

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.: 8037

Administrative Contact: Iveta Špiclová

Complainant: ALPARGATAS EUROPE, S.L.U

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Authorized representative: PADIMA TEAM SLP, Maria Cristina Martinez-Tercero

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Respondent: Eleonora Jorge Alves

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



Domain Name(s): havaianas-shop.eu

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

Factual Background:

The Request to Change the Language of the ADR Proceeding (the "Request") was filed in English pursuant to the .eu Alternative Dispute Resolution Rules (the "ADR Rules"), Paragraph A(3)(b), on September 4, 2020 (hardcopy on September 8, 2020). On September 9, 2020, the Registry transmitted its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In addition, the Registry confirmed that the language of the registration agreement is German.

In accordance with the ADR Rules, Paragraph A(3)(b)(3), the Respondent was formally notified of the Request, and the proceedings commenced on September 15, 2020. In accordance with the ADR Rules, Paragraph A(3)(b)(4), the due date for Response was September 27, 2020. The Respondent did not submit any response.

The Center appointed Tobias Malte Müller as the sole panelist in this matter in accordance with the ADR Rules, Paragraph A(3)(b)(4). The Panel finds that it was properly constituted. On October 26, 2020 the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the ADR Rules, Paragraph B(5).

Parties' Contentions:

Complainant:

In its request the Complainant pointed out that it acts on behalf of ALPARGATAS EUROPE, SLU, exclusive licensee of HAVAIANAS' trademarks in Europe. In its view, the domain name havaianas-shop.eu resolves to a fraudulent web page that has been registered and is being used in bad faith by our the registered HAVAIANAS trademark.

In support of its request, the Complainant alleges that ENGLISH is a language in which both parties can communicate each other easily being Europeans citizens. Furthermore, the Complainant does not speak German.

Respondent:

The Respondent did not contest these allegations and did not reply to the Complainant's Request regarding the language.

Discussion and Findings:

In accordance with Paragraph A(3)(a) of the ADR Rules, "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 that the language of the ADR Proceeding will be different than the language of the registration agreement for the disputed domain name."

The Panel has not been made aware of any agreement between the parties pertaining to the language of the proceedings. Furthermore, it results from the registrar verification that the language of the registration agreement is German.

In accordance with the general powers attributed to the Panel under Paragraph B(7)(b) and (c) of the ADR Rules, the Panel shall ensure on the one hand side that the Parties are treated fairly and with equality, and shall ensure, on the other hand, that the ADR Proceeding takes place with due expedition.

It is true that the Complainant did not provide any concrete evidence – such as prior correspondence between the parties in English language or content of the website to which the disputed domain name resolves (currently the domain name is parked) – from which it clearly results that the Respondent actually speaks and understands English. ~~However, u~~Use of the term “shop” may nevertheless be an indication that the Respondent does indeed understand English.

However, this point can finally be left open, since the Respondent did not participate in these proceedings and did not file any response. In particular, the Respondent did not object for English to be the language of the proceedings and did not reply to the Complainant’s Request. According to Paragraph B(10)(a) of the ADR Rules the Panel may consider this failure to comply as grounds to accept the claims of the other Party. In addition, pursuant to Paragraph B(10)(a) of the ADR Rules the Panel shall draw such inferences from a Party’s default as it considers appropriate. Therefore, the Panel considers the Respondent’s failure to reply as an affirmation that the Respondent does not object the change of language into German.

In addition, the Panel accepts that requesting a translation of the Complaint will cause undue delay of these proceedings and therefore be inequitable for both parties and contrary to the obligation to proceed with these ADR Proceedings with due expedition.

Therefore, having regard to the above circumstances, the Panel accepts in its sole discretion that the language of the ADR Proceeding will be English and therefore different than the language of the registration agreement for the disputed domain name.

Decision:

For all the foregoing reasons, in accordance with Paragraphs A3 (b)(6) of the Rules, the Panel orders that the Request is denied / 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.

Tobias Malte Müller

Date: November 9, 2020

Annex 1:

Having regard to the circumstances of this case, the Panel accepts in its sole discretion that the language of the ADR Proceeding will be English and therefore different than the language of the registration agreement for the disputed domain name, which was German.

It is true that the Complainant did not provide any concrete evidence from which it clearly results that the Respondent actually speaks and understands English. Use of the term “shop” may be an indication that the Respondent does indeed understand English. However, this point can finally be left open, according to Paragraph B(10)(a) of the ADR Rules the Panel may consider the Respondent’s failure to participate in these proceedings as grounds to accept the claims of the other Party. In addition, pursuant to Paragraph B(10)(a) of the ADR Rules the Panel shall draw such inferences from a Party’s default as it considers appropriate. Therefore, the Panel considers the Respondent’s failure to reply as an affirmation that the Respondent does not object the change of language into German.