Panel Decision for dispute CAC-ADREU-002466

Case number	**CAC-ADREU-002466**
Time of filing	**2006-08-18 14:07:10**
Domain names	**schwerin.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Stadtverwaltung Schwerin Hauptverwaltung, Silvia Ackermann**

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

History of the Requests for Registration

On 7 February 2006, 19:41:08.218, Dietrich Schwerin filed a request for the registration of the domain name “schwerin.eu” within part two of the phased registration period.

On 17 March 2006, 10:53:43.871, Stadtverwaltung Schwerin filed a request for the registration of the domain name “schwerin.eu” within part two of the phased registration period.

Dietrich Schwerin’s application was first in the queue and Stadtverwaltung Schwerin’s application was second in the queue.

On 10 March 2006, before the deadline of 19 March 2006, the Respondent received from the first applicant Dietrich Schwerin documentary evidence for a Prior Right regarding the designation “SCHWERIN”, consisting of a copy of the German Identity Card of Mr. Dietrich Graf von Schwerin and of an affidavit by a legal practitioner, Dr. Torsten Bettinger, partner at Bettinger Schneider Schramm.

The Respondent accepted the first applicant’s, namely Dietrich Schwerin‘s request for registration on 17 March 2006 on the grounds that the documentary evidence presented by the first applicant did substantiate the Prior Right claimed in the request for registration.

History of the ADR Proceeding

On 15 August 2006 at 14:20:54 the Complainant filed a Complaint by e-mail in German with the Czech Arbitration Court (“CAC”) to contest EURid Decision of 17 March 2006 to register the domain name <schwerin.eu> and selected “German” as the language of the arbitration.

In response to Complainant’s request to the CAC to require EURid to disclose the Documentary Evidence as defined in the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereafter “Sunrise Rules”), the Respondent disclosed, inter alia, the Documentary Evidence on 24 August 2006.

With communication dated 24 August 2006 CAC informed the Complainant that a Complaint with the Registry as the Respondent must

be filed in English language (“Die Beschwerde gegen EURid muss in Englisch sein.”).

With communication dated 30 August 2006 the Complainant requested a two-week extension for submission of their amended Complaint.

With communication dated 30 August 2006 the CAC granted the requested two-week extension for submission of the amended Complaint by 14 September 2006.

On 1 September 2006 the Complainant filed the amended Complaint which was again written in German language.

The formal date of the commencement of the ADR Proceeding is 11 September 2006. With communication dated 11 September 2006 the CAC notified EURid of the Complaint and invited the Respondent to issue its Response within 30 working days from the delivery of the notification.

On 24 October 2006 the Respondent filed its Response with the CAC.

A. COMPLAINANT

The Complainant’s contentions were not submitted in the mandatory language of the ADR proceedings against the Registry, namely in English.

B. RESPONDENT

With Response of 24 October 2006 the Respondent requests that the Panel should not take the content of the Complaint submitted in German language into consideration as the Complaint is inadmissible.

For the sake of completeness and although it is not strictly speaking compulsory for the Respondent to respond to a Complaint that is not written in English language, the Respondent explains the grounds on which it accepted the application by Dietrich Schwerin. The documentary evidence consisted of a copy of his identity card, as well as an affidavit by the legal practitioner declaring that the family name claimed by the Applicant is protected under the laws of Germany, including a references to the relevant legal provisions (§12 BGB), scholarly works (BGH GRUR 1996, 423, 424 – J.C. Winter) and court decisions (BGHZ 155, 273, 276 f.) and the conditions required for such protection, which are met by the Applicant.

DISCUSSION AND FINDINGS

In consideration of the factual background and the Parties’ Contentions stated above, I come to the following conclusions:

1. The relevant provisions

A. EC Regulation No. 733/2002

Article 4 (2) of the EC Regulation No. 733/2002 provides that the Registry shall implement the extra-judicial settlement of conflicts policy based on recovery of costs and a procedure to resolve promptly disputes in relation to individual decisions by the Registry. This policy shall be adopted in accordance with Article 5(1) and take into consideration the recommendations of the World Intellectual Property Organisation.

Article 5 of the EC Regulation No. 733/2002 provides that the Commission shall adopt public policy rules concerning the implementation and functions of the .eu TLD and the public policy principles on registration. Public policy shall include: (a) an extra-judicial settlement of conflicts policy; (b) public policy on speculative and abusive registration of domain names including the possibility of registrations of domain names in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised or established by national and/or Community law and for public bodies to register their names; and (d) issues of language and geographical concepts.

B. EC Regulation No. 874/2004

Article 3 (1) of the EC Regulation No. 874/2004 provides that the request for domain name registration shall include an undertaking from the requesting party that it shall abide by all the terms and conditions for registration, including the policy on the extra-judicial settlement

of conflicts set out in Chapter VI.

Article 12 (6) of the EC Regulation No. 874/2004 provides that to resolve a dispute over a domain name the rules provided in Chapter VI shall apply.

Article 22 (1) of the EC Regulation No. 874/2004 provides that an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002.

Article 22 (4) of the EC Regulation No. 874/2004 provides that unless otherwise agreed by the parties, or specified otherwise in the registration agreement between registrar and domain name holder, the language of the administrative proceeding shall be the language of that agreement. This rule shall be subject to the authority of the panel to determine otherwise, having regard to the circumstances of the case.

Article 22 (5) of the EC Regulation No. 874/2004 provides that the complaints and the responses to those complaints must be submitted to an ADR provider chosen by the complainant from the list referred to in the first paragraph of Article 23. That submission shall be made in accordance with this Regulation and the published supplementary procedures of the ADR provider.

