# Panel Decision for dispute CAC-ADREU-001047

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| Case number | **CAC-ADREU-001047** |
| Time of filing | **2006-05-10 12:15:19** |
| Domain names | **festool.eu** |

## Case administrator

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| Name | **Tereza Bartošková** |

## Complainant

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| Organization / Name | **Matthias Freytag** |

## Respondent

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| 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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed decision or the disputed domain name.

FACTUAL BACKGROUND

1. History of the Request for Registration

1.1. The Complainant is Mr. Matthias Freytag ("the Complainant").

1.2. The Complainant applied in his own name for the domain name festool.eu ("the Domain Name") on December 7, 2005 during the phased registration defined in article 10.1 of EC Regulation 874/2004. The application was received by the Registry ("the Respondent") in position #1. The Sunrise WHOIS Database records show that the Complainant was the only person to apply for the Domain Name.

1.3. The Documentary Evidence was received on January 11, 2006, before the January 16, 2006 deadline. The Respondent concluded from its examination of the documentary evidence that the Complainant did not appear to be the owner of the FESTOOL trademark considering that the name of the holder mentioned on the trademark certificate differed from the name of the Complainant. The Respondent therefore rejected the Complainant's application.

2. History of the ADR Proceeding

2.1. The Complainant submitted a complaint against EURid to the ADR Center for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic ("the Court"), along with three annexes ("the Complaint"). The Complaint was received on April 24, 2006.

2.2. On May 17, 2006, the Court notified to the Complainant that there were deficiencies in the Complaint. The Complaint was duly amended in accordance with Paragraph B.2 (b) of the .eu Dispute Resolution Rules ("the ADR Rules"), and was submitted on May 22. The formal date of commencement of the ADR Proceeding was May 23, 2006.

2.3. The Complaint included a request to the Czech Arbitration Court to require EURid to disclose the Documentary Evidence as defined in the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period ("the Sunrise Rules").

2.4. The Documentary Evidence consisted of two documents: The Cover Letter (as required in Chapter IV, Section 8.2 of the Sunrise

Rules), and an extract from the Deutsches Patent- und Markenamt showing that TTS Tooltechnic Systems AG & Co. KG is recorded as the owner of German trademark No. 39743235 for the word FESTOOL ("the Trademark"), for products of classes 7, 8, 9, 11 and 20.

2.5. The Court received the Response to the Complaint on July 11, 2006. The Panel was duly appointed the following day.

2.6. On the day the Panel was appointed, it communicated, in accordance with Paragraph A2 (k) of the ADR Rules, that Annex 1 attached to the Complaint (and titled as follows: "excerpt from the commercial register of TTS Tooltechnic Systems AG & Co. KG"), was written in German. The language of this ADR proceeding being English, the Panel asked to be provided with an English translation of this Annex as, under Paragraph A3(c) of the ADR Rules, "[a]ll documents including communications made as part of the ADR proceeding shall be made in the language of the ADR proceeding" and as, under Paragraph A3(d) of the ADR Rules, "the Panel ... may order that any documents submitted in languages other than the language of the ADR proceeding be accompanied by a translation in whole or in part into the language of the ADR proceeding."

2.7. On July 18, the Panel reminded the Parties that under Paragraph A.2 (j) of the ADR Rules, "[n]o Party or anyone acting on its behalf may engage in any unilateral communication with the Panel," and that "[a]ll communications between a Party, on the one hand, and the Panel or the Provider on the other shall be made to a case administrator appointed by the Provider by the means and in the manner prescribed in the Provider's Supplemental ADR Rules," and that under Paragraph A.2 (k), any communication initiated by a Party shall be made through the Provider.

