

## **ADMINISTRATIVE PANEL DECISION**

**AEPO-ARTIS (Association of European Performers' Organisations) v.  
Ekkehard Franz Weete  
Case No. DEU2023-0010**

### **1. The Parties**

The Complainant is AEPO-ARTIS (Association of European Performers' Organisations) of Belgium, internally represented.

The Respondent is Ekkehard Franz Weete of Germany.

### **2. The Domain Name, Registry and Registrar**

The Registry of the disputed domain name <payperformers.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is EURid vzw.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 14, 2023. On March 15, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On March 17, 2023, 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 March 21, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 20, 2023. 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, AEPO-ARTIS (Association of European Performers' Organisations), based in Brussels, operating in the European Union and the United Kingdom, is a non-profit organization that represents collective management organisations of performers' neighboring rights.

The Complainant claims unregistered trademark rights for the name "PayPerformers" in the European Union Member States (such as Austria, Czech Republic, Denmark, Finland, Germany, Ireland, Italy, Malta, Norway, Portugal, Slovakia, Sweden) and the former European Union Member State, the United Kingdom.

In 2020 the Complainant launched, through the European Union and the United Kingdom, a campaign under the name "PayPerformers", using the services of a consultancy company. The consultancy contract concluded in August 1, 2020, and provided as Annex 11 to the Complaint, had the purpose of coordinating the PayPerformers campaign for the implementation of Article 18 of the Copyright Directive into the national legislation of the 27 Member States of the European Union in relation to the equitable remuneration of the performers.

Such campaign was visible on social platforms like Twitter, Facebook, Instagram; it was further referred to by various organizations that support performers across the European Union, including the Complainant's members; and was also referred to in several studies, documents and news articles produced by third parties such as the United Kingdom Parliament's Department for Culture, Media and Sport Select Committee Report.

The disputed domain name was registered on July 20, 2022, and, at the time of filing the Complaint, it resolved to a website containing links with adult content.

The Complainant, through the consultancy company promoting the campaign PayPerformers, held the disputed domain name and used the corresponding website "www.payperformers.eu" until June 9, 2022. At the time of the present procedure, some publicly available documents related to the Complainant's campaign PayPerformers contain active links diverting Internet users to the website under the disputed domain name.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant requests the transfer of the disputed domain name to it and contends the following: the disputed domain name is confusingly similar to its unregistered trademarks PAYPERFORMERS and #PAYPERFORMERS; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent has registered and is using the disputed domain name in bad faith with the intent of causing confusion for the Internet users with regard to the source of services provided on the corresponding website.

As a part of the PayPerformers campaign, the Complainant's consultancy company operated on the Internet with the "www.payperformers.eu" website as an essential part of the project. On June 9, 2022 the consultancy company failed to renew the disputed domain name and, at the termination of the consultancy contract, when transferring to the Complainant the control over the corresponding websites and social-media accounts, the disputed domain name was not transferred. The Complainant noticed such omission only after the current content was displayed on the website under the disputed domain name.

The disputed domain name was an essential part of the PayPerformers campaign and hosted a multitude of campaigning materials and information used by the Complainant's members as well as individuals and entities interested in the performers' rights. Further, several still-existing publicly available documents (such as the United Kingdom Parliament's Report) contain links to the Complainant's campaign available on the

website at “www.payperformers.eu”. The links currently direct the Internet users to the Respondent’s website under the disputed domain name.

Since there are several still-existing publicly available documents with links to the Complainant’s campaign, which currently redirect to the website under the disputed domain name which provides links to prostitution, pornographic or adult dating sites, this is highly damaging for the Complainant’s PayPerformers campaign and in general, to performers’ reputation. Further, the word “pay” in the content of the disputed domain name contradicts the purportedly “free” nature of the services and activities (supposedly) provided on the website under the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under Paragraph B(11)(d)(1) of the ADR Rules the Complainant is required to demonstrate the following:

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

The Panel will further analyze the potential concurrence of the above circumstances.

### **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**

Paragraph (B)(1)(b)(9) of the ADR Rules contains a list of rights which may fulfill the definition of “name in respect of which a right is recognized or established” provided in Paragraph (B)(11)(d)(1)(i) of the ADR Rules. Said list includes, *inter alia*: “copyright, trademarks and geographical indications provided in national law or European Union law, and, insofar as they are protected under national law in the Member States where they are held: unregistered trademarks, trade names, business identifiers, company names, family names and distinctive titles of protected literary and artistic works.”

Paragraph B(11)(d)(1)(i) of the ADR Rules requires that the disputed domain name be “identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a member State and/or European Union law”.

