Panel Decision for dispute CAC-ADREU-001911

Case number	**CAC-ADREU-001911**
Time of filing	**2006-06-27 14:19:45**
Domain names	**adlershof.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Bezirksamt Treptow-Köpenick von Berlin, Dr. Klaus Ulbricht**

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 any other legal proceedings.

FACTUAL BACKGROUND

On February 6, 2006, 17:01:00.861, the Complainant filed an application to register the disputed domain name <adlershof.eu>. The application took place during the so called “Phase I”, i.e. the first part of the phased registration (“Sunrise”) period. The Complainant’s application was the only (and still is the only) application received by the Respondent (EURid) for the Domain Name.

At the time of the domain name application, the Complainant claimed that it had a prior right to the term “adlershof” based on a geographical indication/denomination of origin. The documentary evidence was received by the Respondent on March 15, 2006, which was before the March 18, 2006 deadline. Following an assessment of the documentary evidence by the Validation Agent, the Respondent rejected the Complainant’s application for the domain name.

On June 27, 2006, the Complainant filed his Complaint with the Czech Arbitration Court. On August 31, 2006, the Respondent submitted its Response to the Complaint.

On September 6, 2006, having received the Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed the single-member Panel.

A. COMPLAINANT

Given the brevity of the Complainant's arguments, the Panel reproduces herein below the Factual and Legal Grounds of the Complaint:

"The rejection of the proposal of registration of the domain adlershof.eu for the complainant is contradictory with EU regulations, particularly in contradiction with Articles 2, 10, and 14 of the decree of Europena (sic) Communities No. 874/2004 of the Commission from the 28th of April 2004.
[…]
As evidence of the authorisation the “Act of the formation of a new municipality of Berlin” from the 27th of April 1920 in terms of the Prussian corpus juris in 1920 No. 19, page 22 and the following was provided.
- Appendix 1 -
In this law it is in § 1 determined that the rural community of Adlershof with other city and rural communities would build the municipality of “Berlin”. Similarly, it was in § 2 of this law assigned that all rights and duties of the communities would pass over to the new municipality of Berlin. Consequently the right to a bear the Adlershof community name has transferred to the new municipality of Berlin, and in the meantime to the federal state of Berlin.

In Appendix 2 to § 14 of this law the administrative districts are determined in such a way in numeral 15 that the assignment of the rural community of Adlershof to Berlin-Treptow took place.

By regional reform due to the area reform law from the 10th of June 1998 (GVBI 1998, pp. 131) the regions of Berlin-Treptow and Berlin-Köpenick fused on the 1st of January 2001 to form the region of Treptow-Köpenick, which since then has observed the administrative duties and responsibilities of this region.

Consequently the region of Treptow-Köpenick of Berlin is the responsible administrative unit of the former rural community of Adlershof and therewith the beneficiary of the right to the Adlershof name.

The complainant has thus submitted the proposal for the registration of the domain adlershof.de (sic) within the time limit. The complainant also has the right to the Adlershof name and has proven these rights, so that the rejection of the domain proposal wrongly occurred.

The rejection of the proposal for the registration of the domain of adlershof.de (sic) should therefore be repealed and the domain should be assigned to the complainant."

B. RESPONDENT

The Respondent contends that the application for the domain name <adlershof.eu> was based on a geographical indication/designation of origin. As explained in the Response to the Complaint, there are several bases for domain name applications during Sunrise Phase I (registered national/community trademark, geographical indication, "public body name") and depending on what basis is used, the application is allocated to a different Validation Agent. Thus, an application based on a geographical indication will go to a different Validation Agent than if the application was based on a "public body name". In the latter case, the Validation Agent would be an entity designated by the member state concerned.

The Respondent states that the Complainant did not demonstrate that it was the holder of the claimed geographical indication/designation of origin. The Respondent relies on section 14 of the Sunrise Rules.

Finally, the Respondent points out that the ADR procedure is not a "second shot" and if the Complainant meant to base its application on a "public body name", he should have done that at the time of filing the application.

DISCUSSION AND FINDINGS

Article 10 (1) (1) 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 (hereafter "Regulation 874") states that: "Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts".

Article 10 (1) (2) of the Regulation states that "Prior rights shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works".

Article 14 of the Regulation states that: "(…)Every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question. (…)The Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure (…)".

According to Articles 22 (1) (b) and 22 (11) of Regulation 874 a party is, following the decision by the Respondent to reject a domain name, entitled to initiate an ADR proceeding against the Registry on the grounds of non-compliance of that decision with Regulation 874 or with Regulation (EC) No 733/2002.

The Panel has, therefore, very narrow powers under the above legal parameters.

Regulation 874 lists several grounds to apply for a domain name during the "privileged" application phases (Sunrise I and II) and before the land-rush phase opens. In order to qualify for those privileged phases, applicants need to select a particular ground for their application and additionally, proof of that ground should be submitted.

Phase I requires either a registered national/community trademark, a geographical indication or a "public body name".

As was clearly demonstrated by the evidence submitted by the Respondent, the domain name applicant requested that its application be based on a geographical indication/designation of origin. Thus, proof of such right should have been furnished.

A geographical indication or a designation of origin has a very specific meaning and they are not simply a name of a place (see for example COUNCIL REGULATION (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs). According to the information on the record, the evidence submitted by the Complainant only shows that Adlershof was a former rural community, currently within the Complainant's territory. In view of the Panel, the evidence submitted by the Complainant is clearly insufficient to establish a prior right based on a geographical indication/designation of origin. Therefore, the Panel agrees with the Respondent and finds that the Complainant has not proved that the name "adlershof" is a geographical indication or a designation of origin, as required by Article 14 of Regulation 874.

Accordingly, the Panel finds that the Respondent decision is not against Regulations 874 and 733 and therefore, denies 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	José Checa

DATE OF PANEL DECISION 2006-09-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed an application to register the disputed Domain Name <adlershof.eu> during Sunrise Period I based on a geographical indication/designation of origin. The Respondent rejected the domain name application based on the lack of evidence supporting the prior right claimed.

The Panel agrees with the Respondent’s and finds that the Respondent was correct in rejecting the Complainant’s Domain Name Application, and that its decision was not in conflict with the Regulations.

The Complaint is denied.