

Entscheidung der Schiedskommission for dispute CAC-ADREU-000945

Case number **CAC-ADREU-000945**

Time of filing **2006-05-02 12:04:19**

Domain names **cwi.eu**

Case administrator

Name **Josef Herian**

Complainant

Organization / Name **ir. Ids Dijkstra**

Respondent

Organization / Name **EURid**

MACHEN SIE ANGABEN ZU ANDEREN ANHÄNGIGEN BZW. BEREITS ENTSCHEIDENEN RECHTLICHEN VERFAHREN, VON DENEN DIE SCHIEDSKOMMISSION WEISS, INSOWEIT DIE STREITIGEN DOMAINNAMEN BETROFFEN SIND

None

SACHLAGE

On 7 December 2005, day of commencement of the Sunrise Period for the registration of .eu domain names, an application for registration of the domain name "cwi.eu" (the "Domain Name") was filed, apparently on behalf of the Dutch entity Centrale Organisatie Werk en Inkomen (the "First Applicant").

On 30 December 2005, a second application for registration of the Domain Name was filed, apparently on behalf of the same Dutch entity Centrale Organisatie Werk En Inkomen (the "Second Applicant").

The main difference between both applications was that while the First Applicant included an address in Zoetermeer, the Second Applicant referred to an address in Amsterdam. However, both applications seem to refer to the same entity, a public law entity called Centrale Organisatie Werk en Inkomen ("CWI") described at the Complaint as an "...independent management organization [which] operates on assignment of the Ministry of Social Affairs and Employment...".

On 7 February 2006, a third application for registration of the Domain Name was filed, on behalf of the Complainant, a Dutch institution called Stichting Centrum voor Wiskunde en Informatica (the "Complainant" or "SCWI").

Both the First Applicant and the Complainant duly submitted the documents justifying their rights within the time limit provided for, in accordance with Article 14 of the Commission Regulation (EC) 874/2004 (the "Regulation"). The Second Applicant failed to do so, so its applications expired, and the Complainant's application became second in the queue.

On 13 March 2006, EURid, acting as Registry in accordance with Article 14 of the Regulation, analysed the First Applicant's application and accepted it, as it found that it complied with the requirements of the Regulation and of Regulation (EC) 733/2002.

On 20 April 2006, before the expiration of the forty-day period provided for in Section 22(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules"), SCWI filed a Complaint (the "Complaint") before the ADR Centre for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "ADR Centre"). Although the file has been incorrectly labelled after the Complainant's representative, Mr Dijkstra, and Mr Dijkstra has been identified as the complainant, it is clear that this is a clerical mistake, and that SCWI is the actual Complainant.

The Complaint was addressed against EURid's decision of 13 March 2006.

On 11 May 2006, EURid provided the registration information requested by the ADR Centre.

The ADR Centre issued a notice of commencement of proceedings on 19 May 2006.

EURid filed its response to the Complaint within the time limit provided for.

A. BESCHWERDEFÜHRER

SCWI's Complaint requests the annulment of EURid's decision to assign the domain name to CWI, or at least to the First Applicant, referred to at the Complaint as "CWI Zoetermeer".

This petition is based on two grounds:

1. That the First Applicant (CWI Zoetermeer) is not in fact CWI, since CWI is domiciled in Amsterdam, at the address of the Second Applicant, the real CWI. And that, in addition, the telephone number submitted by the First Applicant would correspond to another entity.

This inaccuracy would amount to a breach of the terms of registration in the sense of Article 3 of the Regulation. For that reason, the application submitted by the First Applicant should have been rejected.

2. That SCWI's right on the sign "CWI" was older than those of CWI and CWI Zoetermeer.

B. BESCHWERDEGEGNER

EURid's response contends that:

1. EUR-id's role is not to check whether all contact details submitted by an applicant are correct, or they were wrongly submitted in bad faith, but only whether or not the applicant has demonstrated a prior right.

2. That EUR-id's role is to assign the name to the first applicant holding a prior right, and not to analyze which of the applicants in the queue holds an older right, which is irrelevant.

WÜRDIGUNG UND BEFUNDE

Both of SCWI's arguments must be disregarded.

