

Panel Decision for dispute CAC-ADREU-000904

Case number	CAC-ADREU-000904
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Time of filing	2006-04-24 09:30:55
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Domain names	noell.eu
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Case administrator

Name	Josef Herian
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Complainant

Organization / Name	Noell Crane Systems GmbH
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Respondent

Organization / Name	EURid
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INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings of which the Panelist is aware.

FACTUAL BACKGROUND

This Complaint arises out of the decision of the Registry EURid to reject the application for the domain name "NOELL.EU".

On 13.12.2005, the patent attorney Mr. Frank Ludtke (hereinafter the "Applicant") applied for the rights on the domain name "NOELL.EU".

On 27.02.2006, the Registry EURid refused the application for the domain name "NOELL.EU" deeming that the evidence received did not prove the claimed right sufficient. With the same communication of refusal, the Registry EURid informed the Applicant about the opportunity to file an ADR procedure against the decision, within the term of forty (40) calendar days after the decision.

On 19.04.2006, Noell Crane Systems GmbH (hereinafter the "Complainant") filed a Complaint against the mentioned decision of the Registry EURid (hereinafter the "Respondent"), indicating English as the language of the proceedings.

On 24.04.2006, the Complainant provided with the payment of the relevant fees. On the same date, the Case Administrator acknowledged the receipt of the Complaint. The relative Time of Filing was 24.04.2006 at 09:30:55 a.m.. Also, on the same date, the Case Administrator filed the "Request for EURid Verification", requesting, inter alia, the indication of the date of commencement of the Sunrise Appeal Period with respect to the Complainant and the disputed domain name.

On 27.04.2006, the Respondent filed a "Nonstandard Communication" indicating, inter alia, as the date of commencement of the Sunrise Appeal Period the date of 28.02.2006. The Respondent attached the "Documentary Evidence" related to the disputed domain name.

On 28.04.2006, the Case Administrator filed the "Complaint Check" and issued the relative "Notification of Deficiencies in Complaint".

On 03.05.2006, the Complainant filed an amended Complaint, together with "Nonstandard Communication" and "Language Selection", according to the requested issued by the Case Administrator in its "Notification of Deficiencies in Complaint".

On 05.05.2006, the Complainant filed a "Nonstandard Communication" with the correction of the name of the Registrar, complying with the requirements indicated in the "Notification of Deficiencies in Complaint".

On 09.05.2006, the Case Administrator filed a new "Complaint Check" together with the communication of "Commencement of the ADR Proceeding".

On 30.06.2006, the Case Administrator filed a communication of "Delayed Response" and the "Notification of Respondent's Default" acknowledging that the Respondent (hereinafter the "Respondent in default") failed to comply with the relevant deadline to submit the Response.

On 03.07.2006, the Respondent in default filed a "Nonstandard Communication" indicating the grounds on which the Registry has rejected the

application for the domain name “NOELL.EU”.

On 11.07.2006, a first “Panelist Selection” was issued.

On 18.07.2006, the actual Panelist has been selected and, on the same date, this Panelist filed the “Statement of Acceptance and Declaration of Impartiality and Independence”. Therefore, the Case Administrator served the parties with the “Notification of Appointment of the ADR Panel and Projected Decision Date”.

On 21.7.2006, the “Case File” was transmitted to the Panelist.

On 24.07.2006, the Panelist submitted a “Nonstandard Communication” requesting the parties to provide:

- for the Complainant: 1) a translation in English language of the documents attached to the “first” Complaint filed in German; 2) the document (translated in English if it is written in another language) containing the decision by EURid to reject the domain name application “NOELL.EU”, together with the evidence of the day it was served to the Applicant;
- for the Respondent in default: 1) a translation in English language of the documents attached to the “Nonstandard Communication” of 27.04.2006.

The Panelist gave the parties a term of seven (7) calendar days, starting from the filing of the “Nonstandard Communication”, to provide the requested documents, with express advice that such documents would have not been taken into account if filed after the mentioned term. Moreover, the Panelist clarified that any document filed in a language other than English would have not been taken into consideration for the decision of the case.

On 25.07.2006, the Respondent in default filed a “Nonstandard Communication” affirming to be discharged from the duty to provide the Panelist with the requested documentation and translation.