The Complainant provided evidence that it promoted and has unregistered or common law rights in the name “PayPerformers” throughout the European Union. Similar to *Centri Technology, Inc. v. Alina Prokopenko*, WIPO Case [DEU2018-0017](#), in which passing off held to be relevant, there is sufficient evidence to support unregistered trademark rights.

The disputed domain name reproduces the Complainant’s unregistered trademark exactly.

It is well established in decisions under the ADR Rules that the ccTLD “.eu” is typically ignored when assessing the similarity between a name, in which a right is recognized or established by national law and/or European Union law, and a domain name.

The Panel therefore finds that the disputed domain name is identical to the name “PayPerformers” as per the purpose of the Paragraph B(11)(d)(1)(i) of the ADR Rules.

## **B. Rights or Legitimate Interests**

The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that it has no relationship or association with the Respondent, and has not authorized the Respondent to use or register in a domain name its name “PayPerformers”, that the Respondent is not commonly known by the disputed domain name and is not using it in connection with the offering of goods or services, or making a legitimate noncommercial or fair use of it.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name.

Although properly notified with regard to the present procedure, the Respondent failed to provide a Response to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The Respondent is using the website under the disputed domain name for a webpage providing links apparently related to adult oriented services. However, when trying to access the links, the Internet user was asked to provide various personal information. Further, on the website under the disputed domain name there was no information regarding the holder of the website or any information on how to contact the website holder.

Accordingly, in the absence of any evidence from the Respondent – who has not submitted a Response – to support a possible basis on which the Respondent may have rights or legitimate interests in respect of the disputed domain name, and having in view the other circumstances of this case – namely that the purpose of coordinating the PayPerformers campaign (which was at the time of the registration of the disputed domain name tied to the Complainant’s name and rights) for the implementation of Article 18 of the Copyright Directive into the national legislation of the 27 Member States of the European Union in relation to the equitable remuneration of the performers, the Panel accepts the Complainant’s un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the condition set out at Paragraph B(11)(d)(1)(ii) of the ADR Rules.

## **C. Registered or Used in Bad Faith**

Under Paragraph B(11)(d)(1) of the ADR Rules, lack of rights or legitimate interests and registration or use in bad faith are considered alternative requirements for a successful complaint. As the Panel has found that the Respondent lacks rights or legitimate interests in the disputed domain name no further discussion on bad faith registration or use is necessary.

Nevertheless, the Panel finds that the Complainant holds rights for the name “PayPerformers” since 2020 and has promoted this unregistered mark also under the website at “www.payperformers.eu”.

The disputed domain name was registered in July 2022, a month after the Complainant’s failure to renew the disputed domain name.

Further, at the time of filing the Complaint, the disputed domain name was connected to a website diverting Internet users to third parties’ websites apparently providing adult services and asking Internet users to provide their personal details.

Paragraph B(11)(f)(4) of the ADR Rules lists as evidence of bad faith the situation when the respondent has used the disputed domain name in order to attract Internet users, with the purpose of intentionally attempting

to create a likelihood of confusion with the Complainant's association name as to the disputed domain name's source, sponsorship, affiliation or endorsement for its commercial gain.

Given that the disputed domain name reproduces the Complainant's mark, the Respondent did not provide any response in this proceeding, and on the website operated under the disputed domain name there is no information on its holder and no disclaimer regarding the (lack of any) relation between the Respondent and the Complainant, in this Panel's view, on the balance of probabilities, it is more likely than not, that the Respondent has intended to attract Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's trademark to suggest that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

Further, Internet users looking for information provided by the Complainant on its website under "www.payperformers.eu" or accessing the still-existing publicly available documents with links to the Complainant's PayPerformers campaign were directed to the Respondent's website under the disputed domain name, which would be detrimental to the Complainant, its PayPerformers campaign and performers generally.

The Respondent failed to participate in the present proceeding in order to provide arguments in its favor and apparently provided false contact details in the WhoIs because the Written Notice could not be delivered to the Respondent by courier service. Panels additionally view the failure to provide a response and the provision of false contact information as an indication of bad faith.

The Panel therefore finds that the Respondent has both registered and used the disputed domain name in bad faith and that the condition set out at Paragraph B(11)(d)(1)(iii) of the ADR Rules has also been satisfied.

## 7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <payperformers.eu> be transferred to the Complainant.<sup>1</sup>

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: May 4, 2023

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<sup>1</sup> The Complainant sought the transfer of the disputed domain name. As the Complainant is located in Belgium, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 4(2)(b) of Regulation (EC) No. 733/2002 as amended by Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.