

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

Tish & Snooky's N.Y.C. Inc. v. Michael Kuehn
Case No. DEUL2022-0003

1. The Parties

The Complainant is Tish & Snooky's N.Y.C. Inc., United States of America, represented by Tarter Krinsky & Drogin LLP, United States of America.

The Respondent is Michael Kuehn, Germany.

2. The Domain Name, Registry and Registrar

The disputed domain name is <manicpanic.eu>.

The Registry of the disputed domain name is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is pro.vider.de Internetagentur GmbH.

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 March 4, 2022. On March 7, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On March 9, 2022, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Request. The Center sent an email communication to the Complainant on March 11, 2022, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Request. The Complainant filed an amended Request on March 14, 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 16, 2022. In accordance with the ADR Rules, Paragraph A(3)(b)(4), the due date for Response was March 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on April 11, 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 disputed domain name was registered on September 15, 2014, and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests a change of the language of the ADR Proceeding in accordance with Paragraph A(3)(a) of the ADR Rules from German into English and asserts that it has established circumstances that justify the acceptance of such Request. The Complainant has argued a number of circumstances supporting English as the language of the ADR proceeding, and that if it was required to file its Complaint in German this would unfairly disadvantage and create a financial burden on the Complainant just as it would delay the proceedings and adjudication of the matter.

The reasons provided by the Complainant are:

"There is no evidence contrary to the presumption that the Respondent is not fluent or proficient in English; The disputed domain name consists of two English words "manic" and "panic," which, when combined together, formulate an arbitrary and fanciful combination which is identical to the MANIC PANIC trademarks of the Complainant; Neither Complainant nor its authorized representative have knowledge of German, and, therefore, are unable to communicate in German, and based on Respondent's lack of use of the disputed domain name, which incorporates in its entirety the MANIC PANIC brand, which in 2014 had been openly used for 37 years, and for which trademarks had been registered, there is no other conclusion to draw then that the disputed domain name <manicpanic.eu> was registered in order to prevent Complainant, the owner of the trademark or service mark, from reflecting the mark in a corresponding domain name. In light of Respondent's decision to register and use the disputed domain name in bad faith, it would unduly burden the Complainant to have to arrange for a German translation and unfairly force it to bear translation costs."

B. Respondent

The Respondent did not reply to the Complainant's contentions.

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."

The procedure related to the request for a change to the language of the ADR Proceeding shall be as follows: (1) The request shall be submitted to the Provider and shall:
(ii) specify the requested change of the language of ADR Proceeding; (iii) specify the circumstances that would justify such a change of the language of an ADR Proceeding.

In this case, the language of the Registration Agreement is German. The Complainant requests that English should be the language of the proceeding.

In accordance with Paragraph B(7)(b) and (c) of the ADR Rules, the Panel shall ensure on the one hand that the Parties are treated fairly and with equality, and shall ensure, on the other hand, that the ADR Proceeding takes place with due expedition.

The Panel considers the following circumstances of the present proceeding:

- The Complainant is a New York corporation with its seat in Long Island, New York;
- The disputed domain name consists of the two English words "manic" and "panic", which corresponds to the trademark MANIC PANIC of the Complainant;
- The disputed domain name does not lead to an active website.
- The language of the disputed domain name is English;
- Neither the Complainant nor its authorized representative have knowledge of German, so they are unable to communicate in German. The necessary translations of documents would cause delays and extra costs and fees for the Complainant;
- The Respondent did not object the Complainant's request to change the language of proceeding.

In the present case the Panel therefore is satisfied that the Respondent has knowledge of the English language so that proceeding in English is fair and equal for the Complainant and the Respondent. This is supported by the fact that the Respondent did not object the request to change the language.

7. Decision

For the foregoing reasons, in accordance with Paragraph A(3)(b)(6) of the ADR Rules, the Panel orders that the language of the ADR proceeding shall be English and any future submission by the Parties (including the submission of a new Complaint) regarding the disputed domain name <manicpanic.eu> shall be made in the language of the ADR Proceeding in accordance with paragraph A(3)(c) of the ADR Rules.

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

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: April 26, 2022