On 26.07.2006, the Complainant filed a “Nonstandard Communication” affirming to be discharged from the duty to provide the Panelist with the requested documentation and translation.

On 26.07.2006, the Panelist submitted a new request for disclosure of the documents already demanded on the 24.07.2006 “Nonstandard Communication”. Moreover, the Panelist clarified and explained to the parties the grounds of his power to request further documents and gave the parties a new seven (7) day term to comply with the request.

On 02.08.2006, the Complainant, filed a “Nonstandard Communication” with annexed the documents and the translation requested by the Panelist. The Respondent in default did not file any document.

A. COMPLAINANT

Preliminarily, the Panelist wants to clarify that, to the purpose of deciding the case, it will be taken into account only the second amended Complaint, filed on 03.05.2006 and the documentation filed in English language.

In fact, according to Section 16 No. 3 of the “.eu Domain Name Registration Terms and Conditions”, any ADR procedure initiated against the Registry shall be conducted in the English language. Moreover, according to the documents in the file of the current ADR procedure, the official language of the ADR procedure No. 00904 is the English language.

Furthermore, according to Section A3 (c) of the “.eu Alternative Dispute Resolution Rules” (hereinafter the “ADR Rules”), all documents including communications made as part of the ADR proceeding shall be made in the language of the ADR proceeding (i.e. English). Also, according to Section B1 (d) of the “Supplemental ADR Rules” (hereinafter the “Supplemental Rules”), all relevant parts of the documents submitted as part of the Complaint including any annexes and schedules submitted in languages other than the language of the ADR proceeding (i.e. English) must be accompanied by a translation into the language of the ADR proceeding. Documents or their parts not submitted in the language of the ADR proceeding shall not be taken into account by the Panelist.

The Complainant filed a succinct Complaint indicating summarily the factual and legal grounds to obtain the sought remedy of “quashing the notice of EURid, dated 27 February 2006, and to registrate the domain “Noell.eu” for Noell Crane Systems GmbH, D-Wurzburg”.

The Complainant affirmed that the application form for the domain name, dated 15.12.2005, contained a spelling mistake. The Complainant continued affirming that the Applicant Mr. Frank Ludtke had been registered wrongly, as the correct applicant Noell Crane Systems GmbH should have been named. The circumstance, according to the Complainant, is confirmed by the cover letter sent to EURid on 22.12.2005. Therefore, the Complainant applies for the correction of the applicant into Noell Crane Systems GmbH and for the registration of the domain name “NOELL.EU” for this applicant on the ground of the national, Community and international trademarks owned by Noell Crane Systems GmbH.

B. RESPONDENT

On 09.05.2006 the Case Administrator duly served the communication of “Commencement of ADR Proceeding”. In this communication, the Case Administrator informed the Respondent of its duty to submit a Response within the term of thirty (30) days from the communication, according to

Section B3 of the “ADR Rules”.

However, the Respondent failed to submit its Response within the term and, therefore, on 30.06.2006, the Case Administrator filed the “Notification of Respondent’s Default”.

Therefore, the Respondent is in default in this ADR procedure.

According to the above, the Panelist, for the purpose of deciding the case at issue, does not take into account the communications and the documents filed by the Respondent in default after the expiration of the relevant term to submit the Response (i.e. the “Nonstandard Communication” of 03.07.2006).

DISCUSSION AND FINDINGS

The ADR procedure at issue has been commenced by the Complainant against the decision to reject a domain name application. The application for the domain name “NOELL.EU” has been filed, according to the “Sunrise Rules”, by the Applicant on the ground of asserted prior rights.

Section A1 of the “ADR Rules” provides that “Sunrise Appeal Period means a 40 day period during which a Complaint against the Registry’s decision to register a domain name within the Sunrise period can be filed as specified in the Sunrise Rules”.

Section 22, paragraph 2, of the “Sunrise Rules” provides that “during a period of forty (40) calendar days following the decision by the Registry to register the domain name concerned, any interested party may initiate an ADR Proceeding against the decision of the Registry on the grounds of non-compliance of that decision with the Regulations”.

