

PANEL DECISION

CommScope EMEA Limited, CommScope, Inc. of North Carolina v. Dario Baumgartner, Hostpoint Limited
Case No. DEU2024-0017

1. The Parties

The Complainants are CommScope EMEA Limited ("First Complainant"), Ireland, and CommScope, Inc. of North Carolina ("Second Complainant"), United States of America ("United States"), represented by Merchant & Gould, PC, United States.

The Respondent is Dario Baumgartner, Hostpoint Limited, Malta.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <comscope.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Ascio Technologies Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 30, 2024. On May 31, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On June 3, 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 sent an email communication to the Complainants on June 7, 2024, providing the registrant and contact information disclosed by the Registry, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on June 8, 2024.

The Center verified that the Complaint together with the amended 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 June 10, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 30, 2024. The Respondent sent an email to the Center on June 10, 2024 disclosing a beneficial holder of the disputed domain name (Comhair Swiss GmbH,

Herbert Kühleitner, hereinafter referred both together as the “beneficial holder”). The beneficial holder sent an email to the Center on June 28, 2024. However, the Respondent did not submit any formal response. Accordingly, the Center notified the Respondent’s default on July 1, 2024. On July 1, 2024, the beneficial holder sent several emails to the Center.

The Center appointed Kaya Köklü as the sole panelist in this matter on July 5, 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).

On July 17, 2024, the Panel issued Procedural Order No. 1 (the “Order”), by which the beneficial holder of the disputed domain name was requested to submit evidence until when he used “Comscope” for his business. On July 23, 2024, the beneficial holder submitted an email to the Center in response to Panel Order No. 1 together with some annexes. On July 29, 2024, the Complainants submitted a response to the beneficial holder’s email.

4. Factual Background

The Second Complainant is a manufacturer of broadband coaxial cable for hybrid fiber coaxial applications and a supplier of fiber optic and twisted pair cables with its registered seat in the United States.

The Second Complainant owns various trademark registrations for COMMSCOPE, such as the European Union Trademark Registration No. 000966937, registered on February 29, 2000, for COMMSCOPE, covering protection for communication cables, co-axial cables, fiber optic cables, and communication cable connectors as protected in class 9.

The Second Complainant further owns and operates its main company website at “www.commscope.com”. It further owns the domain name <commscope.eu>, which redirects Internet users to its main company website.

The First Complainant is an affiliate of the Second Complainant with its registered seat in Ireland, which promotes the products and services of the Second Complainant in the European Union.

The Respondent is reportedly located in Malta. However, the identified beneficial holder of the disputed domain name, as indicated by the Respondent, is an entity located in Switzerland running a business for cashier solutions for hair salons. Previously, the beneficial holder of the disputed domain name also provided services of computer-assisted analysis of hair under the brand “comscope”.

The Complainants and the beneficial holder of the disputed domain name have known each since at least the year 2000 due to previous domain name disputes between the parties before the Forum, where the domain name <commscope.info> was ordered to be transferred to the Complainants, but the complaint as to the domain names <comscope.info> and <comscope.com> was denied.¹ In 2009 or later, the beneficial holder sold the domain name <comscope.com> to the Complainant.

The disputed domain name was registered on October 31, 2021. According to the evidence provided by the beneficial holder in his submissions to the Procedural Order No. 1, the disputed domain name was already registered on behalf of the beneficial holder from 2007 to 2013.

At the time of filing of the Complaint and this Decision, the disputed domain name resolves to a parking page of the Registrar indicating that the disputed domain name has recently been purchased. As confirmed by the beneficial holder, the disputed domain name is offered for sale on a sales platform.

¹ *CommScope, Inc. of North Carolina v. EHK AG a/k/a Chris Zumbrunn*, Forum Case No. FA0204000109052, and *CommScope, Inc. of North Carolina v. Herbert Kuehleitner*, Forum Case No. FA0905001260847.

On February 26, 2024, the Complainants' attorney sent an email to the Respondent requesting the voluntary transfer of the disputed domain name.

5. Parties' Contentions

A. Complainants

The Complainants request the transfer of the disputed domain name to the Second Complainant. They contend that they have satisfied each of the elements required under the ADR Rules.

In the comments to the beneficial holder's submission to the Procedural Order No. 1, the Complainants contend that the Respondent did not provide evidence of the Respondent's use of the term "comscope" in business at the time the disputed domain name was registered or thereafter. The Complainants argue that the previous decisions confirm the Respondent's knowledge of the Complainants' rights.

B. Respondent

The Respondent did not formally reply to the Complainants' contentions, but sent an email communication on June 10, 2024, stating that:

"Please note that Hostpoint Limited is not the domain owner of comscope.eu. We just offer our customer a local presence service. The domain owner information for comscope.eu are:
Comhair Swiss GmbH
Herbert Kühleitner [...]"

Providing also a postal address for Comhair Swiss GmbH, Herbert Kühleitner in Switzerland, and a Swiss phone number.

