Panel Decision for dispute CAC-ADREU-000504

Case number	**CAC-ADREU-000504**
Time of filing	**2006-05-02 11:58:30**
Domain names	**cork.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Dr. Eileen O'Leary**

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 relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Cork City Council, is the local authority for the city of Cork, Republic of Ireland. On 11 January 2006 the Complainant had filed an application for the domain name CORK.eu, claiming a prior right as a public body in Ireland as referred to in Article 10(3) of Commission Regulation (EC) No 874/2004. The corresponding documentary evidence was received by EURid's validation agent on 7 February 2006.

The Complainant challenges EURid's decision to grant the domain name CORK.eu to Traffic Web Holding BV, who filed its relevant application on 5 January 2006. This application was based on the Benelux trademark registration no. 786981 "cork", which had been registered on 4 January 2006 for "Bleekmiddelen" (class 03). The corresponding documentary evidence was received by EURid's validation agent on 13 February 2006.

The Czech Arbitration Court received the Complainant's Complaint on 28 April 2006. Upon request of the Czech Arbitration Court, EURid disclosed Traffic Web Holding's documentary evidence regarding the domain name CORK.eu in a nonstandard communication of 11 May 2006. On 12 May 2006 the Czech Arbitration Court notified EURid formally of the commencement of the ADR proceeding and requested submission of EURid's Response within 30 working days. EURid filed its Response on 7 July 2006.

A. COMPLAINANT

The Complainant requests to (1) annul EURid's decision to grant the domain name CORK.eu to Traffic Web Holding and to (2) transfer and attribute the domain name to the Complainant based on the following reasons:

The Complainant contends that EURid's disputed decision is in breach of

a) Article 4(1) of Regulation (EC) No 733/2002 because EURid has not observed the rules, policies and procedures laid down in said regulation; specifically, while the Complainant accepts that Traffic Web Holding applied for the domain name CORK.eu before the Complainant filed its own application for this domain name, the Complainant contends that its documentary evidence to complete its own application was submitted to the validation agent before Traffic Web Holding's documentary evidence in support of its application, and that EURid should therefore have attributed the domain name to the Complainant and not to Traffic Web Holding;

b) Article 4(2)(a) of Regulation (EC) No 733/2002 because EURid has not organized, administered and managed the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility; this contention is not specified in more

detail; and

c) Article 4(2)(b) of Regulation (EC) No 733/2002 and Article 10(1) of Commission Regulation (EC) No 874/2004 which, according to the Complainant, set out an order of priority among applicant bodies that was not observed by EURid's decision.

The Complainant also contends, without referring to a specific provision of Regulation (EC) No 733/2002 or Commission Regulation (EC) No 874/2004, that Traffic Web Holding applied for registration of the domain name CORK.eu without rights or legitimate interest in the name, and/or that this application has been made in bad faith. To support this contention the Complainant points out that (1) two other unsuccessful applications for the domain name CORK.eu had been made by an applicant called Parknet BV, who provided the same contact details as Traffic Web Holding and based its applications on alleged trademark registrations in Malta and the Netherlands, respectively, (2) Traffic Web Holding has also been registered for the European city domain names PRAGUE.eu, LISBON.eu, GLASGOW.eu, BELFAST.eu, and ATHENS.eu, and has also applied for the European city domain names LONDON.eu, PARIS.eu, and MOSCOW.eu.

B. RESPONDENT

The Respondent did not file its Response within the deadline of 30 working days as requested by the Czech Arbitration Court in line with Article 22(8) of the Commission Regulation (EC) No 874/2004. The Czech Arbitration Court notified the Parties of Respondent’s default, but nevertheless added EURid's Response to the case file pursuant to Paragraph 3(f) of the ADR Rules. EURid did not challenge the Czech Arbitration Court’s notification of the Respondent’s default as provided for in Paragraph 3(g) of the ADR Rules.

As EURid has not put forward any reasonable explanation for its belated Response, the Panel has decided not to admit the contentions made therein (Article 22(10) of the Commission Regulation (EC) No 874/2004, Paragraphs 3(g) and 7(d) of the ADR Rules). The Panel has noted, however, the documentary evidence in support of Traffic Web Holding's registration of the domain name CORK.eu, which was disclosed in EURid's nonstandard communication of 11 May 2006. The Panel has also decided that Article 22(10) of the Commission Regulation (EC) No 874/2004 does not mean that the belated Response will automatically result in a successful Complaint, but that the Panel will rather apply the law as it stands to the facts put forward by the Complainant (see Raad voor Rechtsbijstand v. Traffic Web Holding and EURid, Case No. 335 – MEDIATION.eu).