Section 26, paragraph 1, of the “Sunrise Rules” states that “during the Sunrise Appeal Period, being a period of forty (40) calendar days following a decision by the Registry to register or not to register a domain name, the Applicant or any other interested party may initiate an ADR Proceeding against the Registry with regard to that decision”.

According to the above, the relevant rules clearly state that the term to file an ADR application against the Registry’s decision to reject a domain name application is forty (40) calendar days following the decision by the Registry.

In the case at issue, the decision by the Registry to reject the application for the domain name “NOELL.EU”, has been issued by the Registry on 27.02.2006.

As confirmed by the “Translation of the E-Mail by Eurid to Frank Ludtke, dated 27.02.2006” attached to the “Nonstandard Communication” filed by the Complainant on 02.08.2006, the Registry EURid informed the Applicant about the opportunity to file an ADR procedure against the decision, in the term of forty (40) calendar days after the decision.

Moreover, answering to the “Request for EURid Verification”, on its “Nonstandard Communication” of 27.04.2006, the Registry indicated the date of commencement of the “Sunrise Appeal Period” with respect to the Complainant and the disputed domain name on 28.02.2006.

Therefore, the “Sunrise Appeal Period” for the case at issue expired forty (40) days after the decision of 27.02.2006 to reject the application: on 08.04.2006.

The Complainant filed its first Complaint on 19.04.2006 and submitted the payment of the relevant fees on 24.04.2006. On the same date (24.04.2006), the Case Administrator acknowledged the receipt of the Complaint and assigned the following “Time of Filing”: 24.04.2006 at 09:30:55.

Notwithstanding the possible question arising with regard to the date to be considered as the “initiation” of the ADR proceeding, it clearly appears that, even following the most permissible rule set forth by the Decision “NAGEL” of 02.06.2006 (the Panelist in that decision held that “the only requirement for the initiation is the submission of a Complaint as long as it is made in an official EU language. The reception of the Complaint in the language of the ADR Proceeding or the reception of the complete initial fee by the ADR Provider within the Sunrise Appeal Period is not required”), the Complaint has not been timely filed.

In fact, even considering this ADR proceeding initiated on 19.04.2006, the ADR proceeding at issue has been initiated by the Complainant eleven (11) days after the expiration of the “Sunrise Appeal Period”.

In my understanding, also following the already mentioned previous Decision “NAGEL”, Section A1 of the “ADR Rules”, Section 22, paragraph 2, of the “Sunrise Rules” and Section 26, paragraph 1, of the “Sunrise Rules” clearly state that the Applicant may initiate an ADR proceeding only within forty (40) days following the contested decision with the consequence that the Complainant loses his remedy in case the Complaint is not timely filed within the “Sunrise Appeal Period” and that the disputed decision then becomes final.

According to the above, the Complaint should be denied and the disputed decision should become final.

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	Francesco Paolino
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DATE OF PANEL DECISION 2006-08-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant affirmed that the application form for the domain name, dated 15.12.2005, contained a spelling mistake. The Complainant continued affirming that the Applicant Mr. Frank Ludtke had been registered wrongly, as the correct applicant Noell Crane Systems GmbH should have been named. The circumstance, according to the Complainant, is confirmed by the cover letter sent to EURid on 22.12.2005. Therefore, the Complainant applies for the correction of the applicant into Noell Crane Systems GmbH and for the registration of the domain name “NOELL.EU” for this applicant on the ground of the national, Community and international trademarks owned by Noell Crane Systems GmbH.

The Respondent failed to timely file its Response and, therefore, the Respondent is in default in this ADR procedure.

The Panelist found that the ADR proceeding at issue has been initiated by the Complainant eleven (11) days after the expiration of the “Sunrise Appeal Period”.

The Panelist held that Section A1 of the “ADR Rules”, Section 22, paragraph 2, of the “Sunrise Rules” and Section 26, paragraph 1, of the “Sunrise Rules” clearly state that the Applicant may initiate an ADR proceeding only within forty (40) days following the contested decision with the consequence that the Complainant loses his remedy in case the Complaint is not timely filed within the “Sunrise Appeal Period” and that the disputed decision then becomes final.

The Panelist, therefore, ordered the denial of the Complaint.
