# Entscheidung der Schiedskommission for dispute CAC-ADREU-000328

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| Case number | **CAC-ADREU-000328** |
| Time of filing | **2006-03-23 10:37:09** |
| Domain names | **last-minute.eu** |

## Case administrator

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| Name | **Tereza Bartošková** |

## Complainant

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| Organization / Name | **Thomas Rücker** |

## Respondent

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| Organization / Name | **EURid** |

ANDERE RECHTLICHE VERFAHREN

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

SACHLAGE

On December 7, 2005, at 11:00:16.753, L'Tur Tourismus AG ("L'Tur") filed an application for the registration of the domain name <last-minute.eu> during Phase I of the phased registration period. This application is subject to the Commission Regulation (EC) No 874/2004 of 28 April 2004 ("Regulation 874/2004") and the .eu Registration Policy and Term and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules"). L'Tur's application was listed first in the queue for the domain name concerned, and on December 12, 2006, in support of its application, L'Tur submitted documentary evidence of the registration document issued by the German Patent and Trademark Office. The documentary evidence confirms that L'Tur is the registered owner of the trademark "Last Minute" No. 304 49 653 registered on October 18, 2004 with the German Patent and Trademark Office. Upon validation of L'Tur's prior right, the Registry, EURid, accepted L'Tur's application.

On March 17, 2006, by email and by hardcopy the Complainant, Thomas Rücker, submitted its Complaint against the EURid, concerning the domain name <last-minute.eu> (the "disputed domain name"), in accordance with the .eu Alternative Dispute Resolution Rules (the "ADR Rules"). The Complainant is in position 2 for the disputed domain name, having filed its application on December 7, 2005, at 11:00:25.410 and requests the decision by EURid to register the domain name to L'Tur be annulled. The ADR Center for .eu (the "ADR Center") issued on March 17, 2006 a Request for EURid Verification and on March 23, 2006 an Acknowledgement of Receipt of Complaint. On March 29, 2006, EURid submitted its Verification for the disputed domain name.

The Complaint was in the German language. According to Article 16.3 of the .eu Domain Name Registration Terms and Conditions (the ".eu Terms and Conditions"), any ADR Procedure initiated against the Registry shall be conducted in the English language. Accordingly, on March 30, 2006, the ADR Center issued a Notification of Deficiency in the Complaint and requested the Complainant to submit the Complaint in the proper language of the proceeding, namely the English language.

On April 4, 2006, the Complainant submitted its Complaint in the English language.

On April 5, 2006, the ADR Center formally notified the Respondent of the Complaint and the commencement of the ADR proceeding. As no Response was filed within the deadline indicated in the “Notification of Complaint and Commencement of ADR Proceeding”, the ADR Center issued a Notification of Respondent’s Default on May 25, 2006.

On June 1, 2006, the Respondent made a submission stating that the Complaint is “inadmissible” as it is in violation of Article 16.3 of the .eu Terms and Conditions. The ADR Center replied on June 2, 2006, clarifying that “[…] the Complaint was originally filed in German. Since German is not the language of the trial in this case, this deficiency was notified to the Complainant who afterwards corrected the Complaint properly - the Amended Complaint was filed in English.” The ADR Center further clarified that the framework of the ADR Center's On-line Arbitration Platform remained in German due to a “technical deficiency of the platform […] and should have no impact upon the position of the Complainant who in fact fulfilled all the administrative requirements.”
Pursuant to Article 4 of the ADR Rules, the ADR Center contacted the Undersigned requesting his services as a sole Panelist to consider and decide this dispute. The Undersigned accepted, signed and sent his Statement of Acceptance and Declaration of Impartiality on June 2, 2006. On June 7, 2006, the ADR Center appointed the Undersigned.

In light of the above sequence of events, the Panel issued an Order on June 7, 2006 and, in accordance with Article 8 of the ADR Rules, requested the Respondent to submit its Response addressing the assertions made in the Complaint.

“The Respondent is requested to comment, in particular, on the Complainant’s assertion that the “domain name last-minute was […] awarded on the basis of a technically incomplete and incorrect application for the prior right "" for the domain name last-minute” and that “[…] the applicant, the company L’TUR, in order to gain technical and time advantage, had stated its prior right with two quotation marks "" in the application […]. By giving two quotations marks as previous right, the data record to be transmitted was shortened. Therefore the company L'TUR achieved Position 1 for the domain name last-minute. […] The register [sic] has no discretionary right […] regarding the completeness and admissibility of applications.””

The Panel indicated in the Order that the Complainant may submit its Reply to the Response by June 16, 2006.

