

Panel Decision for dispute CAC-ADREU-000838

Case number **CAC-ADREU-000838**

Time of filing **2006-04-20 10:09:03**

Domain names **cbi.eu**

Case administrator

Name **Josef Herian**

Complainant

Organization / Name **Hugo Verhoeven**

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

This Complaint arises out of the interpretation and application of Commission Regulation (EC) No 874/2004 dated 28 April 2004 (the “Regulation) and the .eu Registration Policy and Term and Conditions for Domain Name Applications made during the Phased Registration Period (“the Sunrise Rules”)

Article 3 of the Regulation provides that the request for a domain name shall include inter alia the name and the address of the requesting party and further that any material inaccuracy in the name shall constitute a breach of terms of registration.

The Sunrise Rules govern all applications during the phased registration period.

Section 3.1 (1) of the Sunrise Rules states that an application is only considered complete when the Applicant provides the Registry, via a registrar, with at least the full name of the Applicant.

The Complainant is a Dutch public body. The Dutch name of the Complainant is “Centrum tot Bevordering van de Import uit Ontwikkelingslanden (CBI)”. The English name of the Complainant is “The Centre for the Promotion of Imports from developing countries (CBI)”.

On 7 December 2005, the Complainant applied to register the domain name “cbi.eu” during Phase I of the phased registration period.

The Complainant filed using its English name, which is the name used on the Complainant’s web site www.cbi.nl.

The automated application system provided to applicants, including the Complainant, by the registrar imposed at the time of filing a limitation of 50 characters in the name field in which applicants were permitted to enter their respective names. This is a fact which is not disputed by the Respondent.

In the application for the domain name “cbi.eu” received from the Complainant by the Respondent, the name of the Complainant was therefore, due to the technical limitations of the automated system, truncated to “The Centre for the Promotion of Imports” rather than the full name “The Centre for the Promotion of Imports from developing counties (CBI) ”.

The Respondent refused to register the domain name “cbi.eu” in the name of the Complaint during the Sunrise Period on the grounds that the application was not filed in the Complainant’s actual name, being filed in its English name instead of its Dutch name, the Complainant’s application did not provide the full name of the Complainant and that the Respondent cannot be held responsible for technical limitations in the automated system operated by the Complainant’s registrar.

A. COMPLAINANT

The Complainant submits that the Registrar should accept the application filed in its English name as opposed to its Dutch name. The Complainant submits that the English name is a literal translation of the Dutch name and that the English name is the name normally used by the Complainant.

The Complainant submits that the error in its name was due to a technical problem created by the limitations of the automated application system made available to applicants. The Complainant submits the application was entered in the full name of the Complainant but the limitation on the number of characters in the field provided for the name of an applicant resulted in the Complainant's name being truncated because it was too long.

The Complainant submits that it was not appropriate to amend the name on the Cover Letter issued in pdf format by the Respondent because the Sunrise Rules state it is not permissible to modify the wording of the Cover Letter and that Documentary Evidence with a modified Cover letter will be rejected.

The Complainant submits that the entry of the abbreviated name should be considered a minor mistake.

The Complainant requests that the decision of the Respondent to reject the application should be annulled.

B. RESPONDENT

The Respondent does not dispute the Applicant's status as a Dutch public body or its entitlement to the "cbi.eu" domain name pursuant to Article 10(3) of the Regulation.

The Respondent submits that the Applicant is bound by the Sunrise Rules and that the reason for rejection of the application was the failure to comply with the Sunrise Rules.

The Respondent submits that the application received by the Registry referred to the Applicant as being the "Centre for the Promotion of Imports"

The Respondent submits that Dutch public bodies have Dutch names and therefore the English name "Centre for the Promotion of Imports" cannot be the actual name nor the full name of the Applicant.

The Respondent submits that it cannot be held responsible for technical limitations and errors in the automated system of the registrar, citing the decision in Case No 00232 (DMC).

DISCUSSION AND FINDINGS

Based on the case file the Panel determines as follows:

The Complainant is stated to be Hugo Verhoeven, resident at the same address as the Applicant while the Authorised Representative is stated to be Bas Kist. The Panel assumes that the Complainant is the Applicant represented by the said persons.

