

Decision for dispute CAC-UDRP-105813

Case number	CAC-UDRP-105813
Time of filing	2023-10-02 14:47:13
Domain names	schwestern-vom-goettlichen-erloeser.info

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Name	Schwester Barbara Geißinger
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Complainant representative

Organization	1601.com e.K.
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Respondent

Name	Kenneth T. Orf
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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 bases its claim on rights in an earlier name of a public body, IGO or NGO, claims to be a Christian organization and puts forward that the domain owner uses the .info domain with "the same name for TLD domains" used by the Complainant. The Complainant has not stated what that name actually is and has not provided any evidence of a legally valid earlier right.

FACTUAL BACKGROUND

Following the filing of the Complaint, the CAC issued a Notification of deficiencies in complaint on 02-10-2023, detailing inter alia that the Complaint was not filed in the language of the administrative proceedings. The language of the registration agreement was German and the Complaint had been filed in English. The Complainant was therefore asked whether he would like to either:

- translate the complaint and annexes into the language of the Registration agreement; we will provide you with additional time for translations;
- or
- whether he intended to proceed with the dispute in English in which case a request for the change of the language into English would need to be filed via online platform (in the amended complaint).

An amended Complaint was filed in English on that same day. Also on the same day, the CAC again pointed out that no request for a

change of language of the proceedings had been filed with the Amended Complaint and explained the resulting alternatives.

On 03-10-2023, the Complainant replied as follows: "i want to proceed in English. I can't find the point to change this." On that day, the Respondent responded by e-mail, requesting that the proceedings be conducted in German. Also on that date, the Complainant was notified of the Respondent's request to conduct the proceedings in the language of proceedings, i.e. in German, giving the Complainant the opportunity to react to the request or have a decision issued on the request to conduct the proceedings in English.

On 06-10-2023, the CAC issued a notice of the lack of an administratively complaint response as a result of the choice of language.

On 16-10-2023, after the time limit set by the Arbitration Court, the Respondent filed a statement in German alongside a machine translation into English.

PARTIES CONTENTIONS

THE PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant argues that the domain owner uses the ".info domain with the same name for TLD domains used" by the Complainant and thereby violates their naming rights, Section 12 Sentence 1 BGB. According to the Complainant, "the presumption of names creates a significant risk of confusion, which the domain owner explicitly strives to achieve".

The Complainant further argues that the misuse also results in massive damage to the applicant's reputation; and that the respondent uses the domain for offensive and false claims and content. The Complainant goes on to explain that "since a dispute entry is not possible for a .eu domain, there is an exceptional right to transfer the misused domain to the applicant", as this would be the only way to counteract the risk of another unauthorized person registering the domain in his name and the name owner would have to take action again. According to the Complainant, this is also expressly referred to in Article 22 Paragraph 11 of Regulation (EC) 874/2004.

RESPONDENT:

In a delayed response filed in German and a machine translated English version and followed up by a further communication in German, the Respondent put forward that he has a right to own the disputed domain name and to operate the website.

RIGHTS

The Complainant has not, to the satisfaction of the Panel, 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).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not, to the satisfaction of the Panel, 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).

BAD FAITH

The Complainant has not, to the satisfaction of the Panel, shown the Disputed domain name to be registered and used in bad faith (within the meaning of paragraph 4 (a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complaint was filed in English despite the fact that the language of the Registration and therefore the language of the proceedings under the Policy is German.

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. Here, the language of the registration agreement is German and therefore that is the default language of the proceeding. The Panel would have a discretion to determine that the language of the proceedings be English but, having carefully considered the substance of the

Complainant's request, declines to exercise such discretion for the following reasons:

The Panel confirms that the Parties have not agreed an alternative language. On the contrary, the Respondent expressly requested the proceedings to be carried out in German. Therefore, the Panel would need to identify another reason showing that it would be fair to both Parties to depart from the default language rule.

As outlined in section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), previous panels under the Policy have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. The section notes that such scenarios include (i) evidence showing that the respondent can understand the language of the complaint; (ii) the language/script of the domain name particularly where the same as that of the complainant's mark; (iii) any content on the webpage under the disputed domain name; (iv) prior cases involving the respondent in a particular language; (v) prior correspondence between the parties; (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint; (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language; (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names; (ix) currencies accepted on the webpage under the disputed domain name; or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

