# Sentence arbitrale for dispute CAC-ADREU-000810

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| Case number | **CAC-ADREU-000810** |
| Time of filing | **2006-05-09 16:46:59** |
| Domain names | **ahold.eu** |

## Case administrator

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| Name | **Josef Herian** |

## Complainant

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| Organization / Name | **Koninklijke Ahold N.V.** |

## Respondent

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| Organization / Name | **EURid** |

AUTRES PROCÉDURES JURIDIQUES

The Panel is not aware of any other legal proceeding related to the disputed domain name

SITUATION DE FAIT

The Complainant (hereinafter, the “complainant”) is Koninklijke Ahold N.V.
On 9 december 2005 the complainant filed an application for the domain name “ahold.eu”.
On 18 january 2006, before the 19 january 2006 deadline, the complainant filed documentary evidence of the claimed prior right, consisting in the Czech trademark n.172846 for the word “ahold”, registered on the 8 june 1993 and expiring on the 27 june 2011.
On 30 march 2006 respondent notified by email the complainant that the domain name application was rejected, on the basis that documentary evidence provided was insufficient to prove the existence of the prior right enlisted in the domain name application.
On 9 may 2006 complainant filed a complaint before the Czech Arbitration Court (hereinafter “CAC”) against respondent.
After notification of deficiencies in the complaint, duly and timely amended by complainant, on 22 may 2006 CAC notified parties of commencement of ADR procdure, having verified that the complaint satisfied the formal requirements of ADR Rules and ADR Supplemental Rules together with the payment of required amount.
On 9 july 2006, respondent timely filed a response to compliant.
On 13 july 2006, having the selected Panel filed its statement of acceptance to serve as the Panel in the present case, CAC filed a notification of appointment of the present ADR Panel, in the person of Mr. Roberto Manno. Projected decision date was set on 9 august 2006.

A. PARTIE REQUÉRANTE

Complainant represents that he is the holder of the Czech trademark n.172846 registered in 8 june 1993, which formed the basis for the domain name application for the corresponding domain name.
Being the holder of said trademark, respondent’s refusal is in conflict with several articles of Ec regulation 874/04 (hereinafter “PPR”), i.e.: art. 10 (1) ans (2); art. 12 of PPR, as it is clear that complainant is the holder of a prior right consisting in the Czech trademark and therefore has a right in applying for the corresponding domain name.

It is complainant's submission that, during the examination of the documentary evidence, the Validation Agent should have wrongfully qualified the documents as referring to a French, rather to a Czech trademark. Respondent's decision is therefore conflicting also with art. 13 PPR, according to which "validation agents shall be reputable bodies [….] execute the validation in an objective, transparent and non-discriminatory manner".
Complainant further alleges that, having disclosed sufficient documentary evidence showing that he is the holder of the prior right on the name in question, respondent's decision conflicts with art. 14 of PPR.
It have to be pointed out that complainant clearly states that his "mistake" consisting in the omission of the word "Koninklijke" in the application form for the ahold.eu domain name relating the full name of the applicant, should not have led respondent to the conclusion that he is not the holder of the prior right, which refers to "Koninklijke Ahold N.V." and not to "Ahold N.V." as from the domain name application.
The complainant therefore requests that respondent's decision concerning the ahold.eu domain name be annulled.

B. PARTIE DÉFENDANTE

The Respondent contends that its decision rejecting the complainant's application was compliant with art. 10 (1) and art. 14 (4) of PPR, as it was clear from the examination of the documentary evidence that the complainant did not appear to be the owner of the Ahold trademark, as the name of the holder mentioned on the trademark certificate differed from the name of the complainant.
As it was the finding of the prima facie review of the documentary evidence received, pursuant to art. 21.2 of the Sunrise Rules, neither the respondent nor the validation agent may be censured of any EC regulation breach. Furthermore, Sunrise Rules clearly states that Registry and Validation Agent do not have any obligation to engage in speculation and/or embark upon its own enquiry in relation to the exact connection between two entities (see case n. 294 COLT).
The rejection of the domain name application was therefore compliant with EC regulation 874/04 and 733/02 and the complaint must be dismissed.

DÉBATS ET CONSTATATIONS

Given the number of claims raised by the complainant it is necessary to establish their admissibility, as the Panel believes that some arguments may not be taken into account, as not sufficiently proved and/or relevant.
Pursuant to art. B 11 (a) ADR Rules, the Panel will disregard complainant's allegation following which the Validation Agent, and the respondent, should have wrongfully qualified the documentary evidence as referring to a French rather to a Czech trademark.
From the documents disclosed in the case file, it is clear that the sole basis for the rejection of complainant's application for the ahold.eu domain name is the fact that the complainant did not appear to be the same applicant for the domain name and holder of prior right.