Article 22 (10) of the EC Regulation No. 874/2004 provides that failure of any of the parties involved in an ADR procedure to respond within the given deadlines may be considered as grounds to accept the claims of the counterparty.

Article 22 (11) of the EC Regulation No. 874/2004 provides that in the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002. The ADR panel shall decide that the decision shall be annulled and may decide in appropriate cases that the domain name in question shall be transferred, revoked or attributed, provided that, where necessary, the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002 are fulfilled.

C. .eu Domain Name Registration Terms and Conditions (“Terms and Conditions”)

Section 16 (3) of the Terms and Conditions provide that any ADR Procedure initiated against the Registry shall be conducted in the English language.

Section 16 (4) of the Terms and Conditions provide that all disputes covered by this section will be governed by the .eu Dispute Resolution Rules applicable upon filing of the complaint and the selected ADR Provider’s rules of procedure, as published on the Website of the Registry.

D. .eu Alternative Dispute Resolution Rules (“ADR Rules”)

Section 3 (c) of the ADR Rules provide that all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding. The Panel may disregard documents submitted in other languages than the language of the ADR Proceeding without requesting their translation.

Section 10 of the ADR Rules provide that in the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party. Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

E. Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (“Supplemental Rules”)

Section 1 (d) of part B Conduct of the Proceedings of the Supplemental Rules provide that in accordance with Paragraph A3(d) of the ADR Rules, all relevant parts of the documents submitted as part of the Complaint including any annexes and schedules submitted in languages other than the language of the ADR Proceeding must be accompanied by a translation into the language of the ADR Proceeding. Documents or their parts not submitted in the language of the ADR Proceeding shall not be taken into account by the Panel.

2. Language of the ADR Proceeding

Based on the above specified clauses of the EC Regulations, Terms and Conditions, ADR Rules and Supplemental Rules any alternative dispute resolution proceedings initiated against the Registry (EURid) shall be conducted in English language. Consequently, the Complainant is bound by the arbitral agreement in Section 16 (3) of the Terms and Conditions to conduct the ADR Proceedings against the Respondent in English.

3. Admissibility of the Complainant's Contentions

The Respondent contends that the Complaint is made in German, and, therefore, not admissible. This is correct both for the original Complaint, submitted on 15 August 2006 and for the amended Complaint, submitted on 1 September 2006.

Consequently, any of the contentions made in the original Complaint or in the amended Complaint submitted to the Provider cannot be admitted.

The Complainant did not submit the Complaint in the mandatory language, namely English, even when he was urged to do so by the CAC. As a result, the Panel can only deduce that Complainant is satisfied with the idea that the Panel shall not take the Complaint into consideration in making its decision.

As a result, the Panel has decided not to take the content of the Complaint into consideration.

4. The contested decision

The Panel is of the view that it can decide the dispute based solely on the Respondent's response which is in English language and clearly states the reasons for Respondent's decision.

It has not been in any way demonstrated that the Respondent's decision to register the disputed domain name <schwerin.eu> to Dieter Schwerin would conflict with the EC Regulations. In the absence of evidence to conclude otherwise, Panel has no choice, but to dismiss 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	**Elina Koivumäki**

DATE OF PANEL DECISION 2006-11-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's application was second in the queue for the domain name <schwerin.eu>. The Respondent accepted the first applicant's, namely Dietrich Schwerin's request for registration on the grounds that the documentary evidence presented by the first applicant did substantiate the Prior Right claimed in the request for registration. The Complainant contested Respondent's decision to register the domain name to Dietrich Schwerin.

The Complainant filed a Complaint in German to contest EURid's Decision. CAC informed the Complainant that a Complaint with the Registry as the Respondent must be filed in English language ("Die Beschwerde gegen EURid muss in Englisch sein.").

In the set time limit the Complainant filed the amended Complaint which was again written in German language.

Article 5 of the EC Regulation No. 733/2002 provides that the Commission shall adopt public policy rules concerning the implementation and functions of the .eu TLD and the public policy principles on registration. Public policy shall include: (a) an extra-judicial settlement of

conflicts policy; (b) public policy on speculative and abusive registration of domain names including the possibility of registrations of domain names in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised or established by national and/or Community law and for public bodies to register their names; and (d) issues of language and geographical concepts.

Article 3 (1) of the EC Regulation No. 874/2004 provides that the request for domain name registration shall include an undertaking from the requesting party that it shall abide by all the terms and conditions for registration, including the policy on the extra-judicial settlement of conflicts.

Article 22 (5) of the EC Regulation No. 874/2004 provides submissions to the ADR provider shall be made in accordance with this Regulation and the published supplementary procedures of the ADR provider.

Section 16 (3) of the Terms and Conditions provide that any ADR Procedure initiated against the Registry shall be conducted in the English language.

Section 3 (c) of the ADR Rules provide that all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding. The Panel may disregard documents submitted in other languages than the language of the ADR Proceeding without requesting their translation.

Based on the applicable EC Regulations, Terms and Condition, ADR Rules and Supplemental Rules any alternative dispute resolution proceedings initiated against the Registry (EURid) shall be conducted in English language.

The Complainant did not submit the Complaint in the mandatory language, namely English, even when he was urged to do so by the CAC. As a result, the Panel has decided not to take the content of the Complaint into consideration.

It has not been in any way demonstrated that the Respondent’s decision to register the disputed domain name <schwerin.eu> to Dieter Schwerin would conflict with the EC Regulations. In the absence of evidence to conclude otherwise, Panel has no choice, but to dismiss the Complaint.