Decision for dispute CAC-UDRP-102150

Case number	CAC-UDRP-102150
Time of filing	2018-09-05 15:10:46
Domain names	AER-AMPS.COM

Case administrator

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

Complainant

Organization	GISMO Industrie Holding und Verwaltung AG

Respondent

Organization	AER. Audio Electric Research GmbH

Respondent representative

Organization	Dr. Solf & Zapf

OTHER LEGAL PROCEEDINGS

Between the Complainant and Mrs. Rösner a lawsuit is pending before the District Court Düsseldorf, inter alia, on the understanding and extent of Mrs. Rösner's rights in below said trademarks.

IDENTIFICATION OF RIGHTS

German trademark 302018015956 applied for 2.7.2018 and registered 14.8.2018 Class 9, 15, 42 (AER)
German trademark 302008052844 applied for 14.8.2008 and registered 15.1.2009 Class 9, 15, 42 (AER The acoustic people)
EU trademark 007160641 applied for 14.8.2018 and registered 15.6.2009 Class 9, 15, 42 (AER)
EU trademark 007167349 applied for 18.8.2018 and registered 22.7.2019 Class 9, 15, 42 (AER The acoustic people)

The date of registration of the disputed domain name <aer-amps.com> is 28.01.2003 as stated in the Registrar Verification.

FACTUAL BACKGROUND

The dispute seemed to have arisen in the course of a sale of the company formerly owned by the Respondent. Further facts remain uncear.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant argues that the current holder of the disputed domain name is the former CEO of the company AER. He states that this company was bought from bankruptcy by the Complainant and with that the intellectual property. He stated that “his” trademark is still in use and the Domains not being transferred. He claims that the content shown on the sites is outdated an customers complain i.e. on social media, that there is no reactions to requests and no person reachable. He asserts that this situation damages his reputation and hinders his ongoing business.

RESPONDENT

The Complainant’s statement that the company AER was bought from bankruptcy by the Complainant is deliberately and blatantly false. Tellingly, the Complainant furnishes no evidence at all to support such claim.

The shift of the core business of that company concerning Europe to the Complainant’s subsidiary AER music GmbH is still part of a pending lawsuit. The Complainant’s statement “GISMO AG bought the company and with that the material and intellectual property” is also deliberately and blatantly false. Likewise, no evidence is given to furnish such claim.

The only intellectual property item sold to the Complainant by sales contract with handwritten corrections dated as of 26.05.2014 between the company AER and Mr. Udo Rösner as Sellers and the Complainant as Buyer are the German trademarks 30 2008 051 416 AER and 30 2008 052 844 AER the acoustic people, 30 2010 056 863 ACOUSTICUBE. EUTM 007160641 AER and 007167349 AER the acoustic people as well as international Registrations 1 008 934 AER and 1 076 606 AER the acoustic people were later transferred to the Complainant.

Even though the Complainant may be registered as sole owner of said trademarks with the respective registries, the Complainant willfully omits that an agreement exists between the Complainant and Mrs. Ulrike Rösner dated as of 29.12.2014. The Preamble states, inter alia “The parties are in agreement that in view of the intended long-term future cooperation, the trademark rights shall be due to Gismo and Mrs. Rösner internally each in equal parts legally and economically.” Further, the agreement states hat half of each of the trademark rights are held in trust by the Complainant for Mrs. Rösner.

Mrs. Rösner is CEO and Shareholder of the company AER the Acoustic People GmbH.

Between the Complainant and Mrs. Rösner a lawsuit is pending before the District Court Düsseldorf, inter alia, on the understanding and extent of Mrs. Rösner’s rights in said trademarks.

RIGHTS

The Complainant has, to the satisfaction of the Panel, not shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy). The situation is rather complex. All trademarks mentioned by the Complainant are registered years after the domain in question has been registered and attributed to the Respondent (2003). Furthermore the trademarks AER the acoustic people are not used in a confusingly similar way by registering a domain like <aer-amps.com>. The wording aer is not related to any famous or at least well-known activities of the Complainant; there is no evidence or argument of the Complainant on this matter.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, not shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). It seems that the Respondent had all the rights vested in the company and its trademarks. The rest obviously is subject of a pending court proceeding In Germany,

BAD FAITH

The Complainant has, to the satisfaction of the Panel, not shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). There is no indication of bad faith behaviour. Vice versa, this is a clear case which falls under reverse domain name hijacking. Obviously the Complainant tried to misuse by delivering a very short Complaint omitting important facts and documents to get a quick transfer decision. This misbehaviour is proven additionally by the documents prvided by the Respondent. They show that the Complainant is using the UDRP as an alternative acquisition strategy after negotiations between the parties which had been conducted until they had been declared failed by the Complainant in early 2018.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant misused his Complaint with short allegations and missing documents as a tool to get the domain quickly transferred to him. This amounts to reverse domain name hijacking.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **AER-AMPS.COM**: Remaining with the Respondent

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2018-10-17

Publish the Decision