The Center received email communications from the identified beneficial holder on June 28 and July 23, 2024 in German language.

The beneficial holder requests the Complaint to be denied.

In its email communication to the Center, the beneficial holder asserts that he previously used the brand "comscope" for its computer assisted hair analysis business. But for business reasons, the beneficial holder first stopped its use outside the European Union and then completely, including in the European Union, while not specifying when the use effectively ended. The beneficial holder just asserts that since "2021/23" all relevant content concerning the use of the brand "comscope" was deleted.

The Panel notes that Regulation (EU) 2019/517 of the European Parliament and of the Council of March 19, 2019, on the implementation and functioning of the .eu Top-Level Domain name ("Regulation (EU) 2019/517") establishes in its article 3 that:

"Registration of one or more domain names under the .eu TLD can be requested by any of the following:

- (a) a Union citizen, independently of their place of residence;
- (b) a natural person who is not a Union citizen and who is a resident of a Member State;
- (c) an undertaking that is established in the Union; and
- (d) an organisation that is established in the Union without prejudice to the application of national law."

In addition, the Panel notes that the applicable Terms and Conditions for .eu, .europa and .europa Domain Names (the "Terms and Conditions for .EU") states that:

"Your registration data must be your own data and must not be that of your Registrar, or of a proxy holder or a representative of a natural person or legal entity who does not meet the eligibility criteria."

Moreover, the beneficial holder appears to be located in Switzerland, and does not appear to meet any of the conditions of article 3 of the Regulation (EU) 2019/517. In this regard, the Panel notes that the Respondent stated that it offers its customer “a local presence service”. The Panel notes that if the Respondent registered the disputed domain name for the beneficial holder, and the beneficial holder did not satisfy the eligibility criteria, that would amount to a breach of the Terms and Conditions for .EU.

6. Discussion and Findings

6.1. Language of the Proceeding

Pursuant to the ADR Rules, Paragraph A3(a), and in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the ADR proceeding shall be the language of the registration agreement, which in the present case is English.

Accordingly, the Complaint was correctly filed in English. However, the beneficial holder replied to the Complaint and to the Procedural Order No. 1 in German language, even though being explicitly informed that the language of the ADR Proceeding is English, and that any communication should be made in English language.

In exercising its discretion to consider the submissions in a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.5.1).²

Panel notes that the Complainants were able to comment on the Respondent's email communications to the Center, even though communicated in German language. The Panel concludes that the Complainants were able to read and understand the Respondent's statements. Considering the need to ensure the proceeding is conducted in a timely and cost effective manner, the Panel finds it is not foreseeable that the Complainants would in any way be prejudiced, if the Panel accepts the beneficial holder's submissions in German language.

Accordingly, the Panel decides to consider the Respondents submissions in German language, even they were not submitted in the language of the proceeding.

6.2. Consolidation of multiple Complainants

The Complaint contains a request for consolidation of the First and Second Complainants on the basis that they are affiliated companies with a common grievance against the Respondent.

Taking into consideration that the Respondent has not rebutted the requested consolidation, the Panel finds that the Complainants have established a prima facie case that the Complaint can be consolidated based on a common grievance and interest of both Complainants, in particular as the First Complainant is an affiliated company of the Second Complainant, which is an organization established in Ireland and promotes the products and services of the Second Complainant in the European Union. The Panel is convinced that it is fair and equitable in the circumstances of the case to order the consolidation as requested.

Consequently, the Panel accepts the First and Second Complainants in this administrative proceeding and, for the ease of reference, will jointly refer to them as “the Complainant” in the following, whenever appropriate.

² Considering the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), where appropriate, and will decide consistent with the consensus views captured therein.

6.3. Substantive Issues

In terms of the ADR Rules, Paragraph B11(d)(1), the Complainant is required to demonstrate 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.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the COMMSCOPE trademark by virtue of various trademark registrations, including in the European Union. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds the Complainant's COMMSCOPE trademark is recognizable within the disputed domain name. As stated at sections 1.7 and 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings or minor differences do not prevent a finding of confusing similarity. In the present case, the Panel notes that the disputed domain name differs from the Complainant's COMMSCOPE trademark only by an omitted letter "m", which in view of the Panel, still makes the Complainant's COMMSCOPE trademark recognizable within the disputed domain name.

Accordingly, the disputed domain name is confusingly similar to the Complainant's COMMSCOPE trademark for the purposes of the ADR Rules. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the ADR Rules, paragraph B(11)(d)(1)(i), has been established.

B. Rights or Legitimate Interests

Pursuant to the ADR Rules, Paragraph B11(d)(1)(ii), it is up to the complainant to plead and prove accordingly that the disputed domain name has been registered by the respondent without rights or legitimate interests therein. The ADR Rules contain in Paragraph B11(e) a non-exhaustive list of case scenarios suitable to prove rights or legitimate interests of a respondent. Inasmuch as it is typically difficult to prove a negative fact (here the absence of rights or legitimate interests), it is in line with the majority view of UDRP panels as well as in .eu ADR proceedings that it is sufficient if the complainant establishes a so-called prima facie case. This results in a shifting of the burden of production, and it is then up to the respondent to present and prove that there are corresponding rights or legitimate interests in the disputed domain name (see for example: *Lidl-Stiftung & Coupon KG v. Name Redacted*, WIPO Case No. [DEU2018-0012](#)).