A. COMPLAINANT

3. The Complainant contends as follows:

3.1. "Matthias Freytag filed the application for the domain name festool.eu to eurid for the German company TTS Tooltechnic Systems AG & Co. KG. This application was dismissed. We will start the ADR proceeding to claim the right of TTS Tooltechnic Systems AG & Co .KG to the domain name festool.eu.
Mr. Freytag is employee of TTS Tooltechnic Systems AG & Co .KG and has been authorised to apply for the festool.eu domain.
He has been acting for and in the name of TTS Tooltechnic Systems AG & Co .KG as a representative. This is obvious in the circumstances of this case. TTS Tooltechnic Systems AG & Co .KG and Mr. Freytag were both named in the same application. Mr. Freytag as the applicant and TTS Tooltechnic Systems AG & Co. KG in the trademark certificate. In the sunrise period domain names will be only available for the holders of prior rights, i.e. the right of TTS Tooltechnic Systems AG & Co. KG to the trademark festool.
Furthermore, in the application form there has only been space for one name to fill in. Therefore Mr. Freytag filled in his name as a representative of TTS Tooltechnic Systems AG & Co. KG.
As mentioned above, TTS Tooltechnic Systems AG & Co. KG has the right of the trademark Festool. This certificate was filed in to eurid. TTS Tooltechnic Systems AG & Co. KG has therefore the right to the domain name festool.eu.
Because eurid did not attribute the domain name festool.eu to TTS Tooltechnic Systems AG & Co. KG, its registration decision conflicts with the European Union regulations.
Mr. Matthias Freytag has also the authorisation to claim the rights of TTS Tooltechnic Systems AG und Co. KG, especially in the ADR proceeding in the name of TTS Tooltechnic Systems AG und Co. KG."

3.2. The Complainant attached to the Complaint an "excerpt from the commercial register of TTS Tooltechnic Systems AG & Co. KG," a "confirmation that Mr. Freytag is representative of TTS Tooltechnic Systems AG & Co. KG," and a "certificate" to certify that the trademark Festool "belongs to TTS Tooltechnic Systems AG & Co. KG."

3.3. The Complainant "request[s] the annulment of the negative decision taken by eurid regarding the domain name festool.eu" and "request[s] the attribution of this domain name to TTS Tooltechnic Systems AG & Co. KG."

B. RESPONDENT

4. The Respondent rejected the Complainant's application on the grounds that, after examination of the Documentary Evidence, the Complainant did not appear to be the owner of the FESTOOL trademark considering that the name of the holder mentioned on the trademark certificate differed from the name of the Complainant.

4.1. "The documentary evidence did not prove that the Complainant is the holder of the FESTOOL trademark."

4.1.1. "Article 10 (1) of the Regulation states that only the holder of a prior right is eligible to be granted the corresponding domain name. It is therefore of great importance that the Respondent is provided with all information that allows it to assess if the Applicant is the holder of a prior right. Pursuant to article 14 (4) of the Regulation, the documentary evidence must clearly show that the applicant is the

holder of the prior right claimed on the name in question."

4.1.2. "The Complainant himself states that he is an employee of the owner of the trademark and thus not the owner himself. An employee and his employer are two different persons. They are not the same thing. This fact is undisputed in the case at hand."

4.1.3. "During the Sunrise Period only holders of a prior right may apply for a domain name. An applicant for a domain name must not necessarily be the actual owner of the corresponding trademark, he may well be licensed to use that trademark. Section 20 (1) of the Sunrise Rules states to that regard that if an applicant has obtained a licence for a registered trade mark in respect of which it claims a prior right, it must enclose with the documentary evidence an acknowledgement and declaration form, duly completed and signed by both the licensor of the relevant registered trade mark and the applicant (as licensee). However, the Complainant did not submit any licence declaration with his documentary evidence. The Respondent had no information before it that the Complainant was indeed entitled to use the FESTOOL trademark and therefore rejected his application."

4.1.4. The Respondent cites Case No. 294 (COLT), where the Panel stated that "the attention must be drawn on section 21.2 of the Sunrise Rules that expressly states that the Validation Agent will examine whether the applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received. It means that an applicant should not expect the Respondent or Validation agent to engage in speculation and/or embark upon its own enquiry in relation to the exact connection between two entities" [in the original decision from which this quotation is taken, this sentence ends with: "simply because they have similar names"].

4.1.5. "The Respondent must have a licence declaration before it when an applicant is not the actual owner of the trademark. Such a condition is of great importance. Indeed, a domain name is granted to the applicant, in this case the employee of the owner of the trademark. When an applicant uses another's trademark it is imperative for the Respondent to know if the actual owner of the trademark agreed to this. Indeed, the domain name will be lost to the actual owner of the trademark and registered in the name of the applicant. Hence the condition to submit a licence declaration. One must not expect the Respondent to speculate on the exact relationship between two persons, the Respondent must know the relationship between these persons from the documentary evidence which was submitted in time."