Addressing each of these scenarios, the conclusion is as follows: (i) there is no evidence showing that the Respondent can understand the language of the Complaint. The Complaint was drafted in English. While formal notification was made by the provider to the Respondent in both the English and Italian languages, the Complaint itself was not translated into German. The Respondent has not filed an administratively compliant Response, nor has he replied in any way other than to state that he has a right to register the domain name and to request the language of the proceedings to be German. The delayed submission filed in English is a machine translation. Therefore, there is no indication suggesting that the Respondent understands the language in such a way as to deal with the substance of the Complaint; (ii) the disputed domain name is not identifiably in the German language and not in English; (iii) the website associated with the disputed domain name is in German; (iv) the Complainant did not provide any evidence of prior cases involving the Respondent; (v) there is no evidence of prior correspondence between the Parties from which the Respondent's working language(s) could be inferred; (vi) the Complainant was invited by the CAC to withdraw the Complaint if it required to proceed in German, or to provide submissions justifying its choice of language. The Complainant chose to take the latter course but failed to substantiate the request. The Panel does not consider that any delay arising from the complainant refile the complaint in German (if the Complainant chooses to do so) outweighs the importance of the Respondent receiving fair notice of the Complaint, including being able to read and understand it. Both the Complainant and the Respondent are located in Germany. There are no facts from which it is reasonable to infer, in the circumstances of this particular case, that the Respondent is an English speaker and/or understands English; (vii) no evidence has been presented of any other Respondent-controlled domain names suggesting any proficiency on the Respondent's part in any particular language; (viii) this is not a multiple domain name case and there are no other domain names at issue with a registration agreement in a different language; (ix) the website is not operated for commercial use; and (x) there are no other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The present case therefore clearly shows that none of these elements are present. Neither the Complainant nor the Respondent reside outside Germany meaning that use of the German language is no hardship to them.

Given the above, the Panel certainly does not see any specific unfairness in the requirement for the Complainant to translate the complaint into the language of the proceedings and this would cause neither undue nor unwarranted delay.

The Panel therefore refuses the request for change of language.

PRINCIPAL REASONS FOR THE DECISION

Although the request for change of language is accordingly refused on the grounds specified above and this leads to the rejection of the Complaint as it was filed in the wrong language, it would be highly remiss of the Panel not to make a statement on the material claims of this case as well.

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

- (i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed domain name; and
- (iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

- (i) The Complainant is an individual named Sister Barbara Geissinger. The Complaint simply states that the domain owner uses the ".info domain with the same name for TLD domains used" by the Complainant and thereby violates their naming rights, Section 12

Sentence 1 BGB (Short for German Civil Code).

The Complainant does not state what earlier name any rights could be vested in. In fact, the Complainant provides no information at all about the type of earlier rights the complaint could be relying on. The Complainant provides no evidence of the existence or validity of any earlier rights and no evidence or argument concerning a connection or link of any sort between the Complainant and any possible rights in a name. There are certainly neither trademark nor service mark registrations or evidence thereof, which would be permissible evidence. Equally, there is no evidence from companies or societies registers providing evidence of the existence of the name and a connection of the Complainant to that name. These latter types of earlier rights could under some limited circumstances be grounds for a valid Complaint.

A mere screenshot of a possibly existent website without any link to the Complainant cannot be seen as evidence in its own right. It could merely serve to illustrate the possible use made of a name in which rights may have been established. However, neither the name itself, nor the rights in a possible name were put forward or established by the Complainant.

Given the above, the Panel has to conclude that there is no evidence at all showing that the Complainant has rights in an earlier name on which the Complaint could be based. Therefore, the Panel comes to the conclusion that the Complainant has not satisfied the requirement under paragraph 4 (a) (i) of the Policy.

(ii) The Complainant argues that "the presumption of names creates a significant risk of confusion, which the domain owner explicitly strives to achieve". However, as stated under (i) above, the Complainant has failed to establish the existence of rights in a name. Equally, there is no argument or evidence of any kind pointing to a lack of rights of the Respondent. A mere contention on the behalf of the Complainant does not provide the basis for a decision in the Complainant's favour.

Again, since no argument or evidence of any kind is provided and therefore the Panel comes to the conclusion that the Complainant has not satisfied the requirement under paragraph 4 (a) (ii) of the Policy.

(iii) Finally, the Complainant further argues that the misuse also results in massive damage to the applicant's reputation; and that the respondent uses the domain for offensive and false claims and content. The Complainant goes on to explain that "since a dispute entry is not possible for a .eu domain, there is an exceptional right to transfer the misused domain to the applicant", as this would be "the only way to counteract the risk of another unauthorized person registering the domain in his name and the name owner would have to take action again". According to the Complainant, this is also expressly referred to in Article 22 Paragraph 11 of Regulation (EC) 874/2004.

The Complainant again provides no evidence of any damage, let alone "massive damage" at all. Why the Complainant should refer to a provision of the German NIC (DENIC)'s rules concerning the possible transfer of disputed domain names under the ccTLD ".de" or to Regulation (EC) 874/2004 referring to ADR proceedings concerning the ccTLD ".eu" remains a mystery to the Panel.

Since no evidence is provided, the Panel comes to the conclusion that the Complainant has not satisfied the requirement under paragraph 4 (a) (iii) of the Policy.

In summary, the Complainant has failed to file the Complaint in the correct language and has failed to provide grounds for a change of language. Additionally, the Complainant failed to satisfy any of the three requirements under paragraph 4 (a) of the Policy.

The only decision which can be taken as a result of this failure is to reject the Complaint on both procedural grounds and on its merits.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **schwestern-vom-goettlichen-erloeser.info**: Remaining with the Respondent

PANELLISTS

Name	Udo Pfléghar B.A. (Melb.)
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DATE OF PANEL DECISION 2023-10-19

Publish the Decision
