Panel Decision for dispute CAC-ADREU-001320

Case number	**CAC-ADREU-001320**
Time of filing	**2006-05-22 10:08:32**
Domain names	**vdv.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Alexandros Doumas**

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 is not aware of other legal proceedings that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

The object of the present dispute is a proper interpretation of the term “prior right” under Article 10 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter Regulation 874/2004). More specifically, whether the fact that the applicant for the .eu domain name (VDV) not being the first in the queue but having the right to a trademark, which is earlier than the trademark right of the first Applicant for the same domain name corresponding to that trademark, should be relevant for registration of the domain name in question during the Sunrise Phase I.

A. COMPLAINANT

The Complainant being Alexandros Doumas submitted a very short complaint containing only one sentence. Basically, the Complainant contents that they [He probably means the company with which is associated.] have older rights to the disputed name VDV on the basis of the ownership of the registered trademark since April 18, 2001.

Attached to the complaint, there is a document dated May 3, 2006 issued by the Office for Harmonization in the Internal Market (Trademarks and Designs) showing that “VDV LEBE INTERNATIONAL SA” is the applicant of “VDV” Community trade mark No. 004924965 and in the application for that mark, it claims seniority from national trademark “VDV” No. 322 registered in Greece on September 30, 2003 with filing date of April 18, 2001.

B. RESPONDENT

The Respondent (EURid) explains that Deutscher Verkehrsunternehmen applied for the domain name "VDV" on December 7, 2005 invoking a prior right to the name "VDV" in the form of the German trademark "VDV" registered on April 15, 2005. This application was the first received by the validation agent for the domain name VDV. On January 9, 2006, which was before the January 16, 2006 deadline, Deutscher Verkehrsunternehmen sent the documentary evidence demonstrating its prior right. The Registry was informed by the validation agent that it found that the prior right existed, and consequently the Registry accepted the application by Deutscher Verkehrsunternehmen.

The Respondent bases its arguments on the wording of Article 10 (1) and 14 of Regulation 874/2004. By virtue of Article 10 (1) of Regulation 874/2004, the validation agent must only determine whether the applicant is the holder of a registered trademark at the time of the application for the domain name. Consequently, that Regulation does not require a comparison of the seniority of the prior rights invoked by the other applicants whose applications were not received first by the Respondent.

In addition to that, the Respondent submits that under Article 14 of the aforesaid Regulation, the Respondent is obliged to deal with applications in strict chronological order, when it receives more than one claim for the same domain during the phased registration period. In the present case, the Respondent first received the application made by Deutscher Verkehrsunternehmen. This applicant demonstrated its prior right on the name "VDV", by means of the German trademark "VDV" registered on April 15, 2005. Accordingly, the Respondent rightfully accepted the application of the first applicant.

DISCUSSION AND FINDINGS

Article 10 (1) of Regulation 874/2004 provides that holders of prior rights recognised or established by national or Community law shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts and that prior rights shall be understood to include, inter alia, registered national and community trademarks.

The Panel had consulted the WHOIS database where it found out that “Verband Deutscher Verkehrsunternehmen VDV” (hereinafter Deutscher Verkehrsunternehmen) is the first applicant for the VDV domain name. From the documentary evidence disclosed by the Respondent upon the Complainant’s request to the Czech Arbitration Court, it is apparent that Deutscher Verkehrsunternehmen is the proprietor of German “VDV” trademark registered on April 15, 2005 (applied for on February 21, 2005). Therefore, Deutscher Verkehrsunternehmen’s VDV trademark falls within the definition of “prior rights” within the meaning of Article 10 (1) of Regulation 874/2004 and this applicant also proved existence of that right by submitting appropriate documentary evidence.

The Complainant is most likely associated with “VDV LEBEN INTERNATIONAL AEAZ” having third position in the queue for that domain name applied for on February 1, 2006 which results, inter alia, from almost identical name and the same street address appeared in the document annexed to the complaint and the records in WHOIS database. Pertinent details regarding that national Greek “VDV” trademark were mentioned in previous section of this decision.

Pursuant to second paragraph of Article 14 of Regulation 874/2004, applications for the same domain name received by the Registry during the phased registration period shall be dealt with in strict chronological order. Furthermore, the last paragraph of the aforementioned article sets forth the underlying principle “first-come-first-served” also with regard to the registration of .eu domain names applied for within the phased registration period, provided that the Applicant has demonstrated a prior right in accordance with the procedure stated in paragraphs 2 to 4 of said Article. Thus, the rationale behind the phased registration according to Regulation 874/2004 is not to grant the domain name to the Applicant who holds an earlier right to a trademark within the Community corresponding to that name. Accordingly, the task of these ADR proceedings is not to determine whose trademark right first came into existence.

As a result of the aforementioned, the Panel unambiguously concludes that the date of acquisition of prior rights within the meaning of Article 10 (1) of Regulation 874/2004 is entirely irrelevant for granting of .eu domain names for which applications were filed during the phased registration period. This view is also supported by the wording of Recital 12 of said Regulation stating that allocation of .eu domain names takes place on a first-come, first-served basis if there are two or more applicants for a domain name, each having a prior right.

The Panel also points out other ADR decisions of identical nature, such as, ADR 00143 (VITANA) and 01720 (BL) where the Panels reached the same conclusion.

Thus, the Respondent’s decision to accept Deutscher Verkehrsunternehmen’s application for the “VDV” .eu domain name neither conflicts with Regulation 874/2004 nor with the Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain

The Panel therefore unanimously dismisses the complaint.

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	**Olga Georgiades - Van Der Pol**

DATE OF PANEL DECISION 2006-09-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The object of the present dispute is a proper interpretation of the term “prior right” under Article 10 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter Regulation 874/2004). More specifically, whether the fact that the applicant for the .eu domain name (VDV) not being the first in the queue but having the right to a trademark, which is earlier than the trademark right of the first Applicant for the same domain name corresponding to that trademark, should be relevant for registration of the domain name in question during the Sunrise Phase I.

The Panel held that the rationale behind the phased registration according to Regulation 874/2004 is not to grant the domain name to the Applicant who holds an earlier right to a trademark within the Community corresponding to that name. Accordingly, the task of these ADR proceedings is not to determine whose trademark right first came into existence.

The Panel unambiguously concluded that the date of acquisition of prior rights within the meaning of Article 10 (1) of Regulation 874/2004 is entirely irrelevant for granting of .eu domain names for which applications were filed during the phased registration period.

Therefore, the Panel unanimously dismissed the complaint.