Panel Decision for dispute CAC-ADREU-000192

Case number	**CAC-ADREU-000192**
Time of filing	**2006-03-10 10:22:30**
Domain names	**atoll.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Ruediger Thomas Baecker**

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

The Panel is not aware of any other pending or decided legal proceedings in relation to the disputed domain name.

FACTUAL BACKGROUND

Complainant launched by e-mail a Complaint with the Czech Arbitration Court on March 6, 2006, drafted in German, to contest EURid Decision 192 of March 2, 2006 not to register the domain name <atoll.eu>. The Czech Arbitration Court, after assigning as Time of Filing the date of March 10, 2006, notified Complainant of Complaint deficiencies concerning language requirements on March 17, 2006, and, subsequently, Complainant filed an English version of the Complaint on March 31, 2006, accompanied by a certificate of trademark registration in German and a translation of the same in English. Although the time frame envisaged by Paragraph B2(b) of the .eu Alternative Dispute Resolution Rules (hereafter “ADR Rules”) for submission of an amended Complaint is seven days, Complainant had been informed by the Czech Arbitration Court that the deadline for such submission had been moved to April 3, 2006, due to difficulties experienced by Complainant with the ADR Online Platform. On April 3, 2006 the Czech Arbitration Court informed Complainant that due to technical limitations it was not possible to also change the language within the ADR Online Platform. Respondent submitted a Response to the Complaint on June 8, 2006.

Following an invitation to serve as a Panelist in this dispute sent on June 12, 2006, the Panelist accepted the mandate and submitted a Declaration of Impartiality and Independence on June 13, 2006. The Czech Arbitration Court duly notified the Parties of the identity of the Panelist appointed, in accordance with Paragraph B4(e) of the ADR Rules and the date, by which a Decision on the matter was due, which was specified as July 9, 2006.

In the absence of a challenge of the Panelist’s appointment by either Party according to Paragraph B5(c) of the ADR Rules, the Czech Arbitration Court forwarded the case file to the Panelist on June 16, 2006.

A. COMPLAINANT

Complainant in the Complaint of March 31, 2006 contends that Complainant is the owner of the registered word/figurative trademark, written as aTOLL in the annexed trademark registration No. 301 18 787 issued by the Deutsches Patent- und Markenamt. Therefore, Complainant contends that Complainant should be entitled to register the domain name <atoll.eu>. Complainant, as a result, seeks the remedy specified in Paragraph B11(c) of the ADR Rules.

B. RESPONDENT

Respondent in its Response of June 8, 2006 contends that Complainant is the legal person @TOLL, which applied for the domain name <atoll.eu> on December 7, 2005. Respondent also contends that the documentary evidence was received by the Registry on December 13, 2006, which was before the January 16, 2006 deadline.

The Registry decided, subsequently, to reject the application for the domain name <atoll.eu> as there was no proof that the Complainant was the holder of a prior right and as the trademark was incorrectly transcribed.

Respondent finally sought the dismissal of the Complaint, on the basis that it was drafted in German, and, therefore, inadmissible. In this respect, Respondent refers to Article 3(d) of Commission 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 the principles governing registration (hereafter "Regulation 874/2004"), Section 16.3 of the .eu Domain Name Registration Terms and Conditions (hereafter "Registration Terms and Conditions") and Paragraph B1 of the Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (hereafter "ADR Supplemental Rules"). Respondent also contends that Complainant stated in the cover letter accompanying the domain name application that the Rules, including the special terms that relate to the phased registration period, apply and have been read and approved without reservation by the Applicant.

DISCUSSION AND FINDINGS

ISSUES

1. Language of the ADR Proceeding

According to Article 3(d) of Regulation 874/2004, the request for domain name registration shall include, inter alia, an undertaking by electronic means from the requesting Party that it shall abide by all the terms and conditions for registration, including the policy on the extra-judicial settlement of conflicts set out in Chapter VI.

Section 16.3 of the Registration Terms and Conditions stipulates: "Unless otherwise agreed by the parties to an ADR Procedure or otherwise specified in the agreement between the Registrant and its Registrar, the language of the ADR Procedure shall be the language of that agreement. Any ADR Procedure initiated against the Registry shall be conducted in the English language."

Pursuant to these provisions Complainant is obliged to conduct the ADR Procedure against Respondent in the English language. Complainant had filed an English version of the Complaint on March 31, 2006, i.e. within the deadline set by the Czech Arbitration Court and prior to the submission of Respondent's Response. The English version of the Complaint was accompanied by a certificate of trademark registration in German and a translation of the same in English. Therefore, a dismissal of the Complaint on grounds of inadmissibility due to language requirements cannot be ordered.

