

ADMINISTRATIVE PANEL DECISION RELATED TO THE REQUEST TO CHANGE THE LANGUAGE OF THE ADR PROCEEDING

DKH Retail Limited and Supergroup Retail Ireland Limited v. Domain
Manager, Evolution Media e.U.
Case No. DEUL2022-0002

1. The Parties

The Complainants are DKH Retail Limited of United Kingdom and Supergroup Retail Ireland Limited of Ireland, represented by Superdry Plc, Ireland.

The Respondent is Domain Manager, Evolution Media e.U., of Austria.

2. The Domain Name, Registry and Registrar

The disputed domain name is <superdry.eu> (the “Domain Name”).

The Registry of the Domain Name is the European Registry for Internet Domains (“EURid” or the “Registry”).
The Registrar of the Domain Name is eu-rhea.at web invest gmbh & co KG.

3. Procedural History

The Request to Change the Language of the ADR Proceeding (the “Request”) was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) pursuant to the .eu Alternative Dispute Resolution Rules (the “ADR Rules”), Paragraph A(3)(b), on February 23, 2022. On February 24, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the Domain Name. On February 25, 2022, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Request. The Center sent an email communication to the Complainants on March 2, 2022, providing the registrant and contact information disclosed by the Registry, and inviting the Complainants to submit an amendment to the Request. The Complainants filed an amended Request on March 3, 2022.

In accordance with the ADR Rules, Paragraph A(3)(b)(3), the Center formally notified the Respondent of the Request, and the proceedings commenced on March 4, 2022. In accordance with the ADR Rules, Paragraph A(3)(b)(4), the due date for Response was March 16, 2022. On March 4, 2022, the Center received an email communication from an entity which appears to be related to the Respondent.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on April 4, 2022, in accordance with the ADR Rules, Paragraph A(3)(b)(4). The Panel finds that it was properly constituted. 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).

4. Factual Background

The Complainants are part of a group of companies, forming, a global fashion company, of which the parent company is Superdry plc, a public company limited by shares, incorporated in the United Kingdom. The Superdry group operates in 17 countries, including the Netherlands.

The Domain Name was registered on June 12, 2022, and resolves to a website on which the Domain Name is offered for sale for an amount of EUR 4,999. The website contains a button to change the language, which includes, *inter alia*, the Dutch and the English language.

According to information provided by EURid, the contact details of the registrant of the Domain Name are:

Organisation: Evolution Media e.U.
Name: Domain Manager
Address: Austria
Phone: +43.67762501252
Email: "(...)sale@wunderhirsch.hu"

The language of the Registration Agreement is Dutch.

5. Parties' Contentions

A. Complainant

The Complainants have filed a request to change of the language of the ADR Proceeding to English in accordance with Paragraph A(3)(a) of the ADR Rules.

The Complainants have submitted the following arguments for the request to change the language of the proceedings:

- (a) The Domain Name is composed of Latin characters and the content on the website of the Domain Name is in English;
- (b) The evidence contained in the Annexes of the Complaint is in English;
- (c) An order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainants and a delay in the proceedings;
- (d) One of the Complainants is incorporated and domiciled in Ireland, where English is the official language of the European Union; and
- (e) The Complainants have their headquarters and main place of business in the United Kingdom.

B. Respondent

The Respondent has not filed a Response.

However, on March 4, 2022 an email in English was received from the email address "(...)s@wunderhirsch.hu", stating with respect to the request to change the language of the proceedings in summary: "Language of the case is and should keep Dutch(NL) since our lawyers [sic] are only able to defend in Dutch, which costs us ~3000 EUR per case to be mentioned."

6. 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.”

In addition, article 22(4) Commission Regulation (EC) No 874/2004 (“PPR”) Also, article 22(4) of Commission Regulation (EC) No 874/2004 concerning the “.eu” Top Level Domain (“TLD”) contains the principle that the language of the administrative proceeding shall be the language of the registration agreement, unless otherwise agreed or specified in the registration agreement.