A. BESCHWERDEFÜHRER

The Complainant contends that

“[…] the domain name last-minute was […] awarded on the basis of a technically incomplete and incorrect application for the prior right "" for the domain name last-minute,”

and that

“[…] the applicant, the company L'TUR, in order to gain technical and time advantage, had stated its prior right with two quotation marks "" in the application […]. By giving two quotations marks as previous right, the data record to be transmitted was shortened. Therefore the company L'TUR achieved Position 1 for the domain name last-minute. […] The register [sic] has no discretionary right […] regarding the completeness and admissibility of applications.”

On June 16, 2006, the Complainant in his response to the Panel Order of June 7, 2006 states that:

“L’tur incorrectly inserted its prior right as "" . L’tur applied for the domain last-minute - 11 - eleven - times. 10- ten times with a correct and legal application giving the prior right according to the rules as “last minute”. These applications were placed: No. 7, 8, 11,12, 13, 14, 16, 17,18, and 20. The manipulated and incorrect application got the first place. […]

L’tur violated the sunrise-rule deliberately in other applications too. For the EU-domain lastminute.eu L’tur made 8 – eight – applications for the domain lastminute.eu. […]

The legal applications got places # 10, 12, 18, 21, 25, 34 and 37. The incomplete and illegal application for the domain

lastminute.eu was placed far ahead as # 2 […]. With the manipulated, incomplete and incorrect application L'tur gained an significant and illegal advantage. The illegal applications were all placed far ahead of the regular applications of L'tur. The direct impact of the manipulation of the shortened data is evident and obvious. […]

The later "evidence" for the prior right "" for the domain last-minute is a not valid. The evidence has to prove a prior right on the basis of a technically complete and correct application.

Article 21.3 of the Sunrise Rules does NOT allow the validation agent to conduct its own unlimited investigations into the "circumstances" of the application, the Prior Right claimed and the documentary evidence. The investigation is limited by the formal framework of the application to be verified by the following evidence. The validation agent therefore violated the rules. […]

This is NOT comparable to the ADR-decision # 00181-OSCAR. There the applicant tried to give correct and full data. The wrong and shortened data in the case #00181-OSCAR was caused by the register. The application for the domain name last-minute was technically incomplete and incorrect NOT because of technical problems of the register but of intentional shortening of the data to get an advantage in time and an advantage for the following verification of the alleged prior right. […]

The respondent violated the sunrise rules. The decision of the register must be annulled."

B. BESCHWERDEGEGNER

On June 13, 2006, the Respondent (EURid) in his response to the Panel Order of June 7, 2006 confirmed that:

"[…] the application for the domain name last-minute was technically incomplete and incorrect. However, article 21.3 of the Sunrise Rules allows the validation agent to conduct its own investigations into the circumstances of the application, the Prior Right claimed and the documentary evidence. Such investigation has shown that the applicant is the owner of the trademark last-minute, thus holder of a prior right recognised by national law and therefore eligible to apply to register the domain name in accordance with article 10.1 of Regulation 874/2004."

Furthermore, to comment on the Complainant's assertion that the applicant, in order to gain technical and time advantage, had stated its prior right with two quotation marks "" in the application, the Respondent stated that:

"The Respondent is not in a position to appreciate the intentions of the applicant, but can confirm that the applicant did not achieve position 1 for the domain name last-minute due to such advantage, to be calculated in parts of a second, while the application by the complainant was made only 9 seconds after the first application as shown in the WHOIS database."

WÜRDIGUNG UND BEFUNDE

The Complaint arises out of the interpretation and application of Section 3, Paragraph 1 (vii) of the Sunrise Rules. According to Section 3, Paragraph 1 (vii) of the Sunrise Rules, "An Application is only considered complete when the Applicant provides the Registry, via a Registrar, with at least the following information: […] (vii) the complete name for which a Prior Right is claimed;"

The Complainant does not dispute the prior right claimed by L'Tur, which is the first applicant in line to be assessed for the domain name <last-minute.eu>, through its German registered trademark "Last Minute" No. 304 49 653 (registered on October 18, 2004). According to Article 11 of Regulation 874/2004, "As far as the registration of complete names is concerned, where such names comprise a space between the textual or word elements, identicality shall be deemed to exist between such complete names and the same names written with a hyphen between the word elements […]".

The Complainant, however, asserts a violation of the Sunrise Rules, stating that L'Tur incorrectly inserted in the application its prior right as "", in lieu of the complete name for which a Prior Right is claimed, namely "Last Minute", in order to gain technical and time advantage by shortening the data record to be transmitted. The Complainant asserts that the application

was therefore made in violation of the Sunrise Rules.

The Respondent asserts that Article 21.3 of the Sunrise Rules allows the Validation Agent to conduct its own investigations into the circumstances of the application, the Prior Right claimed and the documentary evidence, and that pursuant to such investigations it was found that L'Tur is the owner of prior right in "Last Minute", as defined in Article 10.1 of Regulation 874/2004 and therefore eligible to register domain names during the phased registration period.

