

Decision for dispute CAC-UDRP-104706

Case number CAC-UDRP-104706

Time of filing 2022-07-18 09:10:01

Domain names matthias-arens.info

Case administrator

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

Complainant

Name Matthias Arens

Complainant representative

Organization ITjur

Respondent

Name Jan Vanderpelen

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

The Complainant seeks to rely on his personal civil name (as evidenced by a copy extract of his passport) as a right within the meaning of paragraph 4(a)(i) of the UDRP Policy. For the reasons given below, the Panel does not consider the Complainant's personal name to be a UDRP relevant right in the circumstances of the present administrative proceedings.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a German national resident in Switzerland.

The Respondent registered the disputed domain name on 28 October 2021.

The Complainant adduced evidence supporting his allegation that, as at 28 July 2022, the website accessed through the disputed domain name contained content derogatory and disparaging of the Complainant and images copied from the Complainant's social media accounts and posts without his permission. At the time of this decision, the website no longer

contained any active content.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has failed to show, to the satisfaction of the Panel, that 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

The Complainant has failed to show, to the satisfaction of the Panel, that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has failed to show, to the satisfaction of the Panel, that 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

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.

By nonstandard communication dated 23 August 2022, the Panel invited the Complainant *inter alia* to make further submissions, supported by sufficient explanations and evidence, in compliance in particular with paragraphs 3(b) (viii), (ix) and (xiv) of the UDRP Rules, to demonstrate that the Complainant enjoys rights that provide standing in these administrative proceedings and that the requirements for a revocation of the disputed domain name are satisfied.

The Complainant responded to the Panel's invitation by filing further submissions also on 23 August 2022.

PRINCIPAL REASONS FOR THE DECISION

While the Respondent failed to file a response to the Complaint, a Respondent's failure to respond to the Complainant's contentions does not in itself automatically result in the complaint succeeding. The Complainant is still required to make out a *prima facie* case that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; that the Respondent lacks rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name has been registered and is being used in bad faith. The Panel finds that the Complainant has failed to make out such a *prima facie* case for the following reasons.

The Complainant seeks to rely on his personal civil name as a right within the meaning of paragraph 4(a)(i) of the UDRP Policy. The Panel accepts, based on established UDRP case law, that personal names that have been registered as trade marks would provide standing for a complainant to file a UDRP case. The UDRP Policy does not explicitly provide standing for personal names which are not registered or otherwise protected as trade marks. Other panels have nevertheless accepted that a complainant may be able to establish unregistered or common law rights in a personal name for the purposes of filing a UDRP case where that personal name was being used as a distinctive trade mark-like identifier of a complainant's goods or services in trade or commerce but concluded that a personal name not used in that manner was not otherwise sufficient to demonstrate standing to file a UDRP complaint (see sections 1.3 and 1.5 of the WIPO Overview 3.0).

There are no submissions or evidence before the Panel in the present administrative proceedings to suggest that the Complainant's name is being used in such a manner in trade or commerce; to the contrary, the Complainant's submissions state that the Complainant relies on his personal name, protected as such by German law.

The Panel sees no basis on which it can reach any conclusion other than that the Complainant has failed to establish rights that would provide him with standing within the terms of the UDRP Policy and Rules to bring a UDRP case.

The UDRP Policy and Rules do not provide a remedy in the circumstances of the present administrative proceedings, where the Complainant's name is not used in a trade mark sense to identify goods or services in trade or commerce, regardless of whether the contents hosted on the website accessed through the disputed domain name are or were derogatory or disparaging of the Complainant. The Panel therefore encourages the Complainant, if so advised by his legal representative, to seek a remedy before a court of competent jurisdiction and refers to paragraph 3(b) of the UDRP Policy in this regard.

Against this background and finding, the Panel does not need to reach a decision on whether the Respondent lacks rights or a legitimate interest in the disputed domain name (and whether the website accessed through the disputed domain name is or was a criticism site which would support rights or a legitimate interest); or whether the website was registered or is being used in bad faith. The relevant tests set out in paragraphs 4(b) and (c) of the UDRP Policy are aimed at the use of the disputed domain name in a business context, and adversely affecting the Complainant's trade mark rights, and are therefore not apt to be applied to the facts presented by the Complainant in the present administrative proceedings.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **MATTHIAS-ARENS.INFO**: Remaining with the Respondent

PANELLISTS

Name	Gregor Kleinknecht, LL.M. MCI Arb
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DATE OF PANEL DECISION **2022-09-08**

Publish the Decision