2. Timely initiation of the ADR Proceeding

Pursuant to Section 26(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period "Sunrise Rules" (hereafter "Sunrise Rules"), the Applicant may initiate an ADR Proceeding against a decision of the Registry within forty calendar days following that decision ("Sunrise Appeal Period").

In this particular case, Respondent rejected the domain name application on March 2, 2006 and Complainant launched a Complaint by e-mail with the Czech Arbitration Court on March 6, 2006, drafted in German, to contest this decision. The Czech Arbitration Court assigned as Time of Filing the date of March 10, 2006.

Therefore, the Panel finds that the Complaint was initiated within the prescribed time frame.

3. The Procedural Order

Panel, after carefully reviewing Complainant's and Respondent's exceptionally brief submissions and Complainant's submitted trademark registration, issued Procedural Order No. 1 of June 19, 2006. In issuing the Procedural Order, Panel referred to the powers granted to it by virtue of Paragraph B7(d) and B8 of the ADR Rules, stating respectively that the Panel shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence and that in addition to the Complaint and the Response, the Panel may request or admit, in its sole discretion, further statements or documents from either of the Parties.

The Panel notified the Parties that the information supplied in Parties' submissions was so laconic that it could neither warrant nor support a decision. In light of Paragraph B7(c) of the ADR Rules setting out that the Panel shall ensure that the ADR Proceeding takes place with due expedition and Paragraph B7(b), setting out that in all cases, the Panel shall ensure that the Parties are treated fairly and with equality, Panel ordered Complainant and Respondent to submit additional thorough information and supporting evidence, relating but not limited to the procedural history of this dispute and the legal grounds, which Parties wished to invoke, following a timetable that

was designed to guarantee the fair treatment and the equality of the Parties.

Both Parties were requested to adhere strictly to this timetable as the Panel's projected decision date remained the same, i.e. July 9, 2006. Parties were also reminded that all communication should take place via the Czech Arbitration Court.

In issuing the Procedural Order, the Panel has given both Parties a full opportunity to present their cases, a substantial procedural element of an ADR Procedure.

4. Parties' additional submissions

Following Panel's Procedural Order No. 1 of June 19, 2006, both Parties submitted additional submissions, that were, unfortunately and to a great extent, limited to merely restating their previous positions without providing documentary evidence for their respective contentions within the set deadlines.

Complainant filed a non-standard communication on June 25, 2006, within the deadline set by the Panel, contending that Complainant, Ruediger Baecker [sic] applied for the domain name <atoll.eu> on December 7, 2005 and that the documentary evidence was received by the Registry on December 13, 2006. Complainant also contended that the documentary evidence fulfilled the requirements of Section 13(2) of the Sunrise Rules. Complainant repeated the initial contention that the domain name <atoll.eu> corresponded to the registered national trademark "atoll" [sic] and that the Complainant was the owner of the registered trademark "atoll" [sic] since October 14, 2002.

Complainant has not supported the contentions advanced with any submitted document, apart from a copy of a trademark registration, which was filed in German and in English with the initial English version of the Complaint on March 31, 2006.

Respondent filed a non-standard communication on July 3, 2006, within the deadline set by the Panel, motivating its rejection of the domain name application based on two grounds. Firstly, Respondent refers to Article 10(1) of Regulation 874/2004 and Section 13(2) of the Sunrise Rules and contends that the Domain Name Applicant was the legal person @TOLL, whereas the trademark owners were the individuals Frank Budwillat and Rüdiger Bäcker and not the Domain Name Applicant. Secondly, Respondent contends that the trademark for which prior rights are claimed is @toll [sic], which according to Article 11 of Regulation 874/2004 includes a special character, namely the @ sign. In this event, the special character should have been eliminated, replaced by hyphens or rewritten, with the consequence of the Domain Name being "toll", "-toll" or "attoll" respectively. Respondent essentially contends that Complainant did not transcribe the trademark correctly. For these reasons and upon notification of the findings by the validation agent that the documentary evidence does not substantiate that the Applicant that is first in line has a prior right in the trademark ATOLL [sic], Respondent rejected the application of the legal person.

Following Respondent's filing of the non-standard communication, Complainant filed an further non-standard communication on July 3, 2006 with the purpose of contending that the Complainant, Rüdiger Bäcker [sic], and Frank Budwillat are the co-owners and managing directors of @TOLL GmbH. Complainant contends that all applications and references were written and signed in the name of Rüdiger Bäcker and that the relevant word mark is aTOLL, which is graphically represented as a figurative mark as @TOLL.