Under the Regulation, EURid is not obliged to verify that all the details provided for by an applicant are fully accurate. Article 20 of the Regulation provides that "...the Registry may revoke a domain name at its own initiative..." because of "...holder's breach of the terms of registration under Article 3...". Article 3 of the Regulation provides that "...any material inaccuracy in the [details of the applicant] shall constitute a breach of the terms of registration...". These Articles therefore grant the Registry a faculty to revoke a domain name already registered; but they do not establish an obligation for the Registry to check all the details of each application and reject them on the basis of any inaccuracy found or on the basis that it has been submitted in bad faith, at least unless the inaccuracy is obvious and/or apparent.

In addition, the Complainant has failed to show that an actual breach of the terms of registration existed. Evidence submitted by Complainant does not even provide a prima facie evidence that the First Applicant is not in fact CWI. Similarly, the Complainant has not submitted evidence supporting its statement that the telephone number provided by the First Applicant does not correspond to a telephone number under the control of CWI.

The Panel, following Paragraph B7 of the .eu Alternative Dispute Resolution Rules (the "Rules") has conducted its own investigation on the circumstances of the case and has found that CWI has different addresses in the Netherlands, and amongst them, offices both in Amsterdam (Central Office) and Zoetermeer. In fact, CWI's legal services are located in Zoetermeer. Therefore, it seems reasonable that both the First and the Second Applicants correspond to the entity CWI, and that the decision of the Respondent to assign to them the Domain Name is correct in the circumstances.

In any event, the Complainant may well bring a new complaint against the actual Domain Name Holder, after the expiry of the 40-day period from the decision of EURid granting the domain name under Article 22(1)(a), should it consider that the First Applicant is not in fact CWI and has purposefully given inaccurate details in order to obtain the Domain Name. In addition, such proceedings would provide the First Applicant with an opportunity to defend its identity, the accuracy of its details and its good faith. This opportunity does not exist in the present proceedings, against the decision of EURid.

As for the second of the Complainant's arguments, the rule contained in Article 14, last paragraph, of the Regulation, provides that the domain name shall be registered "...on the first come first served basis, if it finds that the applicant has demonstrated a prior right...". 'Prior Right' must be understood as any existing right, of the kinds defined in Article 10 of the Regulation, already existing at the moment where the phased registration period or sunrise period initiated. The Complainant seems to misunderstand the concept and mistakes 'prior right' with 'older right'. The concept of 'Prior Right' does not imply a comparison between different rights based on the moment of their acquisition, giving preference to the party which obtained it at an earlier moment. Prior relates only to a fixed date, i.e., the day on which the phased registration period or sunrise period started, and the Regulation puts in equal standings all of the rights existing 'prior' to that date. Priority amongst them will be established on a "first come, first served" basis, taking into account only the date of the applications; the dates of acquisition of the rights are irrelevant. This conclusion was also reached in other decisions such as those issued in Cases No. 35 (PST), 143 (VITANA), 382 (TOS) and 827 (TRAVEX).

ENTSCHEIDUNG

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	Alejandro López Ortiz
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DATUM DER ENTSCHEIDUNG DER SCHIEDSKOMMISSION 2006-08-22

Summary

EINE ENGLISCHSPRACHIGE KURZFASSUNG DIESER ENTSCHEIDUNG IST ALS ANLAGE 1 BEIGEFÜGT

The Complainant filed a Complaint against EURid, in respect of EURid's decision to grant the domain name "cwi.eu" to the first applicant in the queue, on two grounds:

1. That the details provided by that applicant were inaccurate and that that applicant was not in fact the Dutch entity it claimed to be; and
2. That the Complainant's right on the sign CWI was older than those held by the applicant and than those held by the entity that the applicant claimed to be.

The Panel decided to dismiss the Complaint.

In respect of the first ground of the Complaint, the Panel found that, although Articles 20 and 3 of the Regulation provide EURid with the faculty to revoke a domain name on the basis of the inaccuracy of the details provided by the applicant, the Regulation does not oblige EURid to check all the details of each application received, and reject them on the basis of any inaccuracy found or on the basis that it has been submitted in bad faith. In addition, the Claimant has not submitted evidence supporting its statement that the details provided by the applicant were inaccurate or that the applicant was not the entity it claimed to be.

In respect of the second ground of the Complaint, the Panel found that the reference to 'Prior Right' in Article 14, last paragraph, of the Regulation, must be understood as any existing right, of the kinds defined in Article 10 of the Regulation, already existing at the moment where the phased registration period or sunrise period initiated. The concept of 'Prior Right' does not imply a comparison between different rights based on the moment of their acquisition, which is irrelevant, as long as it is prior to the moment where the phased registration period or sunrise period initiated.

Consequently, the Complaint was Denied.