Panel Decision for dispute CAC-ADREU-000702

Case number	CAC-ADREU-000702
Time of filing	2006-04-19 10:16:37
Domain names	ecommerce.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Samir Said

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

Nil

FACTUAL BACKGROUND

On the first-to-file principle, EURid registered the disputed domain name “ecommerce.eu” in favor of Traffic Web Holding, with its application dated 7, December 2005. Traffic Web Holding substantiated its application during the first stage of the Sunrise period with proof in the form of Documentary Evidence showing it owns a Benelux trademark. The Complainant challenged EURid’s decision to register the disputed domain name in favor of Traffic Web Holding and filed his Complaint within the Sunrise Appeal Period.

A. COMPLAINANT

The Complainant is the Executive Manager for Finance of the company Ecommerce GmbH and argues that the disputed domain name should be transferred to Ecommerce GmbH which is the owner of the domain name ecommerce.com and a direct subsidiary of Ecommerce Holding. Both companies are based in Austria with international recognition in the area of the Internet. The Complainant argues that Ecommerce GmbH should obtain the disputed domain name based on its corporate name, its international name recognition, and because it holds the domain name ecommerce.com. According to the Complainant, the registration of the disputed domain name in favor of Traffic Web Holding is in breach of Paragraph B1 (10) (i) of the ADR Rules.

B. RESPONDENT

The Respondent (EURid) filed its Response late, after the expiration of the prescribed term for filing a Response. In its Response, the Respondent argues that the disputed domain name was registered on the first-to-file principle and that the first applicant in the row, Traffic Web Holding, presented Documentary Evidence of its registered (Benelux) trademark, which was reviewed by the validation agent. Accordingly, the application for the disputed domain name was accepted.

The Respondent also argues that Paragraph B1 (10) (i) of the ADR Rules can only be invoked in disputes against domain name holders and not in disputes against EURid. Nevertheless, even if the above-mentioned Paragraph would be applicable, the Complainant’s arguments dealt with only a part of the conditions prescribed by the ADR Rules.

Finally, the Respondent argues that it cannot transfer the disputed domain name to the Complainant since the Complainant is not the next applicant in queue.

For all the above mentioned reasons, the Respondent requests that the Complaint shall be denied.

DISCUSSION AND FINDINGS

As a preliminary question, the Panel, in accordance with Paragraph B10 (a) of the ADR Rules, confirms that EURid's failure to submit its Response on time as such will not be considered as grounds to accept the Complainant's claims. The Panel is aware that the Respondent, being EURid, must have been under considerable pressure to prepare and file multiple Responses to the many ADR Proceedings recently filed against it. The Panel shall exercise its own discretion and take into account the Response.

The Complaint was filed against EURid and is related to the Sunrise registration of a .eu domain name. The Complainant requests that the disputed domain name be transferred to the company Ecommerce GmbH. In accordance with Paragraph B11 (c) of the ADR Rules, in appropriate cases the Panel may decide that a disputed domain name in an ADR Proceeding against EURid be transferred, but only subject to a number of conditions including, among others, that "the Complainant is the next applicant in the queue for the domain name concerned." The Complainant is not Ecommerce GmbH itself, but rather, a manager at Ecommerce GmbH; and, the company Ecommerce GmbH is not the next applicant in queue after the registrant Traffic Web Holding.

The Complainant argues that EURid's decision is contrary to Paragraph B1 (10) (i) of the ADR Rules. This provision, however, regulates the legal grounds for Complaints against domain name holders, not against EURid—which is the Respondent in this case. In ADR Proceedings against EURid, the key question is whether or not the disputed decision of EURid conflicts with European Union Regulations as defined by the ADR Rules (Paragraph A1 (b) (10) (ii) of the ADR Rules). With respect to the Sunrise registrations, EURid's obligations are contained primarily in Article 14 of the Commission Regulation (EC) No. 874/2004 (the "Public Policy Rules"):
"The 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" [of Article 14].

As the Respondent stated in its Response, Traffic Web Holding submitted its Documentary Evidence on time, which showed that the applicant was the holder of a registered trademark; and, the validation agent reviewed the Documentary Evidence and did not find any irregularity. Therefore, EURid accepted the application made by Traffic Web Holding based on its place in the queue of applications. The Complainant did not argue in its Complaint that EURid did not observe its obligations under Article 14 of the Public Policy Rules. Instead, he based his arguments on the alleged existence of the prior rights held by his company, Ecommerce GmbH. Such arguments may be applicable in ADR Proceedings against domain name holders but not against EURid. This conclusion has been confirmed in a number of ADR decisions, e.g., ADR 535 (mediation.eu) or ADR 382 (tos.eu).

As a result, the Panel finds that EURid's decision does not conflict with European regulations.

As the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation 874/2004 and/or with the Regulation 733/2002, and for all the above mentioned reasons, the Panel decided, in accordance with Paragraphs B12 (b) and (c) of the ADR Rules, that the Complaint is Denied.

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	**Zbynek Loebl**

DATE OF PANEL DECISION 2006-08-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complaint was filed against EURid and is related to the Sunrise registration of a .eu domain name. The Complainant requested that the disputed domain name be transferred to the company Ecommerce GmbH. In accordance with Paragraph B11 (c) of the ADR Rules, in appropriate cases the Panel may decide that a disputed domain name in an ADR Proceeding against EURid be transferred, but only subject to a number of conditions including, among others, that "the Complainant is the next applicant in the queue for the domain name concerned." The Complainant is not Ecommerce GmbH itself, but rather, a manager at Ecommerce GmbH; The company Ecommerce GmbH, however, is not the next applicant in queue after the registrant Traffic Web Holding.

The Complainant argued that EURid's decision was contrary to Paragraph B1 (10) (i) of the ADR Rules. This provision, however, regulates the legal grounds for Complaints against domain name holders, not against EURid—which is the Respondent in this case.

As the Respondent stated in its delayed Response, Traffic Web Holding submitted its Documentary Evidence on time, showing that the applicant was the holder of a registered trademark; and; the validation agent reviewed the documentary evidence and did not find any irregularity. Therefore, EURid accepted the application made by Traffic Web Holding based on its position in the queue of applications. The Complainant based his arguments on the existence of the prior rights held by his company, Ecommerce GmbH. Such arguments may be applicable in ADR Proceedings against domain name holders but not against EURid. This conclusion has been confirmed in a number of ADR decisions, e.g., in ADR 535 (mediation.eu) or ADR 382 (tos.eu).

As a result, the Panel finds that EURid's decision does not conflict with European regulations.

As the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation 874/2004 and/or with the Regulation 733/2002, and for all the above mentioned reasons, the Panel decided, in accordance with Paragraphs B12 (b) and (c) of the ADR Rules, that the Complaint is Denied.