Panel Decision for dispute CAC-ADREU-000507

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Case administrator

Name	Josef Herian

Complainant

Organization / Name	Are Oy

Respondent

Organization / Name	EURid

FACTUAL BACKGROUND

This Complaint arises out of the interpretation and application of 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”).

The Complaint is made by Are Oy (“the Complainant”), against the decision of the EURid (“the Respondent”) which permitted the registration of the domain name «are.eu» (“the Disputed Domain Name”) to «Aare Kommun» (“the Applicant”).

The «Aare Kommun» applied for the domain name « are.eu » on 9 January 2006. The documentary evidence, which was validated by a Swedish Governmental Validation Point (National Post and Telecom Agency), was received on 12 January 2006, and the application was accepted by the Registry.

The Complainant has lodged its Complaint pursuant to Section 26 of Sunrise Rules, which provides that following a decision by the Registry to register a .eu domain name, an interested party may initiate an ADR Proceeding (as defined therein) against the Registry with regard to that decision.

A. COMPLAINANT

The following is a summary of the main submissions of the Complainant.

The Complainant asserts:

1. Prior to launch, EURid provided newsletters and general information, including the "road shows" together with PriceWaterhouseCoopers (hereinafter "PWC"), the main characteristic of which has been strict adherence to procedural and substantive rules.

2. While Government Validation Points (hereinafter "GVP" or "GVPs”) have not participated in the educational events, nevertheless, their decision-making is based on the same regulations as the decision-making of PWC and EURid.The parties

whose validation is performed by GVPs have a legitimate expectation of having the same standards of judgment applied to their applications, as those of whose validation is performed by PWC. It is for the Respondent to ensure that both validation performers apply the same standards.

3. The Respondent and PWC have spent considerable time and effort in emphasising the fact that any application with procedural or substantive flaws will only be considered taking only into account the information submitted by the applicant. For example, Appendix II of Registration Guidelines 1.0B for .eu (30 September 2005) (provided in Annex III) clearly state, in bold characters, that "note that an application is final and can not be modified. Making an error in the application can only be rectified by resending a correct version".

4. The text refers to "an error", which implies that any error in any part of the application is sufficient for the rejection of the application. Furthermore, on 9 December 2005 the Respondent published a newsflash (provided in Annex IV) on their extranet website for Registrars, according to which if erroneous information is submitted in the name or organisation EPP field of the application, the application will be considered according to the submitted information and should therefore not be accepted if the information in the application turns out to be incorrect or inaccurate.

5. In the newsflash it was further stated that only in two cases is there a procedure for correcting an erroneous data - either the language of the application can be corrected at the time of submitting the documentary evidence or where there are immaterial inaccuracies, such as typos in other EPP fields. However, an error in those EPP fields can only be ignored, according to the Respondent, where it does not "have any impact on the situation or interests of relevant third parties...". In the present case the Complainant suffers irreparable and irrevocable damage if the inaccuracy in the application is not taken into account. The damage is that the Complainant is deprived of a domain name that the Complainant would otherwise be granted.

6. Section 11(3) of the Sunrise Rules stipulate that “[t]he Applicant must be the holder (or licensee, where applicable) of the Prior Right claimed...” As mentioned above, the Applicant is «Aare Kommun». Such municipality does not exist in Sweden, and therefore «Aare Kommun» cannot be a holder of « are.eu » domain name. The Swedish GVP (the Swedish Post and Telecom Agency) has verified that there is no municipality in Sweden called «Aare Kommun» (Annex V). There is a municipality in Sweden called «Are Kommun». This municipality is the owner of a Swedish domain name «are.se». The official contact information of «Are Kommun» (Are Municipality) is the same as mentioned in the contact information details of the disputed domain name. It is evident that «Aare Kommun» is, in fact, «Are Kommun». This finding is also supported by the Swedish GVP (provided in Annex V). However, it is clearly stated in the validation materials of PWC, that "the name of the domain name applicant must exactly match the name of the claimed holder of the prior right, as mentioned in the documentary evidence" (support documents annexed).

7. Since there is no municipality called «Aare» in Sweden, the application should have been rejected. It is irrelevant whether «Are Kommun» had a legitimate right to register domain «are.eu », since «Are Kommun» was not the registered applicant.

8. The Sunrise Rules state that marks with other than standard Latin script can be transliterated (see Section 19(6)). However, this rule only deals with domain names. There is no doubt that other than standard Latin script can be used in the field which identifies the applicant. There is therefore no reason to transliterate the applicant's name. The name should be identical to that of the prior right holder. It is therefore the position of the Complainant that company names and names of public bodies must be identical to the holder of the prior right, that is to say, they cannot be transliterated or translated (except where the translation is found in an official trade register or the equivalent register of public bodies).

9. In conclusion, the Complainant considers it has established beyond any reasonable doubt that:

(a) The holder of the disputed domain is registered as «Aare Kommun»;

(b) There is no such municipality in Sweden as «Aare Kommun»;

(c) Applicant name cannot be transliterated or translated, unless the transliteration or translation is marked in an official

register, such as trade register or municipality register;

(d) The disputed decision is flawed because the disputed domain has been granted to an entity that does not exist;

(e) The Respondent has spent considerable effort in securing strict and literal application and construction of the relevant rules;

(f) The Respondent has taken a view that any error in the application will lead to the rejection of that application, unless there is a specific procedure for rectifying the incorrect information;

(g) It is the view of the Respondent that immaterial inaccuracies (such as typos) can only be corrected if that would not have any impact on the situation or interests of relevant third parties;

(h) If the inaccuracies in the application of the disputed domain are corrected, the Complainant suffers irreparable and irrevocable damage; and

(i) The damage suffered by the Complainant is the losing of a domain that would otherwise be granted to it.

