole discretion, having regard to the circumstances of the ADR Proceeding, decide on the written request of a Complainant, filed before initiating a Complaint, that the language of the ADR Proceeding will be different than the language of the Registration Agreement for the disputed domain name.

Also §A3(c) of the ADR Rules constitute that all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding or in different requested language if the Complainant proves in his submission that the Respondent has adequate knowledge of such different language.

The language of the ADR proceeding in the case at issue is Polish, as neither the Registration Agreement between the Respondent and home.pl S.A. company with its registered office in Szczecin stipulates otherwise nor relevant evidence has been presented that Parties entered into an agreement changing the language of the ADR proceeding. This circumstance is also admitted by the Complainants in the request for change the language of ADR proceedings.

Given the foregoing, the request to change the language of proceedings to another could be approved only if the Panel, having considered the circumstances of this proceeding and the comprehensive analysis of evidence gathered to date, could unequivocally conclude that approval of the Complainants' request would not confine any Party's right to defense.

Notably, §A3(c) of the ADR Rules *expressis verbis* indicates that the burden of proof is on the Complainant, whereas the Complainants have not presented relevant evidence, whose analysis would lead to a conclusion that the requested change of the language will remain the Parties' rights to defense equal and balanced.

In the Panel's view, submission of a short correspondence between the Complainant 1 and the Respondent in English and the Complainants' standpoint concerning lack of knowledge of Polish language as well as presumption with regards to the Respondent being a member of Marshalltown without presenting relevant evidence, does not satisfy the requirements, the fulfillment of which would allow the Panel to approve the request for change the language of the ADR proceeding.

Having analyzed the Complainants contentions, the Panel cannot deem such evidence sufficient and cannot approve the request for change the language of the ADR proceeding in the EMIPRELEVEL.eu domain name case.

Decision:

Given the foregoing, in accordance with §A3 (b)(6) of the ADR Rules, the Panel orders that the Request is denied.

Dorota Rzążewska

Date: *May 30, 2017*

Annex 1: *English summary of the Panel Decision*

The Complainants submitted a request for a change of the language of the ADR proceeding in accordance with § A3 (b)(1) of the ADR Rules from Polish to English. The Complainants reasoned their request to change the language of the ADR proceeding that neither of the Complainants understands Polish. The Complainants contend accordingly, if the ADR Proceeding were to proceed in Polish, the Complainants would have to spend additional time arranging for documents to be translated and incur significant additional costs in employing the services of a translator. The Respondent has not submitted any response to the request for a change of the language within prescribed period of time. The existing wording of §A3 (a) of the ADR Rules does not require for a change of the language the existence of exceptional circumstances, but leaves such decision to the sole discretion of the Panel which has to take into account the circumstances of the ADR Proceeding.

The Panel is of the view that the language of the ADR Proceedings shall not be changed, due to the fact the Complainant has failed to evidence that the Respondent is sufficiently fluent in English in order to adequately defend his rights should the language be changed to English. For that reasons, the Complainants' request is denied.