5. The relevant provisions

This Complaint arises in relation to the application and interpretation of primarily Regulation 874/2004, Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain (hereafter "Regulation 733/2002"), the Sunrise Rules, the Registration Terms and Conditions and is governed by the ADR Rules and the ADR Supplemental Rules.

According to Recital 12 of Regulation 874/2004, in order to safeguard prior rights recognized by Community or national law, a procedure for phased registration should be put in place with the purpose of ensuring that holders of prior rights have appropriate opportunities to register the names on which they hold prior rights on a first-come, first-served basis, subject to validation of such rights on the basis of evidence provided by the applicants.

The procedure to be followed for validation and registration of applications received during phased registration is described in Article 14 of Regulation 874/2004. In particular, Article 14(1) states that "[a]ll claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists" and Article 14(4) states that "[e]very applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question. […]" Article 14(7) provides that "[t]he relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name. If the documentary

evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this." Finally Article 14(10) sets out that "[t]he Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure set out in the second, third and fourth paragraphs."

In order to be able to register a .eu domain name during the period of phased registration, the Domain Name Applicant needs to satisfy certain requirements set out in Section 3 of the Sunrise Rules: "1. An Application is only considered complete when the Applicant provides the Registry, via a Registrar, with at least the following information:
(i) the full name of the Applicant; where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant;
[…]
(v) the Domain Name applied for;
[…]
(vii) the complete name for which a Prior Right is claimed;
(viii) the type of Prior Right claimed by the Applicant, as referred to in Article 10(1), second paragraph, of the Public Policy Rules;
(ix) the country in which the Prior Right claimed is protected;
[…]
The information referred to (viii) and (ix) above is deemed to constitute the legal basis in national or Community law for the claimed Prior Right to the name.
2. The Domain Name applied must consist of the complete name for which a Prior Right is claimed, however taking into account (i) Article 11 of the Public Policy Rules, and (ii) Section 19 hereof.
[…]"

Section 13(1) of the Sunrise Rules, entitled Registered Trade Marks, clearly states that where the prior right claimed is a registered trademark, it must be registered by a national trademark office, the Benelux Trade Marks Office, OHIM or be internationally registered and protected in at least one of the European Union Member States.

Section 13(2) specifies the documentary evidence to be submitted for registered trademarks and clearly states "[…] In the foregoing cases, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark.
In case the Applicant is a licensee or transferee of a registered trade mark referred to in Section 13(1) above, Section 20 hereof shall apply."

Section 20(3) of the Sunrise Rules leaves no doubts as to what should be done in the event of a discrepancy between the Domain Name Applicant and the trademark owner. The provision states:
"If, for any reasons other than as are referred to in Section 20(1) [i.e. where the Applicant has obtained a license] and 20(2) hereof [i.e. where the Applicant is the transferee of a prior right], the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer, etc.), the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right."

The examination by the Validation Agent is set out in Section 21 of the Sunrise Rules, where it is specified:
"[…]2. The Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules.
3. The Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced."

The results of the validation are to be communicated to the Registry in accordance with Section 22(1) of the Sunrise Rules.

Article 22 of Regulation 874/2004 concerns the ADR Procedure. It reads: "1. An ADR procedure may be initiated by any party where:
[…] (b) a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002.
[…]
5. The complaints and the responses to those complaints must be submitted to an ADR provider chosen by the complainant from the list referred to in the first paragraph of Article 23. That submission shall be made in accordance with this Regulation and the published supplementary procedures of the ADR provider.
[…]

11. […]
In the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002.
[…]
The alternative dispute panel shall issue its decision within one month from the date of receipt of the response by the ADR provider. The decision shall be duly motivated. The decisions of the panel shall be published.
[…]"

Therefore, in this particular case, it is imperative to examine, firstly, whether a prior right was claimed and, secondly, whether the Domain Name Applicant could substantiate that the Domain Name Applicant held a prior right. It is only if Complainant has indeed satisfied all requirements as set out by the relevant Regulations and has proven, in particular, the aforementioned issues, that the issue of whether Respondent erred in rejecting Complainant's application arises, as such a decision would conflict with Regulation 874/2004 or Regulation 733/2002. Such examination and assessment is to be conducted in light of Complainant's contentions, statements, submissions and documentary evidence produced, as it is Complainant who has the burden of proving that Complainant's legitimate rights have in some way been compromised in a way opposite to the text or the spirit of the aforementioned Regulations or Rules.

