Panel Decision for dispute CAC-ADREU-001446

Case number	**CAC-ADREU-001446**
Time of filing	**2006-05-23 13:30:02**
Domain names	**toyotabank.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Toyota Bank Polska S.A., Toyota Bank Polska S.A.**

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 that the Panel is aware of.

FACTUAL BACKGROUND

1. The Complaint was filed with the Czech Arbitration Court (hereinafter “CAC”) on May 17, 2006 against EURid’s Decision of April 7, 2006 to register the domain name <toyotabank.eu> for Mr. Sylux Sylwester Domitrz. On May 23, 2005, the CAC transmitted by email to EURid a request for verification in connection with the domain name at issue. On June 20, 2005 EURid transmitted by email to the CAC its verification response confirming that Mr. Sylux Sylwester Domitrz is listed as the registrant and providing the contact details for the administrative, billing, and technical contact.

2. The CAC verified that the Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (hereinafter “ADR-Rules”) and the Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (hereinafter “Supplemental ADR Rules”)

In accordance with the ADR-Rules, paragraph B2, the Czech Arbitration Court formally notified the Respondent of the Complaint and the proceedings commenced on June 2, 2006. In accordance with ADR-Rules, paragraph B3(a), the due date for Response was July 14, 2006. The Respondent did not comply with the deadline indicated in the Notification of the Complaint. Accordingly, the Czech Arbitration Court notified the Respondent’s default on July 26, 2006. Respondent submitted a non-standard communication on July 28, 2006, in essence incorporating the grounds on which the Registry registered the domain name for Mr. Sylux Sylwester Domitrz.

On August 3, 2006 having received the Statement of Acceptance and Declaration of Impartiality, the CAC appointed Dr. Torsten Bettinger as the Sole Panelist, in accordance with ADR-Rules, Paragraph B4(e).

On August 2, 2006 further submissions were filed by the Complainant by way of a non-standard communication.

A. COMPLAINANT

3. Complainant contends that the Respondent’s decision to register the disputed domain for Mr. Sylux Sylwester Domitrz conflicts Articles 2, 10 and 21 of the Regulation (EC) No. 874/2004 and the Article 4(2)(b) of the Regulation (EC) No. 733/2004.

4. Mr. Sylux Sylwester Domitrz filed an application to register the disputed domain name on April 7, 2006. Complainant contends that Sylux Sylwester Domitrz’ application was filed after Complainant has instructed the Polish registrar NASK to file an application for the domain name on March 31, 2006 and that therefore Respondent’s decision to register the disputed domain for Sylux Sylwester Domitrz violates the principle of “first come first served” set out in Art. 2 of the Regulation (EC) No. 874/2004.

5. Complainant asserts that he is the sole licensee of the trademark “Toyota Bank” in Poland and has rights in the company name “Toyota Bank”.

Complainant contends that Mr. Sylux Sylwester Domitrz has no prior rights recognised or established by national and/or Community law and that the registration of the domain name by Sylux Sylwester Domitrz is speculative and abusive within the meaning of Art. 21 of the Regulation (EC) No. 874/2004.

In support of this assertion Complainant argues that

- the disputed Domain Name is confusingly similar to Complainant’s company name,
- Sylux Sylwester Domitrz has no rights or legitimate interest in the domain name and
- Sylux Sylwester Domitrz has registered the domain name in bad faith “since no demonstrable link exists between the domain name holder and the Domain Name”.

B. RESPONDENT

6. Respondent failed to submit a Response within 30 working days from the delivery of the notification of commencement of the ADR Proceeding.

7. Following the notification of Respondent’s default, Respondent submitted a non-standard communication on July 28, 2006 stating that Respondent’s decision to register the domain name for Mr. Sylux Sylwester Domitrz was fully in line with Regulation (EC) No. 874/2004 and Regulation (EC) No. 733/2002.

8. In support of this assertion Respondent argues that Mr. Sylux Sylwester Domitrz applied for the disputed domain name on April 7, 2006 and was the first applicant for the domain name. Respondent also points out that Mr. Sylux Sylwester Domitrz applied for the domain name after the period of the phased registration and that therefore the ADR proceedings should be initiated against the holder of the domain name and not the Respondent.

DISCUSSION AND FINDINGS

A. Respondents default

9. Respondent failed to submit a Response within the deadline given by the ADR-Rules. Respondent filed a non-standard communication incorporating the grounds, on which the rejection of the domain name application was made. Such a non-standard communication essentially incorporates a Response and Paragraph B8 states: “In addition to the Complaint and the Response, the Panel may request or admit, in its sole discretion, further statements or documents from either of the Parties.”