DISCUSSION AND FINDINGS

The Panel rejects the Complainant's contention that EURid should have granted the domain CORK.eu to Complainant because the documentary evidence in support of Complainant's application was submitted prior to Traffic Web Holding's documentary evidence. Articles 14(2), (6) and (7) of the Commission Regulation (EC) No 874/2004 clearly state that the relevant order to deal with multiple applications is based on the date and time these applications were received. The date of receipt for the documentary evidence is not relevant to determine this order as long as this documentary evidence is received before the deadline stipulated in Article 14(4) of the Commission Regulation (EC) No 874/2004.

The Panel also rejects the Complainant's contention that the disputed decision is in breach of Article 4(2)(a) of Regulation (EC) No 733/2002 because EURid has – allegedly – not organized, administered and managed the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility. The Complainant has not put forward any details to substantiate this contention.

The Panel also rejects the Complainant's contention that the disputed decision is in breach of Article 4(2)(b) of Regulation (EC) No 733/2002 and Article 10(1) of Commission Regulation (EC) No 874/2004. The Panel does not share the Complainant's view that these provisions stipulate an order of priority among multiple applicant bodies. Article 4(2)(b) of Regulation (EC) No 733/2002 merely stipulates a European "nexus requirement" for owners of .eu domain names, which is clearly not an issue in this case. Article 10(1) of Commission Regulation (EC) No 874/2004 does not give any priority to either the holders of prior rights (like Traffic Web Holding) or public bodies (like the Complainant), but rather places them on an equal footing.

Complainant's most serious contention is the alleged bad faith in relation to Traffic Web Holding's application for the domain name CORK.eu. It appears that this contention is implicitly based on the provisions contained in Article 21 of the Commission Regulation (EC) No 874/2004 on speculative and abusive registrations. Absent a convincing explanation for Traffic Web Holding's application, the various facts put forward in the Complaint may be sufficient to demonstrate its bad faith under Article 21(1)(b) and (3) of the Commission Regulation (EC) No 874/2004. On the same grounds it appears possible that Traffic Web Holding's affirmation pursuant to Article 3(1)(d) of the Commission Regulation (EC) No 874/2004 regarding its request for the domain name in good faith is questionable, which could result in a breach of the terms of registration (Article 3(2) of the Commission Regulation (EC) No 874/2004) and revocation of the domain name pursuant to Article 20(1)(c) of the Commission Regulation (EC) No 874/2004.

The principles of due process and fair procedure require, however, that Traffic Web Holding must have an opportunity to defend itself against any such allegations before its registration of CORK.eu could be held to be made in bad faith. Traffic Web Holding is, however, not a party to the present ADR procedure. The Commission Regulation (EC) No 874/2004 does not specify in which cases an ADR procedure should be directed against EURid or against the domain name holder as the correct respondent. The final paragraph of Section B.1(a).eu Alternative Dispute Resolution Rules, however, provides that an ADR proceeding against a Domain Name Holder can only be initiated once the domain name at issue has been registered and activated, which is not yet the case for CORK.eu. It is also not possible (and the Complainant has rightly not attempted to do so) to initiate this ADR procedure against EURid and Traffic Web Holding at the same time (see Raad voor Rechtsbijstand v. Traffic Web Holding and EURid, Case No. 335 – MEDIATION.eu).

Based on these considerations relating to due process and fair procedure the Panel believes that the Complainant will have to initiate an ADR procedure against Traffic Web Holding itself to put forward its bad faith argument. The Panel notes that a number of other parties have already initiated similar ADR procedures against this company (see for example Helsingin Kaupunki v. Traffic Web Holding, Case No. 475 – HELSINKI.eu; Stockholms Stad v. Traffic Web Holding, Case No. 386 – STOCKHOLM.eu). This present decision does not prevent the Complainant, should it whish to do so, from filing such a Complaint against Traffic Web Holding based on Article 21 of the Commission Regulation (EC) No 874/2004 if and when the domain name CORK.eu is activated.

DECISION

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

PANELISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2006-07-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

According to Articles 14(2), (6) and (7) of the Commission Regulation (EC) No 874/2004 the relevant order to deal with multiple applications for a single domain name is based on the date and time these applications were received. The date of receipt for the documentary evidence is not relevant to determine this order as long as this documentary evidence is received before the deadline stipulated in Article 14(4) of the Commission Regulation (EC) No 874/2004. In the case herein, there is no doubt that Traffic Web Holding BV's application for the domain name "CORK" took place before the Complainant's application, and documentary evidence was submitted in time before the deadline. Article 4(2)(b) of Regulation (EC) No 733/2002 and Article 10(1) of Commission Regulation (EC) No 874/2004 also do not stipulate a different order of priority among multiple applicant bodies, but rather places them on an equal footing.

The Complainant's contention that the domain name holder has applied for the disputed domain name in bad faith has to be raised vis-à-vis this domain name holder in an ADR procedure based on Article 21 of the Commission Regulation (EC) No 874/2004, and not in an ADR procedure against the Registry. The principles of due process and fair procedure require that the domain name holder has the opportunity to defend itself against such allegations, which is not possible in an ADR procedure against the Registry.