The Panel agrees with the assertion of the Respondent with respect to the interpretation of Article 21.3 of the Sunrise Rules. The Validation Agent is permitted in its sole discretion to conduct its own investigation, and therefore it is permitted to determine the Prior Right claimed by the domain name applicant. By conducting a limited formal investigation of the application and of the Prior Right claimed, through the documentary evidenced received in accordance with the Sunrise Rules, the Validation Agent determined that L'Tur is the registered owner of the trademark "Last Minute" for which Prior Right is claimed.

Moreover, based on the record before him, the Panel is not satisfied that L'Tur achieved position 1 for the disputed domain name by inserting double quotation marks in the prior right field, as asserted by the Complainant. There is no evidence before the Panel which shows that the use of two quotation marks instead of the complete name of the Prior Right claimed, namely the trademark "Last Minute", had any direct effect in L'Tur achieving position 1 in the application for the disputed domain name.

The Respondent confirmed "that the applicant did not achieve position 1 for the domain name last-minute due to such advantage, to be calculated in parts of a second, while the application by the complainant was made only 9 seconds after the first application as shown in the WHOIS database."

The Complainant asserts that the other applications filed by L'Tur for the same domain name <last-minute.eu>, where the complete name of the Prior Right was recorded, were positioned lower in the queue. The Complainant concludes that this result would be due only to the difference in using double quotation marks for the Prior Right claimed in the application. Such assertion however was not evidenced by the Complainant, and is weakened by the record it submits in response to the Panel Order.

The Complainant refers to the application and registration during the phased registration period of the domain name <lastminute.eu> (which does not include the hyphen present in the disputed domain name). The Complainant asserts that the record for <lastminute.eu> shows that of L'Tur's multiple applications for <lastminute.eu>, it is the application which uses double quotation marks in the prior right field that is highest in the queue. The Complainant asserts "[t]he direct impact of the manipulation of the shortened data is evident and obvious."

L'Tur, however, did not obtain position 1 for the domain name <lastminute.eu>. The Complainant did. L'Tur's application for <lastminute.eu> which inserted double quotation marks in the prior right field obtained position 2. This would be an indication that L'Tur did not achieve position 1 for the disputed domain name solely by using double quotation marks in the prior right field. For the domain name <lastminute.eu>, the Complainant achieved position 1, despite L'Tur's application containing double quotation marks in the prior right field. (The Panel notes that the L'Tur's applications for the domain names <last-minute.eu> and <lastminute.eu> that obtained position 1 and 2 respectively, were made through the same registrar.)

The assertion of the Complainant that L'Tur Tourismus AG violated the Sunrise Rule deliberately in the application for the domain name <last-minute.eu> is not supported and evidenced by the record of the case.

While the use of double quotation marks to denote requisite information in a domain name application is far from commendable, in the present circumstances, L'Tur's application, in omitting the complete name for which the Prior Right was claimed and replacing it with double quotation marks, did not interrupt the application process as the applicant submitted in time the correct and necessary documentary evidence showing that it is the holder of the Prior Right claimed in "Last Minute".

Accordingly, the Panel, bearing in mind that the principal purpose of the phased registration period as set out in Recital 12 of Regulation 874/2004 is “to safeguard prior rights recognised by Community or national law”, does not find that the decision taken by the Respondent for the domain name <last-minute.eu> conflicts with the European Union Regulations as defined in the ADR Rules.

ENTSCHEIDUNG

For the reasons stated above and in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is denied.

## PANELISTS

| Name | **Felipe Lorenzo** |
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DATUM DER ENTSCHEIDUNG DER SCHIEDSKOMMISSION 2006-07-04

## Summary

EINE ENGLISCHSPRACHIGE KURZFASSUNG DIESER ENTSCHEIDUNG IST ALS ANLAGE 1 BEIGEFÜGT

The Complaint arises out of the interpretation and application of Section 3, Paragraph 1 (vii) of the Sunrise Rules. According to Section 3, Paragraph 1 (vii) of the Sunrise Rules, “An Application is only considered complete when the Applicant provides the Registry, via a Registrar, with at least the following information: […] (vii) the complete name for which a Prior Right is claimed.”

The Panel has considered that the company L’Tur Tourismus AG has not violated the Sunrise Rules by inserting in the application for the domain name <last-minute.eu> its prior right as "", in lieu of the complete name for which a Prior Right was claimed, namely “Last Minute”. The applicant submitted in time the correct and necessary documentary evidence showing that it is the holder of the Prior Right claimed in “Last Minute,” and there is no evidence before the Panel which shows that the use of two quotation marks instead of the complete name of the Prior Right claimed, namely the trademark “Last Minute”, had any direct effect in L’Tur achieving position 1 in the application for the disputed domain name.