

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.: *0183*

Administrative Contact: *Eva Záhořová*

Complainant: *Budapest Főváros Önkormányzata Főpolgármesteri Hivatala.
Antal*

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Domain Name(s): *budapest.eu*

Decision

English summary of the decision: English summary of this Decision is hereby attached as Annex 1

Factual Background:

Complainant has filed a Complaint against the decision of the Registry to register a domain name "budapest.eu". The Complaint had the time of filing of 14.6.2006 and was based on alleged breach of Commission Regulation (EC) 874/2004 and on speculative and abusive reasons of registration.

Provider has issued a Notification of Withdrawal of the Complaint due to Administrative Deficiency based on late filing of Complaint which was communicated to the Complainant via on-line platform on 23.6.2006 and by email message to the Complainant at the same date. The Complainant has filed Challenge of Withdrawal of the Complaint due to Administrative Deficiency on 20.7.2006 and paid respective fees.

Complainant' Contentions:

Complainant objects that:

1. Paragraph A2 (b) of the ADR regulates the communication of the Complaint and cannot be the legal basis for cancellation of the Complaint. The mentioned paragraph regulates the communication of the Complaint to the Respondent.
2. Notification lacks a proper legal basis as administrator is not entitled in accordance with procedural rules, i.e. ADR Rules, ADR Supplemental Rules to cancel the Complaint due to a late filing. Late filing is never mentioned in the relevant.eu procedural rules as a legal basis of cancellation of the Complaint by the administrator.
3. There is no category as "late filing" under the eu rules and relevant rules do not explicitly state that a Complaint cannot be filed after the Sunrise Appeal Period. The Complainant highlights the fact that the decisions taken by the Registry conflicts with Art. 22(1)(b) of the Regulation. It is not forbidden by the relevant rules to apply Art. 22(1)(b) even after lapse of the 40 days Sunrise Appeal Period. The only consequence of the lapse of this period is that the domain is activated. Therefore the Complaint cannot be rejected without any examination on the merits.

The Sunrise Appeal Period is similar to the opposition deadline in trademark matters. Further on, reference is made to the case "frankfurt.eu" (case 00394) in which Complaint was accepted even though it was filed after lapse of Sunrise Appeal Period.

4. The Notification did not decide about the repayment of the fees paid. They should be repaid to the Complainant.
5. Last but not least, we once again mention that the objected Notification was never communicated to the Complainant's representative, even though the Complaint clearly requested the Czech Arbitration Court to send all communication to the Complainant's authorized legal representative.

Discussion and Findings:

Regulation (EC) No. 733/2002 on the implementation of the .eu Top Level Domain obliges the Registry to implement the extra-judicial settlement of conflicts policy.

Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration stipulates under Art. 22 Alternative Dispute Resolution the procedure for Provider. Art. 22/5 stipulates that the submission (= Complaint) shall be made in accordance with this Regulation and published supplementary procedure of the ADR provider. In accordance with Art. 22/6 as soon as a request for ADR is properly filed with the ADR provider and the appropriate fee is paid, the ADR provider shall inform Registry. In accordance with Art. 22/7 the ADR provider shall examine the Complaint for compliance with its rules of procedure, with the provisions of this Regulation and with Regulation (EC) No. 733/2002 ...

In accordance with .eu Alternative Dispute Resolution Rules (the "ADR Rules") Section B/2 (b) if the Provider finds the Complaint not to be in administrative compliance with the Procedural Rules, it shall promptly notify the Complainant of the nature of the deficiencies identified. If the deficiencies are capable of being corrected, the Complainant shall have seven days within which to correct any such deficiencies after which, if not corrected , the Provider shall inform the Complainant that the ADR Proceeding is deemed to be withdrawn due to administrative deficiency and without prejudice to submission of a different Complaint by a Complainant.

Procedural Rules means in accordance with Definitions under ad 1) of ADR Rules this ADR Rules, Supplemental ADR Rules and European Union Regulations.

This ADR Rules refer to Sunrise Rules as to the definition of Sunrise Appeal Period which mean 40 days period during which a Complaint against Registry's decision to register a domain name within the Sunrise period can be filed as specified in the Sunrise Rules.

In accordance with ADR Rules, Section B 1/b/8 the Complainant must specify whether or not the disputed decision deals with the registration of a domain name within the Sunrise Period.

Section 22 para 2 of the Sunrise Rules stipulates that during a period of forty (40) calendar days following the decision by the Registry to register the Domain name concerned (referred to in the .eu Dispute Resolution Rules as the "Sunrise Appeal Period") any interested party may initiate an ADR Proceeding against the decision with the Regulations.

Based on the above mentioned legislation, the Panel is of the opinion that Provider was entitled and obliged to issue a Decision on Withdrawal of the Complaint due to Administrative Deficiency from the following reasons:

Commission Regulation (EC) No. 874/2004 lays down public policy rules concerning.eu TLD incl. Art. 22/6 according to which a request for ADR must be properly filed with the ADR provider and ADR Provider shall examine the Complaint for compliance with its rules of procedure, this Regulation and with Regulation (EC) No. 733/2002 and Art. 22/7 that the Provider shall examine the Complaint for compliance with its rules of procedure, with the provision of this Regulation and Regulation (EC) No. 733/2002...

