

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.:** 08029

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**Complainant:** Frank Demann

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**Respondent:** Maxim Filippov

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**Domain Name:** senmotic.eu

**Case File:** Case File information is hereby attached as Annex 1

**English summary of the decision:** English summary of this Decision is included as Annex 1

**Dansk resumé af afgørelsen:** Et dansk resume af afgørelsen fremgår af Annex 2

**Factual Background:**

Having commenced the dispute against the domain name SENMOTIC.eu, the Complainant 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 Danish into English on September 2, 2020.

The EURid's verification report with regards to the disputed domain name was issued on September 7, 2020. On September 10, 2020 the CAC notified the Respondent of the request to change the language of the proceeding and informed the Respondent that a response to the request must be filed within 12 (twelve) days.

The Respondent did not file any observation in reply within prescribed period of time, so on September 26, 2020, the appointed Panelist, Mr. Knud Wallberg, submitted his 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.

### **Parties' Contentions:**

#### **Complainant:**

The Complainant requests that the present proceedings to be commenced in English. In the present case, the Respondent's website is in English and it is therefore obvious that the Respondent can understand English.

On the other hand, the Complainant is not able to communicate in Danish and therefore, if the Complainant was required to submit all documents in Danish, the arbitration proceeding will be unduly delayed and the Complainant would have to incur substantial expenses for translation. As a result, the Complainant would be unfairly disadvantaged.

The Complainant states that it is a well-established practice with the WIPO Center that under such circumstances, a Panel may accept the language of the complaint, even if it is different from the language of the registration agreement.

Further, the Complainant states that the Respondent is a serial cybersquatter, that has been found to have acted in bad faith in previous decisions relating to domain names registered under the .eu TLD, just as the Respondent holds numerous domain names built of common English words, inter alia: techno-tool.dk, brew4you.dk, combatsportsacademy.dk, gadgets-mania.dk and graphicfacilitation.dk. Although the address of the owner of these domain names differs from the one in the present proceedings, the phone number is identical in all cases, which is evidence that the domain names are all registered by the Respondent. The above-mentioned domain name registrations are further evidence that the Respondent is doubtlessly able to communicate in English, as he is registering English domain names.

#### **Respondent:**

The Respondent did not file any observation in reply within the prescribed period of time.

### **Discussion and Findings:**

Pursuant to § A 3 (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.

According to the information that is available to the Panel, neither the Registration Agreement between the Respondent and its Registrar stipulates otherwise nor relevant evidence has been presented that the Parties have agreed to change the language of the ADR proceeding. As a starting point, the proper language of the ADR Proceeding is therefore Danish.

The content of website under the disputed domain name is entirely in English and it is therefore obvious to the Panel that the Respondent has adequate knowledge of the English language, that the requested change of the language from Danish to English will not confine the Respondent's possibility to present his case. Also, the Panel finds that allowing the proceedings to be in English will ensure that both parties are treated with equality, and that each of the parties is given a fair opportunity to present its case.

#### **Decision:**

For all the foregoing reasons, in accordance with Paragraphs A3 (b)(6) of the Rules, the Panel orders that the language of future ADR Proceeding shall be English if the Complaint with respect to the disputed domain name mentioned above shall be filed within thirty (30) working days from receiving this decision.

***Knud Wallberg***

**Date: October 8, 2020**

#### **Annex 1: English summary of the Panel Decision**

The Complainant submitted a request for a change of the language of the ADR proceeding in accordance with § A3 (b)(1) of the ADR Rules from Danish to English. The Complainant reasoned its request to change the language of the ADR proceeding that the content of the website under the disputed domain name is in English, and that since the Complainant does not understand Danish, the Complainant would have to spend additional time and costs for all documents to be translated into Danish. The Respondent has not submitted any response to the request for a change of the language within the 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 this particular ADR Proceeding shall be changed, since it is obvious that the Respondent has adequate knowledge of the English language, and since a change to English will ensure that both parties are treated with equality, and that each party is given a fair opportunity to present its case.

#### **Annex 2: Dansk resumé af afgørelsen**

Klageren fremsatte en anmodning om ændring af sproget i ADR-proceduren i henhold til § A3 (b) (1) i ADR-reglerne fra dansk til engelsk. Klageren begrundede sin anmodning om at ændre sproget i ADR med at indholdet af webstedet under det omstridte domænenavn er på engelsk, og at klageren, der ikke forstår dansk, i modsat fald skal bruge ekstra tid og omkostninger på at oversætte alle dokumenter til dansk. Indklagede har ikke indsendt noget svar på anmodningen om ændringen af sproget i sagen inden for den fastsatte tidsperiode. Den eksisterende ordlyd af §A3 (a) i ADR-reglerne kræver ikke, at der for at skifte sprog, skal foreligge ekstraordinære omstændigheder, men overlader en sådan beslutning til panelets eget skøn, under hensyn til omstændighederne i den pågældende sag. Panelet er af den opfattelse, at sproget i denne sag skal ændres til engelsk, da det er indlysende, at indklagede har tilstrækkeligt kendskab til det engelske sprog, og da en ændring til engelsk vil sikre, at begge parter behandles ens, og at hver part får en rimelig mulighed for at fremlægge sin sag.