10. When exercising its discretion the Panel is, however, bound to observe procedural guarantees and Paragraph B7(b) provided that “in all cases, the Panel shall ensure that the Parties are treated fairly and with equality.”

11. Admitting a non-standard communication by the Respondent, essentially incorporating a late Response, would be prejudicial to the fair and equal treatment of both Parties in the framework of this ADR Proceeding. All Parties should observe deadlines for the fair and expeditious progress of the ADR Proceeding. Respondent did not challenge the notification of Respondent default according to Paragraph B3(g) of the ADR Rules, nor did it provide any grounds for its belated Response incorporated in the non-standard communication.

12. In the absence of exceptional circumstances brought to the Panel’s attention justifying the belated Response incorporated in the non-standard communication, the Panel finds the non-standard communication and the information contained therein inadmissible. Therefore, the Complaint will be decided on the basis of information and evidence submitted by Complainant in its Complaint and amended Complaint and by Respondent in response to Complainant’s request to the Czech Arbitration Court to require EURid to disclose the Documentary Evidence.

B. Substantive Law

13. Mr. Sylux Sylwester Domitrz applied for the domain name TOYOTABANK on April 7, 2006. The domain name was registered for Mr. Sylux Sylwester Domitrz.

14. Complainant provided documents that evidence that he has instructed the Polish Registrar NASK to register the disputed domain name during the phased registration on March 31, 2006, but did not show that Respondent did in fact receive a request to register the disputed domain name during the phased registration.

15. Article 2 of Commission Regulation (EC) No. 874/2004 of 28 April, 2004 states that,

“without prejudice to registrations during the phased registration period, 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”.

Article 12 (2) of the Regulation states that "the duration of the phased registration period shall be four months". The phased registration period started on December 7, 2005. The land rush period started on April 7, 2006.

Sylux Sylwester Domitrz applied for the domain name TOYOTABANK on April 7, 2006 in the technically correct manner and in accordance with this Regulation (EC) No. 874/2004. Mr. Sylux Sylwester Domitrz Application was the first application for the Domain Name to be received by the Respondent. Respondent’s decision to register the domain name for Mr. Sylux Sylwester Domitrz according to the “first come first served principle” is therefore fully in line with Art. 2 of the Regulation (EC) No. 874/2004.

16. The question of whether Mr. Sylux Sylwester Domitrz’ registration and use of the domain name is speculative or abusive within the meaning of Art. 21 of Regulation (EC) No. 874/2004 on the ground that Mr. Sylux Sylwester Domitrz has no rights or legitimate interest in the disputed domain name or registered the disputed domain name in bad faith is outside the scope of this ADR-proceeding and can only be decided in an ADR-procedure against Mr. Sylux Sylwester Domitrz.

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	**Dr. Torsten Bettinger, LL.M.**

DATE OF PANEL DECISION 2006-09-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The disputed domain name was registered on April 7, 2006, after the phased registration period, by a polish individual, Mr. Sylux Sylwester Domitrz.

Complainant filed his Complaint against EURid stating that the registration of the domain name in favour of Mr. Sylux Sylwester Domitrz conflicts Articles 2, 10 and 21 of the Regulation (EC) No. 874/2004 and the Article 4(2)(b) of the Regulation (EC) No. 733/2004. Complainant contends that Sylux Sylwester Domitrz’ application was filed after Complainant has instructed the Polish registrar NASK to file an application for the domain name on March 31, 2006 and that therefore Respondent’s decision to register the disputed domain for Sylux Sylwester Domitrz violates the principle of “first come first served” set out in Art. 2 of the Regulation (EC) No. 874/2004. Complainant further contends that Mr. Sylux Sylwester Domitrz has no prior rights recognised or established by national and/or Community law and that the registration of the domain name by Sylux Sylwester Domitrz is speculative and abusive within the meaning of Art. 21 of the Regulation (EC) No. 874/2004.

The Panel found that Mr. Sylux Sylwester Domitrz application for the domain name was filed on April 7, 2006 during the land rush period and was the first to be received by the Respondent. Respondent’s decision to register the domain name for Mr. Sylux Sylwester Domitrz according to the “first come first served principle” was therefore fully in line with Art. 2 of the Regulation (EC) No. 874/2004.

The question whether or not Mr. Sylux Sylwester Domitrz has rights or legitimate interest in the disputed domain name or registered the disputed domain name in bad faith is outside the scope of this ADR-proceeding against EURid and can only be decided in an ADR-procedure against Mr. Sylux Sylwester Domitrz.

For the foregoing reasons, the Complaint was denied.