4.2. In response to the Complainant's argument that "due to technical limitations he was unable to insert the name of his employer," the Respondent submits "a number of copies [three] from the .eu whois which show that it is possible to fill in both the name of the representative and the name of the organisation. The Respondent does therefore not agree with the Complainant's argument on this matter. There are no technical limitations in the Respondent's systems which would have prohibited the Complainant from filling in the name of the owner of the trademark. Moreover, the Respondent also does not understand why the Complainant listed his own name and not the name of the actual owner of the trademark."

4.3. Because the Complainant "submitted a document in which the owner of the trademark states that the Complainant is its representative," the Respondent notes "that this document was not enclosed with the documentary evidence," and that "[t]hese documents were only provided to the Respondent after the rejection of the Complainant's application."

4.3.1. "Section 21 (2) of the Sunrise Rules states that the validation agent will examine whether the applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence received.
In case n° 294 (COLT), the Panel was confronted with a similar situation. In the COLT case, the complainant claimed to be the licensee of the COLT trademark. Pursuant to section 20 (1) one must file a licence declaration signed by both the licensor and the licensee in order to prove that one is licensed to use a trademark. The licence declaration in the COLT case however was signed by a licensor whose name was similar, both consisted of the word MITSUBITSHI, but nevertheless different from the name mentioned on the COLT trademark. The Respondent decided to reject the complainant's application for the COLT domain name.
The Complainant was notified of this rejection and subsequently filed a complaint, with which it enclosed articles of incorporation allegedly showing that the name of the holder of the COLT trademark had changed. The Panel however stated that: In the present case, the Complainant did not prove the timely substantiation of the Prior Right and a copy of "the" [this word does not appear on the original decision] articles of incorporation, enclosed with the Complaint, was submitted too late to be considered.
The Panel in effect stated that the Complainant in that case failed to substantiate that it was properly licensed as it only submitted evidence thereof during the ADR proceedings, whereas it should have filed this evidence with all its documentary evidence."

4.3.2. The Respondent requests the Panel in the case at hand "to disregard the document submitted by the Complainant. Article 22 (1) b of the Regulation states that a decision taken by the Registry may only be annulled when it conflicts with this Regulation. Thus, only the documents which the Respondent was able to examine at the time of validation of an application should be considered by the Panel. The Respondent cannot have made a decision which would conflict with the Regulation if it was not provided with all the information."

4.4. The Respondent asks that the Complaint be dismissed.

DISCUSSION AND FINDINGS

5. Before ruling on the merits of the Complaint, the Panel has to address the following two preliminary issues.

5.1. Although the Complainant's right to do so is not challenged by the Respondent, the Panel has to decide whether the Complainant is entitled to act in these proceedings. The Complainant not only seeks the annulment of the Registry's decision not to allocate the Domain Name to him, but also requests the attribution of this name to TTS Tooltechnic Systems AG & Co. KG. These two requests may seem contradictory. In themselves, these contradictory requests reflect the confusion that arises from this case.

5.1.1. The Complainant describes himself as an employee of TTS Tooltechnic Systems AG & Co .KG ("the Complainant's Company") who has been authorized to apply for the Domain Name. In itself, this does not indicate whether the Complainant was authorized to apply for such name on his own behalf, or on the Complainant's Company's behalf. But the Complainant adds he has been acting for and in the name of TTS Tooltechnic Systems AG & Co .KG as a representative (this was not clear in the Application, as will be discussed below).

5.1.2. Whether or not the Complainant acted for and on behalf of his Company when the Domain Name was applied for, it is obvious that this Complaint is made in his own and sole name. One can understand why the Complainant seeks "the annulment of the negative decision taken by eurid regarding the domain name festool.eu", since this decision was contrary to what he expected. But could the Complainant initiate a proceeding in his own name to request the attribution of the Domain Name to his Company?