The Complainant is a Dutch public body which generally uses the acronym name CBI. Due to a technical limitation in the number of characters in the field provided for entering an applicant's name on the automated application system provided by the registrar, the name of the Complainant was truncated. This is not disputed by the Respondent.

The Respondent accepts the English translation of the Dutch name of the Complainant is "Centre for the Promotion of Imports from developing countries (CBI)"

The Respondent does not dispute the public body status of the Complainant or its entitlement to the "cbi.eu" domain name pursuant to Article 10(3) of the Regulation.

The Complainant correctly inserted its name insofar as the automated system permitted.

These facts demonstrate that the Complainant was the applicant during the phased registration period and that the Complainant is the owner of the Prior Right on which the application is based. The intended purpose of the phased registration period as set out in Recital 12 of the Regulation is "to safeguard prior rights recognised by Community or national law".

The Panel accepts that the registrar and the Registry (ie EURid) are not the same thing. Accordingly, the Panel accepts that the Respondent cannot be responsible for the registrar's technical limitations and errors, as held in Case No 00232 (DMC). However, the Sunrise Rules require an application to be made through registrars. If a technical limitation or error in the system operated by a registrar prevents an applicant from correctly entering details, the Applicant should not be responsible for the consequences of that limitation or error.

The facts of the current case are closer to those of Case no 00181 (Oscar). In that case the name of the applicant was truncated due to a technical limitation with the registrar's automated system. EURid did not dispute that the complainant in that case was the owner of the Prior Right upon which the application was based, or that the difficulties were caused by technical limitations. In that case the Panel concluded that the complainant complied with both the Regulation and the Sunrise Rules insofar as it was possible to do so, but technical problems prevented it from doing so. The Panel accordingly directed that the decision of EURid be annulled and the domain name be registered in the name of the complainant.

In the present case the Respondent does not dispute that there was a technical limitation in the number of characters in the name field and also acknowledges that it became aware of this technical limitation at the end of May 2006.

One difference between the present case and Case no 00181 is that in the present case the Complainant entered its English name instead of its Dutch name on the application. The Complainant states that the English name is a literal translation of its Dutch name and the English name is the name usually used by the Complainant because it is an organisation that operates internationally.

It is significant, in the opinion of the Panel, that both the English and Dutch names include the letters CBI. Moreover, even if the Dutch name had been used in the application, these letters as well as other parts of the Dutch name would have been missing as a result of the technical limitations truncating the Complainant’s name.

In the circumstances this Panel is satisfied that on the particular facts of this case, the problem met by the Complainant in this case was also technical and not legal. The Complainant complied with both the Regulation and the Sunrise Rules insofar as it was possible so to do.

This Panel is satisfied that there was no “material inaccuracy” in the name of the Complainant as contemplated by Article 3 of the Regulation interpreted in light of Recital 12 of Regulation 874/2004.

In the circumstances the decision of the Respondent should be annulled.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the EURid’s decision be annulled and the domain name cbi.eu be registered in the name of the Complainant.

PANELISTS

Name **Ranald Robertson**

DATE OF PANEL DECISION 2006-07-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Article 3 of Commission Regulation (EC) No 874/2004 of 28 April 2004 provides that a request for a domain name shall include inter alia the name and the address of the requesting party and further that any material inaccuracy in the name shall constitute a breach of terms of registration. Due to technical limitations in the automated application system provided by the registrar the name of the Complainant was truncated to “The Centre for the Promotion of Imports” and the application was refused. The Complainant submitted that the error was technical only. The Respondent submitted that the name submitted was neither the actual name nor the full name of the Complainant and that the Respondent cannot be held responsible for technical limitations or errors in the automated application system of the register.

The Panel determined that the defect in the application was technical in nature and that there was no “material inaccuracy” in the name of the Complainant as contemplated by Article 3 of Regulation 874/2004.

The Panel directed that the decision of EURid be annulled and the domain name “cbi.eu” be registered in the name of the Complainant.