Panel Decision for dispute CAC-ADREU-001136

Case number	CAC-ADREU-001136
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Domain names	fie.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Gemeinde Völs am Schlern / Comune di Fiè allo Sciliar, Arno Kompatscher

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

None

FACTUAL BACKGROUND

Complainant is the public body which governs the village of "Fiè allo Sciliar".

In January 2006, Complainant applied for <fie.eu>.

Its application has been ranked #1 in the Queue List.

Application has been rejected by Eurid since the Italian Governmental Validation Point considered that Complainant was not entitled to this domain name.

Complainant also filed other applications for the same domain name in March and April 2006, but these applications are of little interest as far as this procedure is concerned.

A. COMPLAINANT

Complainant explains that the Comune “Fiè allo Sciliar” (i.e. County of Fiè allo Sciliar - in German language: Gemeinde “Völs am Schlern”) is a public body under Italian public law in the autonomous Province of Südtirol/Alto Adige in Italy.

Complainant contends that:

- “Fiè” is the Italian acronym / abbreviation/ name generally used for the public body “Fiè allo Sciliar”.
- “Fiè” is also the name under which the territory is commonly known.
- "Fie" is also the official name of the Comune catastale, which is the official name of the area referred to in official Ordnance survey plan records.

Complainants produces several documents/informations to prove its contentions, including:

A) official report from the Chamber of Commerce referring to different public bodies including “Fié”.

B) Extract from the official Land Register where the County (administrative body) is officially referred to as “Fiè allo Sciliar”, where “Fiè” is the official name of geographical area referred to in Ordnance survey plan records (comune catastale).

C) maps, showing that Fiè is the name under which the territory is commonly known.

D) several URL to demonstrate that Fiè is the name under which the territory is commonly known.

Complainant also insist on the fact that the German name referring to the territory / geographical indication “Völs” (where the complete official name is “Völs am Schlern”) has been registered as domain "Voels.eu" without any objection, and that this application was based on the same documentary evidence as submitted in order to prove prior rights to the “Fie.eu ” domain.

B. RESPONDENT

Respondent recalls that the burden of the proof is on the Complainant’s side: "Pursuant to the Regulation and the Sunrise Rules, it is to the applicant to submit all documents which the GVP needs to examine whether the public body is entitled to apply for a domain name which corresponds with the name under which the territory is commonly known. In case an applicant fails to submit such documents, its application must be rejected. Pursuant to the texts just mentioned, the relevant question is not whether a public body is entitled thereto, but whether the public body proves to the GVP that it is entitled to that domain name pursuant to article 10 (3) of the Regulation."

Bearing this in mind, Respondent explains that "As the Italian Governmental Validation Point considered that the Complainant was not entitled to the FIE domain name, the Respondent rejected the Complainant's application."

Respondent also ask the Panel to disregard all documents and information provided by Complainant for the first time in the frame work of this procedure: "The Complainant now submits new documents so as to prove that FIE is indeed the name under which the territory governed by the Complainant is commonly known. The Respondent would like to note that these documents were not enclosed with the documentary evidence. The Respondent requests the Panelist in the case at hand to disregard the extract as it was produced for the first time in the framework of the present ADR proceedings..."

DISCUSSION AND FINDINGS

The application filed by Complainant in January 2006 is a so-called “article 10.3 application”. There can be no doubt on this point since the documentary evidence provided by Complainant specifically refers to article 10.3 of Regulation 874/2004.

The main advantage of this special regime is to allow European countries to ensure that public bodies may apply for some domain names during the Sunrise Period.

Who is eligible to article 10.3 application?

The answer is provided in article 10.1 of EC Regulation 874/2004:

Article 10.1. “Holders of prior rights recognised or established by national and/or Community law AND PUBLIC BODIES [we emphasize] shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts.”

Complainant is, without any doubt, a public body in the sense of article 10.

Who is in charge of the validation for article 10.3 applications?

Article 13 of Regulation 874/2004 creates two different regimes for the validation of applications: it begins by the common regime applicable, for example to trademark holders, and ends with the special regime applicable to public bodies:

“Member States shall provide for validation concerning the names mentioned in Article 10(3). To that end, the Member States shall send to the Commission within two months following entry into force of this Regulation, a clear indication of the addresses to which documentary evidence is to be sent for verification. The Commission shall notify the Registry of these addresses.”

In respect thereof, all European countries have designated a so-called “Governmental Validation Point” (“GPV”). The list of all national GPV has been published on Eurid’s website.