As the present ADR procedure is directed against respondent's decision, under art. 22.1 (b) PPR it have to be carefully ascertained whether, in reaching this conclusion, respondent have failed to comply with provisions of PPR or Regulation 733/02. This is the only task for the Panel in these proceedings, which may not in any case serve as a "second chance" or an additional round providing applicants an option to remedy their imperfect original application that was rejected during the Sunrise Period (see case n. 551 - VIVENDI UNIVERSAL).

Domain names applications and registration under the phased procedure, as it is the case, are ruled by Sunrise Rules (SR). Sec. 3 (1) SR provides the minimal requirements an application must fulfil in order to be considered complete. The full name of the Applicant is the first of these requirements. Therefore, from the letter of the said section, it is compliant with SR to consider incomplete an application where the name of the applicant is not complete.

Complainant argues that this deficiency of the application, due to a mistake, should not have led the respondent to reject the ahold.eu application, as it should be evident from the documentary evidence that it is "Koninklijke Ahold N.V.", and not "Ahold N.V.", the full name of the applicant.
Furthermore, if Validation Agent and respondent should have acted with the expected due diligence, they should have easily cleared any doubt about the name of the applicant. Complainant refers to case n. 252 – SHOELLER, where the Panel annulled respondent's decision on the basis that, having the Validation Agent failed to conduct its own investigation into the

circumstances of the Application, the Prior Right claimed and the Documentary evidence provided as set out by art. 21 (3) of the SR, it was contrary to a fundamental principle of justice to deny the domain name.

The Panel argues that, notwithstanding the similarity of the case n.252 – SHOELLER with the case at hand, it was a technical obstacle, rather than a “mistake”, which gave raise to a difference between the full name of the applicant as resulting from the automated system for the filing of domain name applications, and the name of the holder of prior rights as resulting from documentary evidence. The Panel believes that nothing under the ADR Rules should justify the attribution to the respondent of the results of a complainant’s error.

Indeed, being the powers of the Validation Agent discretional, the Panel have no right to criticize or to check if those powers have been duly exerted. Art. 21 of SR clearly states that both the Validation Agent and the Registry are not obliged to notify the applicant whereas application’s requirements are complied with (art. 21. 1 last sentence); moreover, validation of prior right is conducted on the basis of a prima facie (emphasis added) review of the first set of documentary evidence provided (art. 21.2).

As confirmed by sec. 20 of SR, it is important to make sure that the applicant is the same holder of the prior rights, to avoid any domain name registration deprived of legitimation on the applicant’s side.
As a result, when faced before a difference between the applicant name and the prior right holder name, correctly detected by the Validation Agent, the Registry may not accept the corresponding domain name application being the application incomplete under sec. 3 (1) SR.

It is this Panel opinion that, in rejecting the domain name application, nor the Validation Agent neither the Registry have failed to comply whit their diligence obligations.

As a result, respondent’s decision does not conflicts with any EC regulation under art. 22.1 (b) PPR, and therefore the complaint is dismissed.

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

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| Name | **Roberto Manno** |

DATE DE LA SENTENCE ARBITRALE 2006-08-04

## Summary

LE RÉSUMÉ EN ANGLAIS DE LA SENTENCE ARBITRALE SE TROUVE À L´ANNEXE 1

The Complainant filed a complaint against the respondent's decision to reject its application for the domain name ahold.eu whithin the Sunrise Period.
The rejection was based on the fact that, according to the documentary evidence provided, the complainant did not appear to be the owner of the prior right consisting in the Czech trademark for the word Ahold, as the name mentionerd in the trademark certificate (Koninklijke Ahold N.V.) differed from the name of the Complainant/Applicant (Ahold N.V.).
After having reviewed the documents provided by the parties, the Panel finds that results of complainant's mistake in drafting the domain name application, consisting in the omission of the full name on the applicant, may not be attributed to Respondent.
Being Respondent and Validation Agent obligation clearly designed by Public Policy Rules and Sunrise Rules, which do not foresee any obligation to cooperate with applicant/complainant, respondent decision to not accept the application may not held as conflicting with PPR or EC Regulation 733/02.
Therefore, as the Panel have no right to censure Respondent or Validation Agent discretional power, the Complaint is

dismissed.