

ADR Center for .eu attached to the Czech Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (Czech Arbitration Court)

PANEL DECISION

§ B2(c)(3) of the .eu Dispute Resolution Rules (ADR Rules)

Case No.: *00174*

Administrative Contact: *Jiri Blazek*

Complainant: French Connexion
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Domain Name: *DOMAINE.EU*

In this case the Complaint is filed against the decision of **EURID**

Disputed EURID's decision: **Termination due to Defective Complaint**

Decision Number: **00174**

Date of Issue of decision: **March 27, 2006**

Case File: Case File information is hereby attached as Annex 1

English summary of the decision: English summary of this Decision is hereby attached as Annex 2

Factual Background:

On March 6, 2006, Complainant filed a complaint against EURid's decision N. a00036738945, rejecting the registration of the domain name <domaine.eu>, requested by Complainant during the Sunrise Period. On March 14, 2006, the ADR Center sent to Complainant, a Notification of Deficiencies in the Complaint, specifying that: any ADR Procedure initiated against the Registry shall be conducted in the English language as follows from ".eu Domain Name Registration Terms and Conditions", referred to as Terms and Conditions on the EURid website, provided in its Section 16.3, Alternative Dispute Resolution. In view of the timelines specified in the ADR Rules [Paragraph B2 (b)], Complainant was then requested to correct the above-mentioned deficiencies and submit an amended Complaint within seven (7) days of receiving this Notification, using the Form A1 available on the website of the Czech Arbitration Court. The notification specified that after the deadline mentioned above, the ADR Proceeding would have been deemed cancelled without prejudice to a submission of a new Complaint. On March 20, 2006, Complainant filed an amended complaint (i.e. in English) through the online arbitration platform available on the website of the Czech Arbitration Court. On March 27, 2006, the ADR Center notified that the ADR Proceeding concerning the above-referenced case N. a00036738945 was cancelled due to the expiration of the deadline to correct the deficiencies in the Complaint. On March 30, 2006, Complainant filed a Challenge of withdrawal of complaint due to administrative deficiency according to § B2 (c) of the .eu Dispute Resolution Rules (ADR Rules). On April 5, 2006, the ADR Center acknowledged receipt of the Challenge. On April 13, the ADR Center sent the notification of appointment of the ADR Panel and projected decision date.

Complainant' Contentions:

Complainant requests: the cancellation of the decision to withdraw the ADR Proceeding due to the expiration of the deadline to correct the deficiencies in the Complaint and to waive the ADR fees related to the challenge.

Reasons of the challenge:

Complainant claims that:

- 1) On March 14, 2006, it received a "Notification of Deficiencies in Complaint" indicating that the complaint must be translated into English;
- 2) It translated the complaint into the English language and sent the amended complaint together with Annexes via the online arbitration platform on March 20, 2006, and, on March 21, 2006, it sent the hardcopy of the complaint duly signed (one original and three copies) via regular mail.
- 3) It corrected the complaint before the deadline, since Complainant sent the amended complaint on March 20, 2006 via the online arbitration platform, i.e. one day before the expiration of the March 21, 2006 deadline.
- 4) Paragraph A2(e)(1) of the ADR Rules dispose: "Except as otherwise provided in these ADR Rules, all communications provided for under these ADR Rules shall be deemed to have been received, in accordance with this provision: (1) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.
- 5) The date of the filing of the amended complaint is verifiable because it was filed via the online arbitration platform which confirms the date.
- 6) In the FAQ section in the ADR's website, there is a question about the deadline to send the hard copy of the complaint, this question is: "Q10: Do I understand it correctly that if the deadline for initiation of an ADR dispute is, for example, 6 February 2006, then I will meet that deadline simply by filing my case through the online arbitration platform at any point in time up until midnight 6 February 2006 of my time. I would then be able to follow up afterwards with the hard copy and fee". The response of the EURid was: "A: Yes, this is correct. In accordance with Paragraph A2(e)(1) of the ADR Rules, communications sent via the Internet is

deemed to be received on the date the communication was transmitted, provided that the date of transmission is verifiable”

7) Then, the hardcopy can be filed after the deadline if the complaint was filed by the online arbitration platform before the deadline.

8) It is possible that the reception of Complainant’s hardcopy was delayed but that is certainly not Complainant’s fault. The delay might have been caused by the situation in France which was very difficult at that time, in fact due to repeated strikes the postal services were disrupted.

Discussion and Findings:

Paragraph **A2(c)** of the ADR Rules Communications and Periods of Time recites:

Unless specified otherwise in these ADR Rules, any written communication to the Complainant, the Respondent or the Provider provided under these ADR Rules, shall be made by the preferred means stated by the Complainant or Respondent, respectively, or in the absence of such specification: (1) electronically via the Internet, provided a record of its transmission is available;

While, Paragraph **A2(e)** of the ADR Rules Communications and Periods of Time recites:

Except as otherwise provided in these ADR Rules, all communications provided for under these ADR Rules shall be deemed to have been received, in accordance with this provision: (1) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

Finally, Paragraph **A2(h)** of the ADR Rules Communications and Periods of Time recites:

«Except as otherwise provided in these ADR Rules, all time periods calculated under these ADR Rules begin on the earliest date that the communication is deemed to have been made in accordance with Paragraph **A2(e)**».

In view of the above quoted provisions and having verified Complainant’s contentions, the Panel finds that Complainant’s submission of the amended complaint via the Internet was made on time.

Decision:

For all the foregoing reasons, in accordance with Paragraphs **B2(cii)** of the ADR Rules, the Panel orders that the decision of the Czech Arbitration Court on the withdrawal of the Complaint under the Case No.00174 mentioned above for its administrative deficiency be cancelled and the Complaint be accepted as administratively compliant.

Fabrizio Bedarida

Date: April 21, 2006

Annex 1 Taking into consideration that Paragraph **A2(c)** of the ADR Rules Communications and Periods of Time recites: *«Unless specified otherwise in these ADR Rules, any written communication to the Complainant, the Respondent or the Provider provided under these ADR Rules, shall be made by the preferred means stated by the Complainant or Respondent, respectively, or in the absence of such*

specification: (1) electronically via the Internet, provided a record of its transmission is available»; that Paragraph A2(e) states: «Except as otherwise provided in these ADR Rules, all communications provided for under these ADR Rules shall be deemed to have been received, in accordance with this provision: (1) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable»; and finally, that Paragraph A2(h) recites: «Except as otherwise provided in these ADR Rules, all time periods calculated under these ADR Rules begin on the earliest date that the communication is deemed to have been made in accordance with Paragraph A2(e)» the Panel finds that Complainant's submission of the amended complaint via the Internet was made on time. Therefore, the Panel orders that the decision of the Czech Arbitration Court on the withdrawal of the Complaint under the Case No.00174 for its administrative deficiency be cancelled and the Complaint be accepted as administratively compliant.