As far as Italy is concerned, GPV is: ISCOM (Ministry of Communications).

Which domain names are concerned by article 10.3 applications ?

Answer is provided by Article 10.3 of Regulation 874/2004:

“The registration by a public body may consist of the complete name of the public body or the acronym that is generally used. Public bodies that are responsible for governing a particular geographic territory may also register the complete name of the territory for which they are responsible, and the name under which the territory is commonly known.”

The role of a national GPV is thus to assess whether or not:

A) the applicant is a public body in the sense of article 10.1; and

B) the applicant claims registration of a domain name that comply with article 10.3, i.e:

- it is the complete name of the public body or the acronym that is generally used;

- if the applicant is responsible for governing a particular geographic territory, it is the complete name of the territory for which the public body is responsible, and the name under which the territory is commonly known.

Application to the present case and conclusions
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1. Under Regulation 874/2004, public bodies received a quite favorable position since they are exonerated from any sort of appreciation by the normal validation agent, provided that their national GPV considers that they are entitled to apply for a domain name under article 10.3.

As recalled in case 00386 (STOCKOLM) : “The European Legislator did not establish an absolute right for a public body to the sole and exclusive ownership of the .eu domain for the geographical territory for which it was responsible. It did, however, give such public bodies considerable advantages over other applicants”.

2. It can be inferred from Eurid’s Response to Complaint that the Italian GVP considered that Complainant was not entitled to the FIE domain name:

“As the Italian Governmental Validation Point considered that the Complainant was not entitled to the FIE domain name, the Respondent rejected the Complainant's application.”

The Panel comes to the same conclusion when reading the documentary evidence of the case: Complainant has provided several self-drafted documents but nothing issued or validated by the Italian GPV.

Another indication of this is the fact that even during this ADR procedure, Complainant did not provide the Panel with any sort of document originating from the Italian GPV.

Of course, another explanation for this situation could be that Complainant simply omitted to request validation by the Italian GPV but

the result is the same: this validation hasn't been provided to the validation agent, nor is it provided to the Panel.

3. In the Panel view, when a public body clearly applies under the benefit of article 10.3, the validation by the national GPV is compulsory. Failing to obtain the GPV validation, Complainant is not entitled to apply under the favorable regime of article 10.3.

4. Also, going through the normal circuit for validation when the GPV refused to validate the application (or when the public body simply omits to request such a validation), is not an option.

It would conflict the letter and the aim of articles 13 and 14 of Regulation 874/2004:
- article 13 says that "Member States shall provide for validation concerning the names mentioned in Article 10(3)"
- article 14 describes the normal circuit and clearly limit its scope to article 10.1 and 10.2 applications : "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".

Situation might have been different, should Complainant have applied in January 2006 on the basis of another prior right (nothing prevent a public body to apply under the special regime of article 10.3, and/or under the benefit of another prior right as defined by article 10.2, provided that the normal procedure is followed including the validation of this prior right, but this is not the case in the present procedure since the application is clearly limited to the special public body regime).

5. Whether or not the Italian GPV correctly assesses the situation of Complainant when it refused to validate its application, is a question that falls outside the scope of this ADR procedure.

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

Name	**Paul Van Den Bulck**

DATE OF PANEL DECISION 2006-08-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Article 13 of Regulation 874/2004 creates two different regimes for the validation of applications: it begins by the common regime applicable, for example, to trademark holders, and ends with the special regime applicable to public bodies:

"Member States shall provide for validation concerning the names mentioned in Article 10(3). To that end, the Member States shall send to the Commission within two months following entry into force of this Regulation, a clear indication of the addresses to which documentary evidence is to be sent for verification. The Commission shall notify the Registry of these addresses."

In respect thereof, all European countries have designated a so-called "Governmental Validation Point" ("GPV"). The list of all national GPV has been published on Eurid's website. As far as Italy is concerned, GPV is: ISCOM (Ministry of Communications).

Complainant applied under the benefit of article 10.3 despite the fact that the Italian GPV did not validate its application for the domain name at stake.

In the Panel view, when a public body clearly applies under the benefit of article 10.3, the validation by the national GPV is compulsory. Failing to obtain this national validation, Complainant is not entitled to apply under this favorable regime.

Whether or not the Italian GPV correctly assesses the situation of Complainant when it refused to validate its application, is a question that falls outside the scope of this ADR procedure.