5.1.3. Under article 22.1 of EC Regulation 874/2004, "[a]n ADR procedure may be initiated by any party where … a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002." The same provision is laid down in the ADR Rules at B.1 (a): "Any person or entity may initiate an ADR Proceeding." Since "any party" can challenge a decision taken by the Registry, the Complainant cannot be barred from initiating an ADR procedure, whether or not he is an employee of the firm for which the Domain Name transfer is requested, and whether or not he is duly authorized to do so. In the Panel's opinion, the Complainant may request the transfer of the Domain Name to the Complainant's Company.

5.1.4. However, in Case No. 596 (RESTAURANTS), the Panel suggested that the Public Policy may not be interpreted so broadly that it would not require certainty that, at the minimum, a complaint must have been filed with the consent of the holder of the right concerned. For the avoidance of doubt, the Panel in the case at hand refers to Complaint Annex 2, where a representative from the Complainant's Company confirms that the Complainant "is employee by TTS Tooltechnic Systems AG und Co. KG. He has been authorised to represent TTS Tooltechnic Systems AG und Co. KG in the proceedings concerning the application for the eu domain names, among these for the domain name festool.eu. Mr. Matthias Freytag has also the authorisation to claim the rights of TTS Tooltechnic Systems AG und Co. KG, especially in the ADR proceeding in the name of TTS Tooltechnic Systems AG und Co. KG." The Respondent noted that this document was not enclosed with the Documentary Evidence but rather provided after the Complainant's application was rejected, but does not challenge the fact that the Complainant acts as a representative of his Company in the present proceedings.

5.1.5. The Panel rules that the Complainant is entitled to request the transfer of the Domain Name to the Complainant's Company.

5.2. The Panel did not receive the translation of the Complaint Annex it required (as mentioned above at 2.6). In application of Paragraph A.3 (c) of the ADR Rules, and as in Case No. 317 (LUMENA) – where the Panel ruled that documents accompanying the Complaint filed in a language other than the one of the ADR proceeding, could not be admissible, and thus decided to disregard the Annexes to the Complaint that were not translated –, the present Panel will disregard said Annex.

6. The Panel now has to assess whether the Respondent lawfully rejected the Complainant's application.

6.1. "All claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists," Article 14 of EC Regulation 874/2004 states. To the Respondent, the Documentary Evidence did not prove that the Complainant is the holder of the Trademark.

6.1.1. The Respondent acknowledges that "an applicant for a domain name must not necessarily be the actual owner of the corresponding trademark," and "may well be licensed to use that trademark," but regrets that the Documentary Evidence submitted by the Complainant did not include the documents required at Section 20.1 of the Sunrise Rules ("an acknowledgement and declaration form … duly completed and signed by both the licensor of the relevant registered trade mark and the Applicant (as licensee)"). The Respondent argues that it ignored that the Complainant "was indeed entitled to use" the Trademark and therefore rejected his Application, and adds that it must be handed over a licence declaration, in case an applicant is not the actual owner of the trademark.

6.1.2. The question is not whether or not the Complainant was entitled to use the Trademark and whether or not he brought the evidence he could. The Complainant did not allege that he is or has been a licensee of the Trademark, and therefore is not entitled to "use" the Trademark.
The Complainant contends he acted in the name of the Trademark owner (i.e. the Complainant's Company), and argues the application was actually made on behalf of the Complainant's Company. Therefore the question is whether or not the Complainant properly represented the Trademark owner on which behalf the application was filed.

6.1.3. Nevertheless, the Respondent was right to reject the application it received. According to Section 21.2 of the Sunrise Rules, and as is emphasized by the Panel in Case No. 294 (COLT) cited by the Respondent, the examination of whether the applicant has a prior right to the name is exclusively carried out based on a prima facie review of the first set of Documentary Evidence received.

6.1.4. To apply for a domain name, an applicant has to file an Application defined by the Sunrise Rules as "a complete, technically correct request for a Domain Name registration submitted to the Registry, which complies with all the requirements provided for in (a) Section 3 of these Sunrise Rules and (b) the Registration Guidelines." Section 3 of the Sunrise Rules lists the conditions to be met for an Application to be considered complete. Under Section 3.1 (i), the applicant must provide the Registry with "the full name of the Applicant; where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the or organisation is specified, then the company or organisation is considered the Applicant."

