Decision for dispute CAC-UDRP-102513

Case number	CAC-UDRP-102513
Time of filing	2019-05-29 15:56:08
Domain names	avk.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	AVK Holding A/S

Complainant representative

Organization	Plougmann Vingtoft Advokatanpartsselskab

Respondent

Organization	BEST WEB LIMITED

Respondent representative

Organization	Muscovitch Law P.C.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

Because of the purely procedural decision of this dispute the Panel refrains from summarising the rights on which the Complainant based the Complaint.

FACTUAL BACKGROUND

Because of the purely procedural decision of this dispute the Panel refrains from summarising the factual background of this case and the Parties' corresponding contentions.

PARTIES CONTENTIONS

ATTENTION! If an administratively compliant Response has not been filed, you may only state in this section: No administratively compliant Response has been filed. In that case you may either omit the Complainant's contentions, or put a brief summary thereof into the Principal reasons for decision below, or specify it in this section. If an administratively compliant Response was filed, please specify the Parties´ contentions in this section. Please do not forget to erase these instructions and any of the options below which do not fit the proceedings you are deciding!

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

RESPONDENT:

RIGHTS

Because of the purely procedural decision of this dispute the Panel has not decided whether 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).

NO RIGHTS OR LEGITIMATE INTERESTS

Because of the purely procedural decision of this dispute the Panel has not decided whether the Respondent has rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

Because of the purely procedural decision of this dispute the Panel has not decided whether 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).

PROCEDURAL FACTORS

Before submitting the full Response, the Respondent's representative had pointed out in a Nonstandard Communication of June 9th, 2019, that the Complainant had not specified a Mutual Jurisdiction (as defined in Section 1 of the Rules for Uniform Domain Name Dispute Resolution Policy, the "Rules")) in the Complaint. In a Nonstandard Communication of June 10th, 2019, the Case Administrator requested the Complainant to provide its preferred Mutual Jurisdiction.

After an internal discussion of this procedural aspect the Panel issued another Nonstandard Communication on August 15th, 2019, in which the Panel pointed out that it considered the Complainant's submission to a Mutual Jurisdiction pursuant to Section 3(b)(xii) of the Rules as an essential requirement of a valid Complaint under the UDRP. Pursuant to Section 12 of the Rules the Panel requested (i) the Complainant to specify a suitable Mutual Jurisdiction together with the submission statement required by Section 3(b)(xii) of the Rules, and (i) both Parties to provide any further comments they might have on this procedural aspect. In line with Section 4(d) of the Rules the Panel set a deadline of 5 calendar days for these supplemental submissions of the Parties. The online case management system indicates that both the Complainant and the Respondent (or their respective representative(s)) have reviewed the Panel's Nonstandard Communication. Neither Party has, however, made any further submissions to the case file.

PRINCIPAL REASONS FOR THE DECISION

Section 3(b)(xii) of the Rules states: "The Complaint including any annexes shall be submitted in electronic form and shall … state that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction".

This Panel agrees with the panel's reasoning in WIPO Case No. D2003-0166 (The Royal Bank of Scotland Group plc, National

Westminster Bank plc A/K/A NatWest Bank v. Personal and Pedro Lopez), according to which the Mutual Jurisdiction rule was created as a sort of review process which would offer the losing party a venue that otherwise would not have personal jurisdiction over the Complainant. In order to provide a fairer opportunity, the Rules offer two choices for such jurisdiction: the place of the Registrar and the Respondent's place of business/domicile. Both options are not supposed to exclude jurisdiction other courts might have with respect to the domain name. But this reasoning nevertheless shows that the Mutual Jurisdiction rule is an important element to ensure a fair process which must not be ignored by the Complainant.

Complainant's Complaint in this proceeding does not comply with this formal requirement. According to the Complaint signature page, "Complainant submits itself to the applicable Mutual Jurisdiction as specified above" – but as no Mutual Jurisdiction is specified "above" in the Complaint (or anywhere else in the case file), this covenant is without any material effect. As a result, the Complainant has not submitted to a Mutual Jurisdiction as required by Section 3(b)(xii) of the Rules.

As the Complaint is deficient and the Complainant has failed to correct this deficiency, the Complaint is rejected on this formal ground (without prejudice to submission of a different complaint by Complainant, cf. Section 4(d) of the Rules).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **AVK.COM**: Remaining with the Respondent

PANELLISTS

Name	**Dr. Thomas Schafft, Dr. Tobias Malte Müller, The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2019-08-23

Publish the Decision