

ADMINISTRATIVE PANEL DECISION

Wikimedia Foundation, Inc. v. sc ADC srl
Case No. DRO2024-0008

1. The Parties

The Complainant is Wikimedia Foundation, Inc., United States of America (“United States”), represented by Zacco Sweden AB, Sweden.

The Respondent is sc ADC srl, Romania.

2. The Domain Name and Registrar

The disputed domain name <wikipedia.ro> (the “Disputed Domain Name”) is registered with ROTLD (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2024. On October 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 7, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 7, 2024, the Center informed the parties in Romanian and English, that the language of the registration agreement for the Disputed Domain Name is Romanian. On October 8, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 7, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on November 15, 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 Rules, paragraph 7.

4. Factual Background

Founded in 2003, the Complainant is a nonprofit charitable organization dedicated to encouraging the growth, development, and distribution of free, multilingual, educational content. One of the Complainant's projects is Wikipedia, a free, online encyclopedia compiled, edited, and maintained by many active contributors.

The Complainant's Trademark includes, inter alia, International Trademark Registration No. 839132 for WIKIPEDIA in Class 41 registered on December 16, 2004, International Trademark Registration No. 1239634 for WIKIPEDIA in Classes 9, 16, 18, 25, 35, 36, 38, 41, 42 registered on June 30, 2014 and International Trademark Registration No. 1224858 for WIKIPEDIA in Classes 9, 36, 38, 41, 42 registered on March 27, 2014 (the "Complainant's Trademark").

The Complainant's Trademark is also fully incorporated in the Complainant's domain name <wikipedia.org> (the "Complainant's Domain Name") registered on January 13, 2001, and resolves to the Complainant's website (the "Complainant's Website").

The Disputed Domain Name was registered by the Respondent on March 1, 2005, which is after the Complainant's Trademark was first registered. At the time of filing of the Complaint and at the time of the rendering of this decision, the Disputed Domain Name resolves to an inactive webpage that shows "this site can't be reached" (the "Respondent's Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that:

- (a) The Disputed Domain Name is identical to the Complainant's Trademark. The Complainant's Trademark is reproduced in its entirety in the Disputed Domain Name.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not affiliated with the Complainant in any way. The Complainant has never authorized the Respondent's registration of the Disputed Domain Name. There is also no evidence that the Respondent is commonly known by the Complainant's Trademark or any variation thereof. Moreover, the Respondent has not made any preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. The Respondent also has not used the Disputed Domain Name for any legitimate noncommercial or fair use. The fact that the Disputed Domain Name has been inactive for many years and is currently still inactive indicates that the Respondent is merely holding on the Disputed Domain Name, presumably with the hope of selling it later on. Therefore, the Respondent does not any have rights or legitimate interests in the Disputed Domain Name.
- (c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. Given the extensive use and reputation that the Complainant has acquired in the highly distinctive Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the

Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent registered, used and is holding the Disputed Domain Name in complete disregard of the Complainant's exclusive rights to use and authorize the use of the Complainant's Trademark. Given the Disputed Domain Name has resolved to an inactive webpage for many years, it is likely that the Respondent has registered the Disputed Domain Name in an attempt to sell the Disputed Domain Name to the Complainant or to use it for commercial purposes. Therefore, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

According to the Registrar's email to the Center on October 7, 2024, the language of the Registration Agreement for the Disputed Domain Name is Romanian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English. The Complainant submitted that the Disputed Domain Name consists of the Complainant's Trademark which is composed of English language letters, suggesting that the Respondent is familiar with the English language. The Disputed Domain Name also attempts to divert Internet traffic from the Complainant's Website, where English-language content is the largest proportion of the content and attracts the largest share of visitors. It is therefore likely that visitors to the Complainant's Website intend to view content in English, and that the Dispute Domain Name intends to capture traffic from English speakers. The Complainant further claims that its immediate legal representatives and itself have no knowledge of the Romanian language. Therefore, requiring the Complainant to translate the Complaint into Romanian would result in significant delay and cost.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use 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).

The Panel is mindful of the requirement of paragraph 10(b) of the Rules which provides that in all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. The Panel observes that the Center has issued its case-related communications in both Romanian and English. The Respondent has chosen not to participate in the proceedings and he has been notified of his default in both Romanian and English. The Panel is satisfied that the Center's approach has been fair and appropriate (see *Fissler GmbH v. Chin Jang Ho*, WIPO Case No. [D2008-1002](#)).

Further, in ensuring fairness in the selection of language, the Panel shall take into consideration the parties' level of comfortability with each language, as well as the expenses to be incurred and the possibility of delay in the proceedings if translation is required (See *Deutsche Messe AG v. Kim Hyunggho*, WIPO Case No. [D2003-0679](#)). In the present case, the Panel accepts that the Complainant is unable to communicate in Romanian. Additional expenses will be incurred if the Complainant is required to submit documents in Romanian and the proceeding may otherwise proceed expeditiously in English. Furthermore, the Respondent did not object to the Complainant's request to use English as the language of the proceedings.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English, but on the condition that the Respondent shall be permitted to submit any documents or assertions in Romanian.

6.2 Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

A. Identical or Confusingly Similar

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. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's Trademark is reproduced within the Disputed Domain Name. Furthermore, it is well established that the country code Top Level Domain ("ccTLD"), ".ro" in this case, may be disregarded for the purposes of assessing confusing similarity under the first element. See section 1.11 of the [WIPO Overview 3.0](#). Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

In the present case, the Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAJM*, WIPO Case No. [D2000-0403](#)).

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become commonly known by the Disputed Domain Name. The Panel further notes the distinctiveness and worldwide reputation of the Complainant's Trademark, and the fact that the Complainant has provided no licence or authorization of any kind to the Respondent to use the Complainant's Trademark or to apply for or use any domain name incorporating the Complainant's Trademark. There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

The Complainant's Trademark is reproduced in its entirety in the Disputed Domain Name, which carries a risk of implied affiliation with the Complainant. The Respondent would likely not have adopted the Complainant's Trademark if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that it is difficult to conceive of any plausible use of the Disputed Domain Name by the unaffiliated Respondent that would amount to good faith use. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Panels have previously held that a finding of bad faith can be established where a complainant's trademark is shown to be well-known or in wide use at the time of registration of the disputed domain name (see *LEGO Juris A/S v. store24hour*, WIPO Case No. [D2013-0091](#)). The Respondent must have been fully aware of the Complainant and the Complainant's Trademark when it registered the Disputed Domain Name, given the well-known and distinctive nature of the Complainant's brand, evidenced by the various trademark registrations for the Complainant's Trademark that was put into use before the Respondent registered the Disputed Domain Name.

At the time of the filing of the Complaint and the rendering of this decision, the Disputed Domain Name resolves to an inactive website. However, panels have nonetheless found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Although panelists will look at the totality of the circumstances in each case, key factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's trademark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's Trademark, the composition of the Disputed Domain Name, and the Respondent's failure to file a Response, and finds that in the circumstances of this case, the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <wikipedia.ro> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: November 29, 2024