6. Prior right claimed

Article 10 of Regulation 874/2004 reads: "1. 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 starts.
'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, […].
2. The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists.
[…]"

In relation to special characters Article 11 of Regulation 874/2004 states: "[…] Where the name for which prior rights are claimed contains special characters, spaces, or punctuations, these shall be eliminated entirely from the corresponding domain name, replaced with hyphens, or, if possible, rewritten.
Special character and punctuations as referred to in the second paragraph shall include the following:
~ @ # $ % ^ & * ( ) + = < > { } [ ] | \ /: ; ' , . ?
[…]"

In terms of the first issue, whether a prior right was claimed, both Parties referred to a certificate of registration issued by the Deutsches Patent- und Markenamt under No. 301 18 787, disclosed by Complainant, which proves that the prior right claimed is a national trademark, specified as a word/figurative mark. From Complainant's disclosed document it can be seen that the word mark is aTOLL, whereas the figurative representation of the trademark is made in grey and yellow colour. A review of the public records of the Deutsches Patent- und Markenamt shows that in the graphical representation of the word mark the initial part of the mark, i.e. the letter "a", has been substituted with a stylisized "@", making the visual textual representation of the mark @TOLL in grey and yellow colour.

Since the word mark as contained in the trademark registration disclosed by Complainant is aTOLL, and Respondent has not contested this document or provided other contesting documents, Panel is satisfied that Applicant applied for a domain name that is identical to a word mark, in which Applicant alleged to hold rights and this word mark was correctly transcribed.

In terms of the second issue, whether the Domain Name Applicant could substantiate that the Domain Name Applicant held the prior right claimed, it is imperative to examine the identity of the trademark owners, the identity of the Complainant and the identity of the Domain Name Applicant.

7. Identity of the trademark owners, the Complainant and the Domain Name Applicant

The identity of the trademark owners is clear from the trademark registration: Mr. Frank Budwillat and Mr. Rüdiger Bäcker are the co-owners of registration No. 301 18 787 issued by the Deutsches Patent- und Markenamt for the word/figurative mark aTOLL/@TOLL.

The identity of the Domain Name Applicant and the identity of the Complainant seem to cause confusion.

The identity of the Complainant is Mr. Ruediger Thomas Baecker. However, Respondent's reference in its Response seems to suggest that Respondent infers that Complainant is the legal person @TOLL, probably as represented by Mr. Ruediger Thomas Baecker. This

issue seems to be inextricably intertwined with the issue of the identity of the Domain Name Applicant.

Mr. Ruediger Thomas Baecker suggests that he applied for the domain name registration, however, Complainant does not specify in the Complaint the identity of the Domain Name Applicant. The fact that Mr. Ruediger Thomas Baecker offers the statement that he applied for the domain name <atoll.eu> does not necessarily mean that the application was made on his behalf. It is perfectly plausible that he was acting as the representative of the legal person @TOLL, which is a separate legal person. This is also supported by Section 3(1)(i) of the Sunrise Rules, setting out: "An Application is only considered complete when the Applicant provides the Registry, via a Registrar, with at least the following information:
(i) the full name of the Applicant; where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant; […]"

Section 2.3 of the .eu Domain Name WHOIS Policy, entitled Identifying Natural Persons and Legal Persons, further states: "Those requesting to register a .eu Domain Name are required to provide certain information through an accredited .eu Registrar. In respect of the name of the Registrant there are two fields: The first is 'Name' and the second is 'Company'. Both fields may be completed or just the 'Name' field. If only the first field is completed, it is assumed that the registration is in the name of a private individual (natural person). If the 'Company' field is completed, it is assumed that the company is the Registrant. This ensures that the Domain Name of the company cannot be "held hostage" by an employee who suddenly leaves or who is dismissed, and who tries to transfer or delete the Domain Name or to link it to another website via the managing agent."

In light of the above, if the legal person @TOLL was deemed to be the Domain Name Applicant and Mr. Frank Budwillat and Mr. Rüdiger Bäcker appeared in the certificate of registration as the trademark co-owners, it is obvious that there would be a discrepancy between the Domain Name Applicant and the trademark co-owners. Complainant unfortunately does not specify in the Complaint on whose behalf the application was made nor does Complainant specify whether, if the application was made on behalf of the legal person, evidence was supplied to the effect that the Domain Name Applicant had prior rights. In this latter case, in the absence of conclusive evidence and pursuant to Section 21(3) of the Sunrise Rules, Respondent cannot be held to have erred in its decision to reject the domain name application on the basis of the Validation Agent's findings, as the onus is on the Domain Name Applicant to produce the relevant documentary evidence to substantiate that the Domain Name Applicant held the prior right claimed.