6.1.5. Section 8 of the Sunrise Rules ("Official Requirements for Documentary Evidence") states that the Cover Letter, i.e. "the pre-formatted electronic document that the Registry makes available to the Applicant (or the person indicated by the Applicant in the Application, if any) upon receipt by the Registry of an Application" will contain, among other information, "the full name of the Applicant" and "the relevant contact information for the Applicant."

6.1.6. The Sunrise WHOIS Database records, and the Cover Letter submitting the Documentary Evidence, both show that the application for the Domain Name was made in the name of the Complainant, whereas the Trademark certificate bears the name of the Complainant's Company. The Registry was then right to reject this Application. The fact, as the Complainant puts it, that his Company and himself "were both named in the same application," was of no effect.

6.2. The Complainant argues that space on the application form only allowed for one name to fill in. Such technical limitations did not exist, as evidenced, by the WHOIS Database printouts submitted by the Respondent. The Complainant agreed to and is bound by the Sunrise Rules, Section 3.1 whereof clearly states that "where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant."

6.3. The Respondent argues that the Complainant did not timely substantiate he was the representative of the Trademark owner. The Respondent cites Case No. 294 (COLT), where the Panel ruled the Complainant should have filed the proper evidence with all its Documentary Evidence.

6.3.1. Several cases were based on similar facts. Aside from Cases No. 181 (OSCAR) and 253 (SCHOELLER) on the one hand, where the mistake that was alleged was a technical one, and from the above mentioned Case No. 294 (COLT) on the other hand, several complainants alleged they made a mistake when they applied for a domain name during the Sunrise period. The jurisprudence is pretty even.
In Case No. 192 (ATOLL), the facts were close to those being the subject of the present proceeding, considering that there was a discrepancy between the identity of the domain name applicant and the trademark owners. The panel found that the complainant's statement that he had applied for the domain name did not necessarily imply that he had applied in his own name, since he actually may have applied on behalf of a separate legal person. Since no documentary evidence substantiating the domain name applicant's prior right was provided during the application and validation period, the respondent was found right to have rejected the application (in this case, the panel regretted that "complainant unfortunately [did] not specify in the [c]omplaint on whose behalf the application [had been] made nor [did] [c]omplainant specify whether, if the application [had been] made on behalf of the legal person, evidence [had been] supplied to the effect that the Domain Name Applicant had prior rights").
In Case No. 396 (CAPRI), the panel observed there were many mistakes in the application, but found that in conducting a more accurate review of such application, the Registry could have easily removed all relevant discrepancies therein.
In Case No. 431 (CASHCONTROL), the name in the application did not match the name of the owner of the trademark invoked as prior right. The panel ruled that the Registry had to reject the complainant's application, but that this rejection conflicted with the right of an applicant to register a domain name when it has demonstrated a prior right.
In Case No. 903 (SBK), the application was filed in the name of the chairman of the company which held the prior right. The Panel found

that the chairman was not eligible to file an application for the domain name during the Sunrise period, for only his company was, and upheld the Registry's rejection decision.
In Case No. 984 (ISABELLA), the application was made in error (a word was added to the applicant's name, another one was missing and so was a letter) and was rejected. The panel found the Registry's decision was technically correct.
In Case No. 1077 (EURACTIV), the managing director of an organization licensed to it the trademark he owns. Upon examination of the application documentation it appeared that the complainant intended to be the applicant and owner of the domain name corresponding to his trademark. The panel was satisfied that, although it made an error on the form covering the documentary evidence, the complainant was the owner of the trademark and did apply for the domain name. EURid's decision was annulled and the name awarded to the complainant.

6.3.2. In the Respondent's view, the Complainant did not act as a representative of the Trademark holder. To the Complainant, it was "obvious" that the application was made in the name of his Company. This Panel does not have to rule who was right or who was wrong, or who misconceived or misrepresented the truth the least. In accordance with Paragraph B.11 (d) of the ADR Rules, the Panel has to rule whether the decision taken by the Registry conflicts with the European Union Regulations.
The Panel observes that the following fact remains undisputed: The Documentary Evidence submitted by the Complainant included a valid trademark certificate which showed that, at the time of the application, the person for which the Domain Name transfer was claimed by the Complainant through this ADR proceeding, had a prior right.

