Panel Decision for dispute CAC-ADREU-001298

Case number	CAC-ADREU-001298
Time of filing	2006-05-24 11:41:07
Domain names	efqm.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	EFQM Private Stichting, Mr Tod Anderson

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

The Panel ist not aware of any other proceedings between the parties.

FACTUAL BACKGROUND

From the response, the Panel learned that a company called European Foundation for Quality Management (Mr. Dewenter, Avenue de Pléiades 11, 1200 Bruxelles, Belgium) applied for the domain name efqm.eu on December 7, 2005. However, no documentary evidence, but only the cover letter was submitted to the validation agent later on who concluded that the applicant did not proove that he is the holder of a prior right.

The Complainant, EFQM Private Stichting (Mr. Anderson, Plejadenlaan 11, Sint-Lambrecht-Woluwe, 1200 Belgium) requests that the domain name in question efqm.eu shall be registered for “us under the our mother company” which shall be a European Foundation for Quality Management, Stichting (Beemdstrasse 1, 5653MA Eindhoven, the Netherlands). As a basis for that Complainant claims that “efqm is a registered trademark of European Foundation for Quality Management, Stichting.” Enclosed is a letter from a law firm to “EFQM, Mr. Geert Opdenbosch, avenue de Pléiades, 15, 1200 Bruxelles” providing no copies of trademark registrations, but a list containing numerous trademarks “efqm” for several owners, i.e. EFQM foundation privée (Avenue de Pléiades 11, 1200 Bruxelles, Belgium) and European Foundation for Quality Management, Stichting (Beemdstrasse 1, 5653MA Eindhoven, Netherlands) and European Foundation for Quality Management, Stichting (Avenue de Pléiades 15, 1200 Bruxelles, Belgium). The latter two owners both allegedly own marks for EFQM in classes 16, 35 and 41 for the Benelux. The Complainant does not specify the legal nature of this (or these) trademark owner(s) under different addresses or explain the relation between them.

A. COMPLAINANT

The Complainant substantiates its complaint with one line which reads “efqm is a register[ed] trademark of European Foundation for Quality Management, Stichting.”

B. RESPONDENT

The Respondent is of the opinion that the validation agent acted correctly rejecting the domain name application, since no evidence for a prior right of the applicant was submitted. The submission of further documents in the ADR proceedings is too late to be considered.

DISCUSSION AND FINDINGS

In the present case, it must not be decided whether or not the evidence the applicant did allegedly not file in time in the Sunrise period can still be filed in the ADR proceedings with the effect that the domain name shall be allocated to the applicant, since the Panel can neither identify exactly the company for which the domain name shall be registered, whether this company is the holder of a prior right

and whether this company - clearly different from the Complainant – has authorized Complainant to request registration for the company.

At least two of the company names, EFQM Private Stichting and European Foundation for Quality Management, Stichting, playing a role in this case have similar, but not identical names and have different addresses. Looking at the third name appearing in the original application in the Sunrise period, the legal form of the foundation is not mentioned so that it cannot be excluded that the original applicant is even a third company.

The original applicant is the European Foundation for Quality Management, Avenue de Pléiades 11, 12 Bruxelles, Belgium. The Complainant is EFQM Private Stiching, Plejadenlaan 11, Sint-Lambrecht-Woluwe, 1200 Belgium. According to the trademark overview submitted by the law firm, these are two companies, i.e. different owners of trademarks. The company the domain name shall be registered for is the European Foundation for Quality Management, Stichting, Beemdstrasse 1, 5653MA Eindhoven, in the Netherlands. Also this company appears on a separate list in the trademark overview. Both the European Foundation for Quality Management, Stichting, Netherlands and the European Foundation for Quality Management, Belgium own EFQM marks in the same classes for the Benelux.

The only explanation provided is that the Dutch European Foundation for Quality Management, Stichting is the mother company of the Complainant. No authorization to act for them or on its behalf is submitted or further explained. The requested registration for the Dutch European Foundation for Quality Management, Stichting located in Eindhoven can accordingly not be granted. Since the registration of any domain name is not only a benefit for its proprietor, but is inter alia also causing costs and can lead to certain liabilities, the Panel is of the opinion that it cannot order the registration of a domain name for a company without its own request or its authorization for another party to request the registration for it.

Furthermore, the company (having another address than the original applicant and can therefore be a separate entity) the domain name shall be registered for is not the next applicant in the queue for the domain name concerned. Finally, the submission of a list of trademarks only, even if put together by a lawfirm, instead of copies of the registration documents or print outs of online databases is not a sufficient proof for the existence of a trademark right.

Although some indications support the impression that the different companies resp. company names belong to the same group and may in one case even be one company with more residences only have not adjusted their efforts to register the domain name efqm.eu, the information, explanation and substantiation of the request and the related circumstances provided by the Complainant is by far to short to give the Panel the possibility to grant this request.

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	Dietrich Beier

DATE OF PANEL DECISION 2006-08-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

An application of European Foundation for Quality Management with an address in Bruxelles, Belgium for the domain name efqm.eu was rejected by EURid in the Sunrise Period since no documentary evidence was submitted. Another company, EFQM Private Stichting, also with an adress in Belgium filed the complaint with the request to register the domain name in question for the company European Foundation for Quality Management, Stichting with an adress in Eindhoven, The Netherlands. The documents submitted show that at least two of the three names belong to different entities. The Panel did not decide whether or not an alleged lack of evidence in the Sunrise Period can be healed by submitting sufficient evidence in the ADR proceedings since already the request for registration for a domain name for another company without any authorization of this company cannot be granted. Furthermore, the submission of a list of trademarks only, even if put together by a law firm, instead of copies of the registration documents or print outs of online databases is not a sufficient proof for the existence of a trademark right.