

ADMINISTRATIVE PANEL DECISION

JJA v. Ireneusz Bachurski, Ireneusz Bachurski Przedsiębiorstwo INFO-BI
Case No. DEU2024-0014

1. The Parties

The Complainant is JJA, France, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is Ireneusz Bachurski, Ireneusz Bachurski Przedsiębiorstwo INFO-BI, Poland.

2. The Domain Name, Registry and Registrar

The Registry of the Disputed Domain Name <hesperide.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Realtime Register B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2024. On May 16, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the Disputed Domain Name. On May 17, 2024, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 27, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on June 27, 2024. 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 Complainant is a French company which sells products in the home furnishing and decor sector. One brand name it uses for its range of garden furniture is HESPERIDE. The Complainant is the owner of European Union Trademark Registration No. 010379196 for the word HESPERIDE, which was registered on April 30, 2012 (the “HESPERIDE” trademark). It also owns a number of other trademarks which include the word HESPERIDE.

The Disputed Domain Name was registered on February 25, 2023. There is no evidence it has been actively used other than being offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant says that “Hesperide” is a term which exclusively relates to its products. It says the Disputed Domain Name is identical to its trademark, the “.eu” Top-Level Domain being disregarded for the purpose of assessing confusing similarity.

The Complainant says the Respondent has no rights or legitimate interests in the term “hesperide”.

The Complainant says the Disputed Domain Name has been registered and is being used in bad faith. It says the Respondent must have been aware of the Complainant and its HESPERIDE trademark when registering the Disputed Domain Name and did so to take advantage of that trademark. It also says registering a domain name that is identical to a distinctive trademark gives rise to a presumption of bad faith. It also cites two previous UDRP cases where the Respondent has been found to have acted in bad faith. These are *STADA Arzneinittel AG v. Ireneusz Bachurski*, WIPO Case No, [D2021-4185](#) (concerning the domain name <stada.online>) and *Tomasz Wojtowicz v Ireneusz Bachurski (Ireneusz Bachurski Przedsiębiorstwo INFO-BI)* Czech Arbitration Court Case No. CAC-ADREU-008288 (concerning the domain name <wojtowicz.eu>).

B. Respondent

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

6. Discussion and Findings

According to Article 4(4) of Regulation (EU) No 2019/517 (“the Regulation”) and in connection with Paragraph B(11)(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedy requested by the Complainant if the latter proves in the ADR proceeding that:

- (i) The Disputed Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) The Disputed Domain Name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) The Disputed Domain Name has been registered or is being used in bad faith.

In the present ADR proceeding, the Complainant has pleaded the cumulative existence of the circumstances provided by the Regulation and ADR Rules (points (i), (ii) and (iii) above). The Panel notes that the Regulation and ADR Rules list the issues under points (ii) and (iii) in the alternative, but nevertheless the Panel will examine both of these issues in order to reach its decision in the present ADR proceeding.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Panel finds that the Complainant has rights in the HESPERIDE trademark for the purpose of this proceeding.

As such the Disputed Domain Name is identical to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law. The country-code Top-Level Domain (".eu") is to be ignored in making this comparison.

Accordingly, the Panel finds that the first condition of Paragraph B11(d)(i) of the ADR Rules has been fulfilled.

B. Rights or Legitimate Interests

Paragraph B11(e) of the ADR Rules provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (1) prior to any notice of the dispute, the Respondent has used the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with the offering of goods or services or has made demonstrable preparation to do so;
- (2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the Disputed Domain Name, even in the absence of a right recognized or established by national and/or European Union law;
- (3) the Respondent is making a legitimate and noncommercial or fair use of the Disputed Domain Name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the HESPERIDE trademark. The Complainant has prior rights in the HESPERIDE trademark which precede the Respondent's registration of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In those circumstances, the Panel considers that the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and second condition of Paragraph B11(d)(1) of the ADR Rules has been fulfilled.

C. Registered or Used in Bad Faith

Although the Panel has determined that the Complainant has sufficiently met the criteria for the second condition under section Paragraph B11(d)(1) of the ADR Rules, and it is therefore unnecessary for the Complainant to also satisfy the third condition, the Panel will nevertheless render findings on the arguments and evidence presented. Further, the third ADR condition is posed alternatively, meaning that it is sufficient for the Complainant to prove that the Disputed Domain Name is either registered or used in bad faith. As the Complainant has provided arguments in support of both registration and use in bad faith, the Panel will examine both grounds for the sake of completeness.

Under the ADR Rules evidence of registration and use in bad faith is established by, amongst other factors, circumstances which indicate that: “(1)...the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or (2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that: (i) the Respondent has engaged in a pattern of such conduct” (ADR Rules paragraph B11(f)(1) and (2)).

“Hesperide” is a term which has no other commercial meaning so far as the Panel is aware save in relation to the Complainant and its products. The Panel notes that the term “Hesperides” in the plural features in Greek mythology but there is no evidence before the Panel of anyone other than the Complainant using either “Hesperide” or “Hesperides” as a brand name or in any other form of commercial activity. Given these circumstances the Panel thinks it more likely than not that the Respondent will have been aware of the Complainant and/or its HESPERIDE trademark when registering the Disputed Domain Name and did so for reasons which fall within either B11(f)(1) or (2) as the only person the HESPERIDE trademark was likely to have been of value to is the Complainant. Insofar as B11(f)(2)(i) above depends on showing a pattern of conduct the Complainant has put in evidence two previous UDRP decisions where the Respondent has been found to have acted in bad faith (see above). This establishes the necessary pattern of conduct. Further the Panel notes that the Respondent has not provided any affirmative case that its registration and use of the Dispute Domain Name was not in bad faith and the Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third condition of Paragraph B11(d)(1) of the ADR Rules has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with Paragraph B11 of the ADR Rules, the Panel orders that the Disputed Domain Name, <hesperide.eu>, be transferred to the Complainant¹.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: July 11, 2024

¹ As the Complainant is located in France, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the Disputed Domain Name set out in Article 3 of Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.

/The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the/
The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.