Panel Decision for dispute CAC-ADREU-001973

Case number	CAC-ADREU-001973
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Domain names	icg.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	ICG Infora Consulting Group GmbH, ICG Infora Consulting Group GmbH

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

No legal proceedings are known in connection with the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the rejection of his application for the domain name icg.eu.

A. COMPLAINANT

According to Complainant it is a limited liability company registered with the Companies Register of the Provincial Civil Court of Graz with its registered office in Austria. It carries out it's business under the company name "ICG Infora Consulting Group GmbH". The Complainant has also a subsidiary in Germany doing business as "ICG Consulting Group Germany AG" registered with the Companies Register of the Krefeld Magistrate Court.

The Complainant is also the owner of the European Community Trademark no. 002841518 "ICG Infora Consulting Group", registered in the classes 35, 41 and 42 under the Nice Classification.

The Complainant therefore derives it's right of registration of the domain "icg.eu" from it's company name on the one hand and it's registered community trademark on the other hand.

This refusal of EURid to register the icg.eu domain applied for was repugnant to Article 10 Regulation (EC) no. 874/2004, since the evidence provided sufficiently substantiate the prior rights claimed by the Complainant.

After the response was filed Claimant did submit it's reply to it in which it argues that it filed the Complaint in due time.

B. RESPONDENT

Respondent notes that the Complaint was submitted after the deadline for initiating ADR proceedings against the Respondent. In the Non-standard communication of 19 July 2006, the case administrator of the Czech Arbitration Court stated clearly that the date of Dispute Initiation was 21 April 2006. This is after the deadline of 14 April 2006. For this reason, the Complaint is inadmissible.

Furthermore Respondent argues that Article 10 (2) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based. Section 19 (2) of the Sunrise Rules further clarifies article 10 (2) of the Regulation for figurative or composite signs, stating that the Respondent must separate the alphanumerical elements from the device elements. The domain name based on this prior right must consist of all alphanumerical elements, disregarding only the device elements.

The trademark which the Complainant submitted as documentary evidence consists of the following alphanumerical characters : "ICG Infora Consulting Group." Consequently, pursuant to section 19 (2) of the Sunrise Rules, this trademark establishes a prior right on the sign ICGINFORACONSULTINGGROUP, but not on the sign ICG alone. As the Complainant applied for the ICG domain name (and not for the ICGINFORACONSULTINGGROUP domain name), the Respondent had no other option than to reject the Applicant's application for the ICG domain name.

DISCUSSION AND FINDINGS

1. Complainant applied for the domain name icg.eu on 7 December 2005. This application was based on a prior right, i.e. Complainant's Company name and a European trademark.

2. Complainant is registered with the Companies Register of the District Court of Graz/Austria under the name "ICG Infora Consulting Group GmbH" (file number FN 51795x). Complainant has a subsidiary in Germany which is registered there under the name "ICG Consulting Group Deutschland AG" (file number HRB 6850).

3. Complainant is also the owner of the European Community trademark "ICG Infora Consulting Group" (file number No 002841518).

4. The date before which an ARD procedure against the decision of the Registry can be initiated was the 14 April 2006.

5. The date of Dispute Initiation was the 21 April 2006, on this day the Arbitration Court received the hard copy of the complaint (the electronic version was received on 21 June 2006).

6. On 29 May 2006 the Arbitration Court informed Complainant of several deficiencies and asked to submit an amended Complaint within seven days of receiving this notification. Complainant did thereafter ask for an extension of that delay which was granted by the Arbitration Court until 21 June 2006.

7. The Panel does first of all have to review the question whether ARD proceedings have been initiated by Complainant in due time.

8. According to Section 26 (1) of the Sunrise Rules ADR proceedings do have to be initiated within 40 days following the decision of the Registry. According to the WHOIS database this period of 40 day expired on 14 April 2006.

9. With it's Nonstandard Communication of 19 July 2006 the Arbitration Court informs that the date of dispute initiation is the 21 April 2006.

10. The Sunrise Rules do not clearly determine whether a complaint does have to be received by the Arbitration Court within theses 40 days or whether it is sufficient for a Complainant to mail it within this delay.

11. Since the Sunrise Rules use the term "initiate" in Section 26 (1), since the Arbitration Court uses (within it's Nonstandard Communication of 19 July 2006) the same term ("initiation") and since the WHOIS database defines the "Deadline ADR" as the "Date before which an ADR procedure against the decision of the Registry can be initiated" the Panel concludes that the complaint does have to be received by the Arbitration Court within the period of 40 days.

