

Decision for dispute CAC-ADREU-001678

Case number CAC-ADREU-001678

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Domain names **aventis.eu**

Case administrator

Name Eva Zahořová

Complainant

Organization / Name SANOFI AVENTIS, Carole TRICOIRE

Respondent

Organization / Name EURid

OTHER LEGAL PROCEEDINGS

ADR case Nr. 1115 (AVENTIS)

FACTUAL BACKGROUND

The complainant is owner of several trademarks and top-level domain "AVENTIS". The Complainant is actively defending his trademark rights on the term AVENTIS.

In accordance with the ".eu Sunrise Rules", the Complainant has instructed a Registrar, Register.com, to file applications the domain name aventis.eu among many other domain names in ".eu".

The application for domain name aventis.eu was applied on December 7, 2005 at 11:02:39.463 and arrived in first position in the queue of the applications made for this domain name.

The Respondent informed the Complainant that his application for the domain name aventis.eu was rejected since the documentary evidence received did not sufficiently prove the right claimed. Rejection of Complainant's application was the subject of the case Nr. 1115 (AVENTIS).

The validation agent, then, examined the application of the second applicant in line. The validation agent estimated that the documentary evidence submitted by the second applicant demonstrated that the second applicant is the holder of a prior right on the name Aventis. Consequently, the Complainant decided to accept the second applicant's application.

Present case is directed against the Respondent's decision to accept the second applicant's application.

A. COMPLAINANT

The Complainant contends that the Respondent's decision to validate the second application in the queue is in conflict with the first come, first served principle.

The Complainant further contends that the Respondent was informed by the Complainant about the consequences of the second application. According to the Complainant's allegation the second applicant has applied for the domain name in bad faith. The Complainant asked the Respondent for annulment of the decision. Because the Respondent did not act as requested by the Complainant, the Complainant contends that the Respondent is in breach of article 20 of the Regulation.

B. RESPONDENT

The Respondent contends that the Complainant initiated the ADR proceeding Nr. 1115 challenging the rejection of the Complainant application. The Panel in case No. 1115 (AVENTIS) decided that the Respondent's decision must be annulled.

Pursuant to article 14 (10) of the Regulation, the Respondent will register the domain name on the first-come-first-served basis to the applicant which was the first to apply for the domain name.

The effect of decision n° 1115 is that the Complainant's application will have the "accepted" status. The Respondent does not dispute that the Complainant was the first to apply for the domain name. Therefore, the domain name will be attributed to the Complainant leaving the present proceedings with no purpose.

Therefore, the Complainant's request was filed too soon for it to be taken into account by the Respondent.

The Respondent further contends to comply with all applicable regulations.

DISCUSSION AND FINDINGS

The Complainant is owner of several national, community and international registered trademarks AVENTIS. The AVENTIS trademark of the Complainant is well-known, and the Complainant is actively defending his trademark rights.

The Complainant had instructed a Registrar, Register.com, to file an application for the domain name AVENTIS. The application arrived in first position in the queue of the applications made for this domain name.

The Respondent informed the Complainant that his application for the domain name *aventis.eu* was rejected because the documentary evidence received did not sufficiently prove the right claimed. Rejection of the Complainant's application was subject of the case Nr. 1115 (AVENTIS).

The validation agent, then, examined the application of the second applicant in line. The validation agent estimated that the documentary evidence submitted by the second applicant demonstrated that the second applicant is the holder of a prior right on the name *Aventis*. Consequently, the Complainant decided to accept the second applicant's application.

Present case is directed against the Respondent's decision to validate and accept the second applicant's application.

The Panel finds that the Complainant was successful in case No. 1115 (AVENTIS), where the Panel decided that the Respondent's decision to reject the Complainant's application is contrary to the aim defined in the paragraph 12 of the Regulation EC No. 874/2004 and must be annulled. According to this decision the Complainant's application for domain name AVENTIS was changed to "accepted".

The Panel finds that the ADR 1678 is very closely related to the case No. 1115 and therefore the Panel needs to take into consideration the findings of the Panel and the decision in the case No.1115. This Panel accepts the principle arguments provided by the Panel in ADR 1115.

Whereas the Respondent's first decision to reject the Complainant's application, was not in accordance with the applicable Regulations, then subsequently also the decision to accept the application next in line can not be in accordance with the Regulations.

The Complainant did not use the possibility to withdraw this Complaint after its success in ADR case No. 1115.

The Complainant requested to suspend the decision in present procedure Nr. 1678 until the registration of the domain name AVENTIS in favor of *sanofi-aventis* has become final and binding.

Taking in consideration all above mentioned the Panel finds that the Respondent's decision to validate and accept the second applicant's application should be annulled.
