Panel Decision for dispute CAC-ADREU-000139

Case number	**CAC-ADREU-000139**
Time of filing	**2006-03-06 15:13:14**
Domain names	**boc.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**The BOC Group plc**

Respondent

Organization / Name	**EURid**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

No legal proceedings have been issued or terminated in connection with the disputed domain name.

FACTUAL BACKGROUND

The Respondent, EURid, accepted the application for the domain name BOC (hereinafter “BOC”) submitted by Gemeentelijk Brandweerkorps Amsterdam of The Netherlands (hereinafter the “Public Body” or “Applicant”), as evidenced by the registration details attached at Annex 1 of the Complaint.

The Complainant maintains that (i) the mark BOC is not the complete name of the Public Body and it does not represent, and is not the acronym, generally used for the Applicant; and (ii) the mark BOC is not a prior right of the Applicant.

The Complainant had also applied for the disputed domain name within the Sunrise period and, as the next applicant in queue for the disputed domain name, the Complainant asked for the annulment of the Registry’s decision to register in favor of the Public Body and transfer it instead to the Complainant.

A. COMPLAINANT

The first paragraph of Article 10(1) of Regulation (EC) No.874/2004 states that “holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain names.”

Article 10(3) of Regulation (EC) No. 874/2004 states that “the registration by a public body may consist of the complete name of the public body or the acronym that is generally used. Public bodies that are responsible for governing a particular geographic territory may also register the complete name of the territory for which they are responsible, and the name under which the territory is commonly known.”

The Complainant undertook an investigation into the Applicant and its use (if any) of the mark. The investigations made by the Complainant did not disclose any use by the Applicant of the mark as the acronym generally used to represent it. The Complainant’s investigations revealed only a limited use of the mark.

The mark is clearly not an acronym generally used for the Public Body, but instead it is used by the Public Body as an identifier for its training centre.

The second paragraph of Article 10(1) of the Regulation (EC) No. 874/2004 states that “prior rights” shall be understood to include, inter alia, “registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member State in which they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.”

The Complaint therefore contended that the mark is not a prior right of the Applicant. The mark is not a registered or unregistered trademark of the Applicant. The mark is not a trade name or business identifier of the Applicant. It is neither an acronym generally used to describe the Public Body, as such, but rather it is an acronym used as an identifier for one of its training centres.

B. RESPONDENT

Grounds on which the Registry accepted the application for BOC by the Applicant:
Art. 10 (1) of Commission Regulation (EC) No. 874/2004 of 28 April 2004 provides that public bodies shall be eligible to apply to register domain names during a period of phased registration before the general registration of. eu domain starts, and art. 10 (2) of the same Regulation that public bodies do include inter alia bodies of local governments.

In accordance with Art. 10 (3) of the Regulation, the registration by a public body may consist of the complete name of the body or its acronym generally used, and in accordance with Art. 13, the Member State provides for the validation of the name.

On 17 December 2005, the Public Body filed an application for the registration of BOC and submitted, in due time, its documentary evidence on 10 January 2006.

The Applicant is a body of a local government, and the mark BOC is the abbreviation of Brandweer Opleidings Centrum, which is the Applicant’s Fire Brigade Training Center. The acronym is generally used for this activity or department of the Amsterdam fire brigade.

Therefore, upon notification of the mark’s validation by the Dutch Governmental Validation Point, the Registry accepted the Public Body’s application for the domain name BOC, on the first-come-first-serve basis.

Since BOC stands for an activity or a department of a public body, it is eligible for registration upon validation by the Member State.

Neither Art.10 (1) nor Art.10 (3) of Regulation No. 874/2004 requires the application for a domain name by a public body to be based on a mark nor any other prior right. Art. 13 only requires for the applications to be validated by the Member State. The Netherlands did so for the domain name BOC.

DISCUSSION AND FINDINGS

The Panel assumes that the following facts in the ADR Proceeding are not controversial:

- The Applicant is a body of a local government (a public body under Art. 10 (1) of Regulation (EC) No. 874/2004), and as such, it was eligible to apply for domain names during the period of phased registration before the general registration began for the .eu domain. And, Art. 10 (2) of the same regulation states that public bodies do include, inter alia, bodies of local governments.
- The Applicant has filed its application in due time, which was also validated in due time by the Dutch Governmental Validation Point
- BOC is not the complete name of the Public Body
- The Applicant does not hold BOC as a registered trademark.

The Panel had to decide on the following controversial points:

1) Whether or not BOC is an acronym of the Public Body and

2) Whether or not the absence of a prior right (in the form of a registered trademark by Public Body) conflicts with Art. 10 of Regulation (EC) No. 874/2004.

Ad 1) The Panel is convinced that the Applicant, upon the statement of the Dutch Governmental Validation Point, is a body of a local government, and that the mark BOC is an acronym of Brandweer Opleidings Centrum, which is the Fire Brigade Training Center of the Applicant. The acronym is generally used for an activity or a department of the Amsterdam fire brigade.

In addition, the Registry had to accept the application for the registration of the disputed domain name, as an acronym, upon validation

by the Member State, i.e., by the Dutch Governmental Validation Point (Art. 10 (1), Art. 10 (3), Art.13 of Regulation (EC) No. 874/2004).

Ad 2) The Panel considers that neither Art.10 (1) nor Art.10 (3) of Regulation No. 874/2004 requires the application for a domain name by a public body to be based on an established mark nor any other prior right.

The Respondent, EURid, accepted the application for BOC by the Public Body on the first-come-first-serve basis, because of validation presented by the Dutch Governmental Validation Point, in due time. The validation proved that the Applicant is a body of a local government and that BOC is the acronym for Brandweer Opleidings Centrum. BOC is generally used to convey an activity or a department of the Amsterdam fire brigade.

DECISION

For the reasons stated above and in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel rules the Complaint Denied.

PANELISTS

Name	**Vladimir Bulinsky**

DATE OF PANEL DECISION 2006-05-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant claimed that the registration of the domain name BOC submitted by the Public Body conflicts with Art. 10(1) and Art. 10(3) of Regulation (EC) No.874/2004. Its reasoning was that the name BOC is neither the complete name of the Public Body nor an acronym generally used to represent it; and (ii) BOC is not a registered or unregistered trademark, trade name, or business identifier of the Public Body.

The Panel found no breach of Regulation (EC) No.874/2004.

The Registry recorded and assigned the disputed domain name after receiving a statement from the Dutch Governmental Validation Point proving that the Applicant is a part of a local government and that the letters BOC is an acronym generally used for the activity or department of the Public Body (Art. 10 (1), Art. 10 (3), Art.13 of Regulation (EC) No. 874/2004).

The Panel considers that neither Art.10 (1) nor Art.10 (3) of Regulation No. 874/2004 requires an application for a domain name submitted by a public body to be based on an established mark or any other prior right.

The Panel dismissed the Complaint.