It is undisputed that the language of the registration agreement is Dutch.

In addition, an email was received one day after the Center’s informing the Respondent of this request, has requested that the proceedings should be conducted in Dutch. Although it is not clear if this entity represents the Respondent, the Panel notes that the email was sent using an email address under “(...s@wunderhirsch.hu”, while the email address for the Respondent is “(...sale@wunderhirsch.hu”. Both email addresses therefore have the domain in common, which consists of the email server (“wunderhirsch”) and the country code TLD (“.hu”). Also taking into account the timing of this email (*i.e.* immediately after the notification of the request by the Center to the Respondent) it appears that this entity is in some way related to the Respondent and that this email may well reflect the opinion of the Respondent as to the request to change the language of the proceedings.

The Complainants have requested a change of the language of the proceedings, arguing that the evidence shows that the Respondent has a sufficient command of the English language and that it would not be unfair to the Respondent to change the language of the proceedings to English. In this context, the Complainants point at the fact that the Domain Name is composed of Latin characters and submits that the content on the website to which the Domain Name resolves is in the English language.

The Panel first notes that the fact that the Domain Name is in Latin characters does not denote a specific language in this case, since both the Dutch and the English language use Latin characters. Furthermore, although the website to which the Domain Name resolves may be in the English language when approached from an English speaking territory (as the Complainants may have done), it is in the Dutch language when approached using an IP address from the Netherlands, as the Panel has done. In addition, the website contains a button to change the language. The Panel further notes that the Respondent is domiciled in Austria, where German is the local language, while its contact email address is under “(...s@wunderhirsch.hu”, denoting the country code TLD of Hungary, where the local language is Hungarian.

The Panel concludes that these findings do not support a finding that the Respondent has a sufficient command of the English language, nor a finding that it would not be unfair to the Respondent to change the procedural language to English.

The Complainants have also supported their request by arguing that an order for the translation of the Complaint and supporting documents into Dutch will result in significant expenses for the Complainants and an unreasonable delay in the proceedings. In this context, the Complainants have pointed, first, at the fact that they are established in the United Kingdom and Ireland respectively. In this context, the Panel notes that the Complainants are part of a global fashion company, operating in 17 countries, including the Netherlands. In addition, when the Panel approached the website under <superdry.com>, operated by Superdry plc, while using its regular IP address in the Netherlands, a pop-up appeared with a Dutch flag and the text “Shoppen vanuit Nederland? Wil je onze Nederlandse winkel gebruiken?” (in English: “Shopping

from the Netherlands? Do you want to use our Dutch shop?") with a "GA" ("GO") button. Therefore, the group to which the Complainants belong is apparently also targeting Dutch-speaking consumers in the Dutch language. In view of these circumstances, the Panel is not satisfied that, merely because the Complainants are domiciled in Ireland and the United Kingdom respectively, it must be found that the Complainants do not reasonably have (access to) knowledge of the Dutch language.

Furthermore, the Complainants have referred to the fact that the Complaint was filed in English and that the annexes are in English. The Panel notes that it is up to the Complainants to file the Complaint in English or in Dutch. The Panel notes that the Complaint must conform to a Model Complaint provided by the Center, limiting the overall number of pages, which is also available in the Dutch language. Furthermore, the Complainants have not provided any information on the annexes it intends to submit, nor on the time and costs that would be involved in translating the Complaint and the annexes into Dutch. In view of the above circumstances, taken together, the Panel cannot conclude that an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainants and an unreasonable delay in the proceedings.

In view of all these circumstances, the Panel concludes that the arguments brought forward by the Complainants are insufficient to support a decision to change the language of the proceedings into English.

7. Decision

For the foregoing reasons, in accordance with Paragraph A(3)(b)(6) of the ADR Rules, the request of the Complainants to change the language of the proceedings is denied.

This Panel's decision shall be final and not subject to appeal.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: April 29, 2022