It is undisputed between the Parties that beneficial holder has neither been granted a license nor has it been otherwise authorized by the Complainants to register and use the disputed domain name. There is also no indication in the current record that the Respondent is commonly known by the disputed domain name, particularly as the disputed domain name has apparently never been used since its registration in 2021.

On the other hand, it is also undisputed that the beneficial holder has used the sign “comscope” for its business for some time and was already owner of the disputed domain name in the period between 2007 and 2013.

However, and as explicitly confirmed by the beneficial holder, the use of the sign “comscope” gradually ended at some time for business reasons, first outside the European Union and then also elsewhere, including in the European Union.

But despite the Procedural Order No. 1, the beneficial holder was not willing or not able to provide any evidence or even a comprehensible demonstration until when he used the sign “comscope” for its business. In this regard, also no reasons were given, why the beneficial holder registered the disputed domain name in October 2021 again, after the registration was seemingly lapsed for many years after the year 2013.

The beneficial holder just vaguely stated in his email communication to the Center on July 23, 2024 that any use of the sign “comscope” was gradually removed from distribution and since “2021/23” all relevant content concerning the use of the brand “comscope” was deleted (whatever this shall mean in concrete terms). The Panel notes that “Panels tend to assess claimed respondent rights or legitimate interests in the present, i.e., with a view to the circumstances prevailing at the time of the filing of the complaint.” See [WIPO Overview 3.0](#), section 2.11.

An independent Internet search by the Panel, including at “www.archive.org”, did not reveal any use of the disputed domain name, either now or since its registration. Since the beneficial holder was unable to demonstrate any use of the disputed domain name since its registration in October 2021, it is in view of the Panel more likely than not that the beneficial holder was already no longer using the sign “comscope” for its business and that the disputed domain name was not registered with the intention of using it legitimately.

This assessment is supported by the fact that the beneficial holder, who previously was already involved in similar domain name disputes with the Complainant and who already sold a domain name comprising the sign “comscope” to the Complainant, was fully aware of the COMMSCOPE trademarks of the Complainant when registering the disputed domain name end of 2021.

Bearing this in mind, the case record does not provide for any indication that the beneficial holder ever used the disputed domain name since its registration in October 2021 nor that the beneficial holder had any such intention to legitimately use it. The fact that the Parties were directly or indirectly involved in previous disputes concerning the COMMSCOPE trademark and corresponding domain names does not alter the Panel’s conclusion as to the lack of rights or legitimate interests for the beneficial holder in the disputed domain name. Rather, the previous disputes between the parties and the sale of another “comscope” domain name to the Complainant make it well conceivable to the Panel that the beneficial holder registered the disputed domain name primarily for the purpose of a second sale to the Complainant.

In light of the above, the beneficial holder was not able to sufficiently rebut the Complainants prima facie case that the beneficial holder has no rights or legitimate interests in respect of the disputed domain name. Therefore, the Panel concludes that the disputed domain name was registered without any rights or legitimate interests therein.

The Panel finds that the requirements of Paragraph B11(d)(1)(ii) of the ADR Rules are met.

C. Registered or Used in Bad Faith

As the Panel finds that the Complainant has made out its case in accordance with the ADR Rules, paragraph B(11)(d)(1)(ii), as discussed above, and as this paragraph is expressed as an alternative to making a case that the Respondent registered or used the disputed domain name in bad faith, in accordance with the ADR Rules, paragraph B(11)(d)(1)(iii), the Panel does not see a necessity to further examine the presence of this particular element in detail.

However, and just for the sake of completeness, the Panel finds it more likely than not that the beneficial holder registered the disputed domain name with the intention to make a second sale to the Complainant. As discussed under the second element, the Panel's conclusion on the Respondent's intention towards the disputed domain name is supported by the fact that the beneficial holder already sold a domain name comprising the sign "comscope" to the Complainant, but there is not any evidence of any use by the Respondent pointing towards a different intention for the disputed domain name after its acquisition in 2021. This assessment is supported by the fact that the beneficial holder was not willing or not able to disclose the information until when he used the sign "comscope" for his business, even though explicitly asked for by the Panel in its Procedural Order No. 1. The email communication on July 23, 2024 by the beneficial holder on this crucial aspect remained vague without any evidence of legitimate use or demonstration of such intention.

The Panel finds that the requirements of Paragraph B11(d)(1)(iii) of the ADR Rules are met as well.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <comscope.eu> be transferred to the Second Complainant.³

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: August 7, 2024

³ (i) 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.

(ii) The Second Complainant satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517, as it is an entity established in Ireland which is a Member State of the European Union.