12. According to the WHOIS database the period for initiating ADR proceedings expired on 14 April 2006. This means that Complainant would have had to file the complaint that way so that it would have been served upon the Arbitration Court at the latest on 14 April 2006. Since the complaint was received by the Arbitration Court only on 21 April 2006 the complaint was submitted after the period for issuing proceedings and therefore was late.

13. Therefore the complaint is to be dismissed.

14. Even if the complaint would have been filed in due time, the Panel would have had to dismiss it.

15. Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 determines that holders of prior rights recognised or established by national and/or Community law shall be eligible to apply to register domain names during the Sunrise Period. These prior rights could be (inter alia) a registered Community trademark or a company name.

16. According to Article 10 (2) of Commission Regulation (EC) No 874/2004 of 28 April 2004 such a registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves

that such a right exists.

17. Section 16 (1) of the Sunrise Rules holds that a company name is defined as the name unter which the company is registered.

18. Section 19 (1) of the Sunrise Rules states that the registration of a domain name on the basis of a prior right consists in the registration of the complete name – as proved by the submitted documentary evidence - for which such a prior right exists. The registration of a domain name consisting of only a part of such a name is not possible.

19. In Section 19 (2) of the Sunrise Rules it is determined which content the documentary evidence does have to consist of. This evidence does have to describe clearly the name for which the prior right is claimed. If this name should include figurative or composite signs it will only be accepted if the sign exclusively contains a name or if the word element is predominant and can be clearly separated or distinguished from the device element (provided that all alphanumeric characters included in the sign are contained in the domain name and that the general impression of the word is apparent, without any reasonable possibility of misreading the characters of which the sign consists or the order in which those characters appear).

20. As mentioned above Complainant is (in Austria) registered under the name “ICG Infora Consulting Group GmbH” and has a subsidiary (in Germany) registered there under the name “ICG Consulting Group Deutschland AG”. It is also the owner of the European Community trademark “ICG Infora Consulting Group”. According to Article 10 (2) of Commission Regulation (EC) No 874/2004 of 28 April 2004 and Section 19 (1) of the Sunrise Rules the registration of a domain name on the basis of a prior right does have to consist of the registration of the full name. Complainant’s prior right (on the basis of it’s company name as proved by the documentary evidence) would therefore justify the registration of the domain name “icginforaconsultinggroup.eu” or “icgconsultinggroupdeutschland.eu” but not of the domain name “icg.eu”.

21. The company name of Complainant does also not meet the requirements of Section 19 (2) of the Sunrise Rules: The sign does not contain of only one name and there is also no predominant word element which can be clearly separated or distinguished from the device element. The company name of Complainant is to be qualified as entity.

22. The European Community trademark ICG Infora Consulting Group is also not identical with the domain name and can therefore not build the basis for the registration of the domain name icg.eu (Article 10 (2) of Commission Regulation (EC) No 874/2004 of 28 April 2004).

23. The Panel therefore 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	**Christoph Haidlen**

DATE OF PANEL DECISION 2006-09-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. Complainant is registered in Austria the name “ICG Infora Consulting Group GmbH”, it has a subsidiary in Germany, registered under the name “ICG Consulting Group Deutschland AG” and it is the owner of the European Community trademark “ICG Infora Consulting Group”.

2. The date before which an ARD procedure against the decision of the Registry can be initiated was the 14 April 2006, the date of Dispute Initiation was the 21 April 2006.

3. The Sunrise Rules do not clearly determine whether a complaint does have to be received by the Arbitration Court within theses 40 days or whether it is sufficient for a Complainant to mail it within this delay.

4. Since the Sunrise Rules use the term “initiate” in Section 26 (1), since the Arbitration Court uses (within it’s Nonstandard Communication of 19 July 2006) the same term (“initiation”) and since the WHOIS database defines the “Deadline ADR” as the “Date before which an ADR procedure against the decision of the Registry can be initiated” the Panel concludes that the complaint does have

to be received by the Arbitration Court within the period of 40 days.

5. Complainant would have had to file the complaint that way so that it would have been served upon the Arbitration Court at the latest on 14 April 2006. Since the complaint was received by the Arbitration Court only on 21 April 2006 the complaint was submitted after the period for issuing proceedings and therefore was late. Therefore the complaint is to be dismissed.

6. Even if the complaint would have been filed in due time, the Panel would have had to dismiss it.

7. Complainant's prior right (on the basis of it's company name) would justify the registration of the domain name "icginforaconsultinggroup.eu" or "icgconsultinggroupdeutschland.eu" but not of the domain name "icg.eu".

8. The European Community trademark ICG Infora Consulting Group is also not identical with the domain name and can therefore not build the basis for the registration of the domain name icg.eu (Article 10 (2) of Commission Regulation (EC) No 874/2004 of 28 April 2004).

9. The Panel therefore dismisses the Complaint.