8. Panel's general powers and mandate

Paragraph B7 sets out the general powers of the Panel. The provision reads:
(a) The Panel shall conduct the ADR Proceeding in such manner as it considers appropriate in accordance with the Procedural Rules. The Panel is not obliged, but is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case.
(b) In all cases, the Panel shall ensure that the Parties are treated fairly and with equality.
(c) The Panel shall ensure that the ADR Proceeding takes place with due expedition.
(d) The Panel shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence.

According to Paragraph B11(a) of the ADR Rules, a Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.

According to Paragraph B11(d)(2), the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR Proceedings where the Respondent is the Registry that the decision taken by the Registry conflicts with the European Union Regulations.

By virtue of the aforementioned provisions, the Panel's mandate is to decide the Complaint on the basis of submitted statements and documents in accordance with the Procedural Rules. The Panel may, but is not obliged to conduct its own investigations on the circumstances of the case. In the event that such investigations are conducted, they cannot prejudice the fair treatment and equality of the Parties, nor can they be so extensive as to call in question the Panel's impartiality and independence in the eyes of the Parties or lead to excess of mandate.

Panel has given both Parties an equal and full opportunity to present and argue their cases, requiring thorough information and supporting evidence for Parties' contentions. Such evidence was not submitted and neither Party requested an extension of time. Panel granted Parties seven additional days each to present their cases. Complainant's and Respondent's additional submissions were requested within a time frame that guaranteed the fair treatment and equality of both Parties. Complainant's additional submission on July 3, 2006 was clearly outside the prescribed deadline granted to Complainant and can, therefore, not be taken into consideration. However, even if it could be taken into consideration, as far as the ownership and management of the legal person or any other

relationship between the legal person @TOLL and the trademark owners is concerned, it constitutes a unilateral statement that does not find any support in timely and duly submitted evidence and even more, fails to invoke the factual and legal grounds as to whether such relationship was disclosed at the time of the application and validation process.

In particular, Complainant has proven that the prior right claimed was a national trademark registration held by Mr. Frank Budwillat and Mr. Rüdiger Bäcker, but Complainant has failed to prove whether it was Mr. Ruediger Thomas Baecker as an individual or @TOLL as a legal person that was the Domain Name Applicant and to substantiate how and why Respondent's decision to reject the domain name application conflicts with the European Union Regulations. In doing so, Complainant failed to satisfy minimal standards of burden of proof. Failure to do so can only lead to the consequence, according to Paragraph B11(d)(2), that Complainant has not proven that the decision taken by the Registry conflicts with the European Union Regulations. The onus is on the Complainant to produce and present the Panel with a full, detailed Complaint satisfying the requirements of Paragraph B1(b) of the ADR Rules, and, in particular to invoke all relevant grounds and support the relevant contentions with documentary evidence.

Panel cannot substitute Complainant in Complainant's role and sole responsibility to present Complainant's case and Panel cannot base its decision on pure contentions, speculations and/or assumptions.

In the absence of adequate evidence, Panel has no choice, but to dismiss the Complaint.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12(b) and (c) of the ADR Rules, the Panel orders that

the Complaint is Denied

Foteini Papiri
Sole Panelist
Dated: July 9, 2006

PANELISTS

Name	**Foteini Papiri**

DATE OF PANEL DECISION 2006-06-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant contested Respondent's decision to reject an application for the registration of the domain name <atoll.eu>. Respondent argued that the application was rejected, firstly, because the Domain Name Applicant was the legal person @TOLL, while the trademark owners were Mr. Frank Budwillat and Mr. Rüdiger Bäcker and, secondly, because the trademark was incorrectly transcribed.

In respect of the prior right claimed, the Panel accepted that Applicant applied for a domain name that is identical to a word mark, in which Applicant alleged to hold rights and this word mark was correctly transcribed.

In respect of the alleged discrepancy between the identity of the Domain Name Applicant and the trademark owners, the Panel found that Mr. Ruediger Thomas Baecker's statement that he applied for the domain name <atoll.eu> does not necessarily mean that he applied on his behalf. If the application was indeed submitted on behalf of the legal person @TOLL and no documentary evidence was provided substantiating Domain Name Applicant's prior right during the application and validation period, the Respondent cannot be found to have erred in its decision to reject the domain name application.

In any event, Panel requested additional information and evidence substantiating Parties' contentions and both Parties were given a full opportunity to present their case with guarantees of fair treatment and equality. The onus is on the Complainant to produce and present the Panel with a full, detailed Complaint satisfying the requirements of Paragraph B1(b) of the ADR Rules. Failure to do so can only lead to the consequence, according to Paragraph B11(d)(2) that Complainant has not proven that the decision taken by the Registry conflicts with the European Union Regulations.