Section B 2 1) of ADR Rules stipulates that the Provider shall review the Complaint for administrative compliance with Procedural Rules and the Regulation (EC) 733/2002, whereby Procedural Rules mean ADR Rules, ADR Supplemental Rules and European Union Regulations. ADR Rules refer specifically as to Sunrise Appeal Period to Sunrise Rules. Therefore the Provider must review the compliance of the Complaint with all the above mentioned provisions (not only ADR Rules and Supplemental ADR Rules as Complainant erroneously interprets).

ADR rules in the definitions and with reference to Sunrise rules (Art. 22/2) stipulate Sunrise Appeal Period as the period of 40 calendar days following the decision of the Registry to register the Domain name concerned during the Phased Registration Period during which any interested party may initiate an ADR Proceeding only against the decision of the Registry. Sunrise Appeal Period started on April 7, 2006 and expired on May 16, 2006. The above mentioned wording therefore without any doubt regulates this Term as an inextensible deadline during which a Complainant may initiate ADR Proceeding against the Registry. Such term has lapsed on May 16, 2006. Should we follow the interpretation of the Complainant, then there would be no reason for inserting any appeal term as the Complainant would be open to file Complaint at any time, whereby ADR Rules do not, in addition thereto, define the different consequences of filing a Complaint within Appeal Period or thereafter. The interpretation cannot be according to the Panel in a way that this term only stipulates the term within which a domain is blocked and after lapse of this period the domain name is activated – such interpretation has no legal basis in the relevant legislation. The comparison with opposition period in trademark matters is inappropriate as most of trademark acts do distinguish specifically opposition period during which an opposition can be filed and cancellation of a trademark thereafter.

In addition thereto, it is necessary to take into account that the Complainant may use other procedures as stipulated in the relevant legislation even after lapse of the Sunrise Appeal Period.

Panel therefore concludes that the Provider was not only empowered but even obliged to issue the relevant Decision on Withdrawal of the Complaint due to the mentioned deficiency which was not capable of being corrected as this Complaint had fundamental administrative deficiency.

If the Complainant, however, objects that the reference to A/2 (b) is incorrect this objection is partially founded.

The Provider was to reason its Notification on Section B 2 (b) of ADR Rules, not only on the mentioned provisions which refer only to a formal way of communication when another reference to a way of communication is even made at the bottom of Notification to Paragraph A2 (d). Therefore this Notification lacks the proper indication of a legal basis of the Notice of Withdrawal of the Challenge. The Panel is the opinion that this deficiency is rather of a formal nature which should have been avoided, however, it does not cause the invalidity of the Notice of Withdrawal and does not result in the limitation of the rights of the

Complainant as the decision was correctly reasoned and in addition thereto a Complainant was instructed, how to proceed in case of the intention of Challenging such Notice and even additional time for filing a Challenge was provided to him.

Complainant further objects not to be correctly notified of the Notification on Withdrawal of the Complaint. As found out and verified from the file, the Notification was put on the platform on 22.6.2006 and communicated by email to the Complainant to its email address as indicated in the Complaint at the same date. This procedure is fully in compliance with Sec. A 2 ADR Rules as well as Annex C of the ADR Supplemental Rules.

In spite of the fact that such objection has no material effect on this case, the Panel officially requested the Provider to verify the term for filing an appeal within Sunrise period with respect to the case "frankfurt.eu" (as objected by the Claimant) and it was confirmed by the Provider that the Complaint was filed on 27 March 2006, i.e. within Sunrise Appeal Period.

As to objection that Provider did not decide about the repayment of the fees, which should be repaid to the Complainant, the Panel states that such objection is not correct.

In accordance of Sec. A 6(e) subject to Paragraph B 1 (f) below, the fees paid are not reimbursable. This case does not fall under the exception as referred to in Paragraph B 1 (f), therefore the Provider is not obliged to return any fees paid and to decide thereupon.

Decision

For all the foregoing reasons, in accordance with Paragraphs B2 (c) (3) of the ADR Rules, the Panel confirms the decision of the Provider – ADR Center for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech republic and Agricultural Chamber of the Czech republic on the Withdrawal of the Complaint under the Case No. mentioned above for its administrative deficiency.

JUDr. Otakar Švorčík

Date: 7.8.2006

Annex 1: English Summary of the Decision

Annex 1

English Summary of the Decision

The Decision of the Provider on the Withdrawal of the Complaint due to administrative deficiency is confirmed.

The Provider was obliged to issue the mentioned Decision due to administrative deficiency, which was filing a Complaint by a Complainant against the Decision of Registry to register the domain name "Budapest.eu" during the Phased Registration Period after expiration of a Sunrise Appeal Period. Sunrise Appeal Period is a deadline during which the Complaint against the Decision of the Registry to register a domain .eu within the Phased Registration Period can be filed. Such procedure of the Provider is based on Art. 22/5,6 of Commission Regulation (EC) No. 874/2004, Section B 2b) of ADR Rules and Sunrise Rules (Art. 22/2) as this administrative deficiency is not capable of being corrected.