6.3.3. It is clear, on the one hand, that the Complainant did not properly file the application, and thus the Domain Name was not allocated to the Complainant's Company, in accordance with Article 2 of the EC Regulation 874/2004 which states that "a specific domain name shall be allocated for use to the eligible party whose request has been received first by the Registry in the technically correct manner and in accordance with this Regulation."
On the other hand, Article 10.2 of this Regulation states that "[t]he registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists;" Such prior rights include registered national trademark, as the Complainant's Company. Article 14 adds that "[a]ll claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists."

6.3.4. The Respondent received a documentation which proved the Complainant's Company had a prior right. This documentation did not comply with the requirements set in the Sunrise Rules, which precisely define the Documentary Evidence and what it must contain. But under Section 26.2 of these Rules, it is stated that "[t]he sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulations." In the Definitions of the Sunrise Rules, "Regulations" are defined as "the .eu Regulation and the Public Policy Rules," the former meaning EC Regulation 733/2002 and the latter EC Regulation 874/2004.
Article 22.11 of EC Regulation 874/2004 also states that "[i]n the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002," and not if it conflicts with any other rule.
Therefore, the Panel considers it has to assess whether there is "documentary evidence which demonstrates the right under the law by virtue of which it exists" under Article 14 of EC Regulation 874/2004, and not whether the documents submitted constituted valid Documentary Evidence under "the technical and administrative measures" contained in the Sunrise Rules (the expression "technical and administrative measures" is used in the Object and Scope Section of these Rules).

6.3.5. The rationale of EC Regulations 733/2002 and 874/2004 is to safeguard prior rights recognized by Community or national law (see Recital 16 of the former and Recital 12 of the latter). Although the Respondent was right not to register a name given that the Complainant's application was deficient, ruling that the Respondent's decision is lawful would be contrary to the principles of the Regulations.

6.3.6. According to Paragraph B.11 (a) of the ADR Rules a Panel shall decide a Complaint on the basis of statements and documents submitted. Evidence was brought before the Respondent, and before the Court, that the Complainant's Company is the owner of the word mark FESTOOL, that this trademark was registered in 2001 and that no opposition was filed by the time the opposition deadline expired.

6.3.7. The Complainant is entitled to request the transfer of the Domain Name to the Complainant's Company. The Complainant brought the evidence, before the Respondent and before the Court, that the Complainant's Company held prior rights on the German word mark FESTOOL and was eligible to register this name under article 10 of EC Regulation 874/2004. The request was the first the Registry received. Therefore, the decision made by the Registry not to allocate the Domain Name to the Trademark holder conflicts with EC Regulation 874/2004.

6.4. Given the singular circumstances of this Case, and as provided for by Article 22.11 of EC Regulation 874/2004, the Panel decides that the disputed decision not to allocate the Domain Name to the Complainant shall not be annulled, but that the Domain Name festool.eu shall be transferred to the Complainant's Company TTS Tooltechnic Systems AG & Co. KG.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

EURID's decision not to allocate the Domain Name to the Complainant not be annulled

but

the Domain Name festool.eu be transferred to the Complainant's Company TTS Tooltechnic Systems AG & Co. KG.

## PANELISTS

| Name | **Cedric Manara** |
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DATE OF PANEL DECISION 2006-07-20

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The complainant filed an application for festool.eu, which was rejected by EURid on the grounds that the applicant's name did not match the name of the owner of the trademark invoked as prior right. The trademark owner is the complainant's employer. The complainant challenged this decision.
The Panel rules that the complainant is entitled to request the transfer of the domain name to his company. The Panel rules that the respondent was right to reject the application it received as it did not comply with the Sunrise Rules. But the sole object and purpose of an ADR Proceeding against the Registry being to verify whether the decision by the Registry conflicts with the sole EC Regulations (and not with the Sunrise Rules), the Panel rules that, there being evidence that the complainant's company was entitled to register the domain name, this name must be attributed to this company.