

Panel Decision for dispute CAC-ADREU-000685

Case number **CAC-ADREU-000685**

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Domain names **lotto.eu**

Case administrator

Name **Josef Herian**

Complainant

Organization / Name **Deutsche Lotto Marketing GmbH**

Respondent

Organization / Name **EURid**

FACTUAL BACKGROUND

Complainant challenges the registration of the domain name lotto.eu in favour of Mr Pintz on the basis of alleged bad faith of the same Mr Pintz.

A. COMPLAINANT

Complainant is a legal entity based in Germany and active in the managing and marketing of the activities of an association of German-based lottery companies. Complainant organises and operates state-licensed lotteries in Germany and its activity is commonly known under the name "lotto". In the course of its business Complainant registered a number of trademarks, among which the trademark "Lotto" is included. Complainant underlines that such registered trademark is a "prior right" to the purpose of article 10, paragraph 1, of the EC Regulation 874/2004 (hereinafter referred to as the "Regulation").

During the first stage of the sunrise period, on December 7, 2005, Mr Gyorgy Pintz of Budapest applied for the domain name lotto.eu. Complainant applied for the same domain name on even date and its request ranked at the second place, while Mr Pintz's request ranked 1st. Mr Pintz provided evidence of the existence of a trademark registration under his name of the trademark "Lotto" in Denmark and, as a consequence, his application was eventually accepted and the domain name in reference registered under his name.

Complainant claims that Mr Pintz's registration is speculative and abusive, that it should have been rejected by the Registry and that it should now be revoked.

According to Complainant Mr Pintz's bad faith is confirmed by a number of circumstances and, more specifically:

- by the fact that Mr Pintz is not active in the same field of Complainant, being a patent attorney with office in Budapest;
- by the fact that Mr Pintz registered his trademark in Denmark just before the sunrise period started;
- by the fact that Mr Pintz applied for the registration of a number of general purpose trademarks, having no relationship with his professional activity;
- by the fact that a Mr Schubert sent an email to Complainant in order to obtain a substantial amount of money (euro 35.000) against Mr Pintz's decision to abandon his registration request.

B. RESPONDENT

EURid claims that ADR proceedings have no object.

In particular, Respondent makes reference to article 22(1)b of the Regulation which states that an ADR procedure may be started if the Registry takes a decision conflicting with the Regulation and/or with EC regulation 733/2002. Respondent further states that (according to article 20 of the Regulation) the Registry may decide to revoke a domain name registration based on certain limited grounds and that, in this case, no decision was taken by the Registry according to article 20 of the Regulation. As a consequence, in Respondent's opinion, this procedure is without object and Complainant's request should be dismissed.

DISCUSSION AND FINDINGS

According to article 14 of the Public Policy Rules, the Registry shall register a domain name on a first-come-first-served basis if the applicant provides evidence of a prior right.

In this case the Registry held that Mr Pyntz provided such evidence and granted the requested registration.

In the opinion on the undersigned Panelist the Registry, in the absence of a specific notice (which could be sent by any party having a legitimate interest) regarding the existence of factual circumstances regarding the (possible) bad faith of applicant, is not required to assess whether the applicant is acting in good faith or not.

The undersigned Panelist underlines that a notice would create the Registry's duty to assess good faith under article 3 of the Public Policy Rules provided that such notice is specific and contains reference to circumstances which are evidence of the applicant's bad faith.

In the present case Complainant did not raise any objection and the Registry, having ascertained the existence of a prior right, granted the domain name lotto.eu to Mr Pyntz.

According to the principle stated in Eurostar (case 00012, decision 12th May 2006) this could not be considered as a Registry's decision to the purpose of article 22(1)b of the Regulation. The existence of a decision (to the purpose of the above provision) is a pre-requisite for starting an ADR procedure against the Registry. The absence of such pre-requisite leads to denial of Complaint.

The undersigned Panelist holds opportune adding that this decision would not impair Complainant's right to start an ADR procedure against Mr Pyntz (not against the Registry, as in this present case) on the basis of article 22(1)a of the Regulation.

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	Riccardo Roversi
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DATE OF PANEL DECISION 2006-07-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Registry is not obliged to assess whether or not the applicant is in good faith during the registration process, unless a specific notice regarding the existence of circumstances proving applicant's bad faith is sent by a third party in accordance with article 20 of the Regulation.

As a consequence, the granting of a domain name registration to an applicant who provided evidence of his prior right may not be considered as a decision to the purpose of article 22(1)b of the same Regulation.