10. Therefore, the Complainant respectfully requests that the panellist annuls the disputed decision and orders the disputed domain name to be transferred to the Complainant. If the panellist is unable to order the transfer of the Disputed Domain Name, the disputed decision should in any case be annulled.

B. RESPONDENT

The following is a summary of the main submissions of the Respondent:

The Repondent asserts:

Basis for accepting application

1. Article 3 of the Regulation states that the request for domain name registration shall include the name and address of the requesting party. Any material inaccuracy to this requirement shall constitute a breach of the terms of registration.

2. Article 10(1) of the Regulation states that public bodies may apply to register domain names during a period of phased registration before general registration of .eu domain names. Pursuant to the definition of "public body" contained in this article, a local government is considered to be a public body.

3. Pursuant to article 10(3) of the Regulation, a public body may apply for a domain name which consists of the complete name of this public body or the acronym that is generally used.

4. With regard to the applications made pursuant to article 10(3) of the Regulation, article 13 of the Regulation provides that such applications shall be validated by the Member States, more in particular by a Governmental Validation Point.

5. The «Åre Kommun», which governs the municipality «Åre», applied for the domain name ARE on January 1, 2005. The documentary evidence was received on January 12, 2006, which is before the February 18, 2006 deadline.

6. As the documentary evidence consisted of a validation by a Swedish Governmental Validation Point, the Registry has accepted the application for the domain name ARE.

Response to Complainant’s Submissions

7. The Complainant argues that the covering letter to the documentary evidence contains an inaccuracy and that such an inaccuracy should have resulted in the rejection of the application. The covering letter states that the Applicant is «Aare Kommun», not «Åre Kommun».

8. In support of this claim, the Complainant refers to a number of documents from the Registry's and the validation agent's (PriceWaterhouseCoopers) websites. These documents state that the name of the Applicant must exactly match the name of the claimed holder of the domain name. The Complainant understands such a rule to mean that the slightest difference in spelling between the name of the Applicant and the name of the holder of the prior right should lead the Registry to reject the application.

9. The Complainant does not dispute that the Applicant is the holder of a right pursuant to article 10 (3) of the Regulation.

10. The Complainant agrees that there can be no misunderstanding as to the personae of the Applicant. In this regard, the Complainant states that, ”It is evident that «Aare Kommun» is, in fact, «Åre Kommun».”

11. The Registry fully agrees with the Complainant's conclusion that «Aare Kommun» is the same public body as «Åre Kommun». Such a conclusion is not surprising as the letters «å» and «aa» interchangeable in Swedish, and the writer has the choice between both. Therefore, «Aare Kommun» is a generally accepted different way of spelling «Åre Kommun». Contrary to the Complainant's submission, the covering letter does not contain an inaccuracy. Therefore, the Complaint should be dismissed.

12. For these reasons, the Registry's decision to validate the Applicant's application was correct and the Complaint must be dismissed.

DISCUSSION AND FINDINGS

The Regulation and further the Sunrise Rules govern all .eu domain name applications made during the phased registration period. The Applicant applied for the Disputed Domain Name on the basis of its status as a public body and Article 10 of the Regulation sets out the basis upon which public bodies may register a .eu domain name.

Article 10 (1) of the Regulation states, “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”

Further, Article 10(1) of the Regulation defines the term “public bodies” as being, “‘Public bodies’ shall include: institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organisations and bodies governed by public law, and international and intergovernmental organisations.”

Article 10(3) provides, “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 Applicant applied for the domain name « are.eu » on 9 January 2006. The documentary evidence, which was validated by a Swedish Governmental Validation Point (National Post and Telecom Agency), and the application was subsequently accepted by the Registry.

The Panelist accepts both parties’ conclusions that «Aare Kommun» is the same public body as «Åre Kommun». The Panelist further agrees with the Respondent that it is commonly accepted that « å » and « aa » are commonly interchangeable in Swedish.

Given that the Swedish Governmental Validation Point (National Post and Telecom Agency) validated the Applicant’s right to the domain name « are.eu », and given that the spelling of «Åre Kommun» and «Aare Kommun» are interchangeable in

Swedish, the Panelist concurs with the Respondent's assertion that the covering letter does not contain an inaccuracy.

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	**Simon Moran**

DATE OF PANEL DECISION 2006-06-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant sought to challenge the decision of the Registry to register the disputed domain name « are.eu » to Aare Kommun which was relying on its prior right as a public body. The Complaint was based on the grounds that (i) « Aare Kommun » was not a municipality in Sweden, and therefore the disputed domain name could not be granted to an entity that did not exist; and (ii) the name of the applicant must exactly match the name of the claimed right and that any inaccuracies in any application must lead to the rejection of that application.

The Swedish Governmental Validation Point (National Post and Telecom Agency) validated the Applicant's right, as a public body, to the domain name « are.eu ». The Panelist accepts that « å » and « aa » are commonly interchangeable in Swedish, and accordingly «Åre Kommun» and «Aare Kommun» are one of the same. As such, the Panelist accepts the Respondent's assertion that the covering letter does not contain an inaccuracy. The Panelist therefore rejects the Complaint.