# Panel Decision for dispute CAC-ADREU-002634

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| Case number | **CAC-ADREU-002634** |
| Time of filing | **2006-08-16 13:17:17** |
| Domain names | **friedrichshafen.eu** |

## Case administrator

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| Name | **Kateřina Fáberová** |

## Complainant

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| Organization / Name | **Stadtverwaltung Friedrichshafen, Josef Buechelmeier** |

## Respondent

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| 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 it’s application for the domain name friedrichshafen.eu.

A. COMPLAINANT

Complainant submitted an application to register the disputed domain name friedrichshafen.eu on 21 February 2006. The application was filed with the following details:
Domain Name: friedrichshafen
Prior Right: Geographical indications/ Designations of Origin
Prior Right Country: Germany
Prior Right on : Friedrichshafen

The City of Friedrichshafen as a public body was authorized to register the domain name friedrichshafen.eu during the Sunrise Period 1 according to Art. 10 (1) of the Regulation (EC) No. 874/2004. Therefore, the Complainant was mentioned in the list of authorized applicants (“Berechtigtenliste”) issued by the Ministry of the Interior of the Federal State of Baden Württemberg, the national validation agent for public bodies.

The documentary evidence was received by EURid on 24 March 2006. EURid transmitted an e-mail to Complainant refusing the disputed domain name friedrichshafen.eu on 22 June 2006. EURid furthermore stated during a telephone conversation that the application to register the domain name friedrichshafen.eu was refused because Complainant did not prove that it is the holder of the asserted right.

Complainant accepts that the Sunrise Application form submitted by it's internet service provider contains an error, as it was based on "geographical indications/designations of origin" and not "name of a public body". However, Complainant contends that this mistake does not justify the refusal of Complainant's application if on the record it is obvious that the applicant is holder of a Prior Right corresponding with the domain name applied for and that the Prior Right by mistake was miscalled. It was therefore – so Complainant - identifiable that the documentary evidence refers to the public body mentioned in the list of authorized applicants and that the application form by mistake wrongly specified "geographical indications/designations of origin" instead of "name of a public body" as the Prior Right on which the Sunrise Application was based. If the documentary evidence clearly demonstrates a Prior Right and it is obvious that the Prior Right was by mistake miscalled, due process in the validation process requires that EURid contacts the Applicant in order to clarify the circumstances of the Sunrise Application.

The decision to deny Complainant's application is therefore according to Complainant unduly formalistic and violates Art. 12 of the Regulation (EC) No. 874/2004 which explicitly contains an obligation that the Registry ensures a proper and fair administration of the phased registration and therefore requires due process and a minimum of procedural protection of the applicant of a domain name registration during the phased registration period.

B. RESPONDENT

Respondent notes that the Regulation (EC) No. 874/2004 offers three different options for registering a domain name during the first part of the phased registration (during which Complainant's application was made). The applicant may rely on:
- a registered national or Community trademark,
- a geographical indication,
- or a name referred to in article 10 (3) of the Regulation (hereafter "a Public Body name").

Applicants have thus three different options when applying for a domain name during the first part of phased registration, depending on the right that they want to rely on. This choice bears some consequences, since the applicant needs to establish its rights and the Registry needs to verify those. For doing so, the Regulation sets forth different procedures, depending on whether the applicant relies upon a Prior Right (trademark and a geographical indication) or upon a public body name.

One important difference is that pursuant to article 13 of the Regulation, there are different validation agents: For Prior Rights (trademarks and geographical indications), the validation agent is PricewaterhouseCoopers ; whereas for public body names, the validation agents are specific entities designated by the Member States.

In the present case, the Complainant clearly expressed it's decision to rely on Prior Right consisting of a geographical indication but it did not demonstrate that it was the holder of the claimed geographical indication.

The relevant validation agent (i.e. PricewaterhouseCoopers) did – according to Respondent - conclude that the documentary evidence submitted by Complainant did not substantiate that it was the holder of a geographical indication on the name FRIEDRICHSHAFEN. Respondent furthermore refers to the Sunrise Rules and mentions, that "If the Prior Right claimed by an Applicant is a geographical indication or a designation of origin, the geographical indication or designation of origin must be protected in at least one of the member states of the European Union". The Complainant failed to provide documentary evidence to establish this fact.

Respondent states that all applicants are made aware of the existence of the Sunrise procedure. Moreover, the Respondent would like to note that the case at hand is not about the unclearness of the Sunrise procedure, but about correctly filling in an application request (and the effects of an incorrect application request).

The Complainant in the present case did not correctly fulfil the substantial requirements. Therefore, the Registry's decision to reject the Complainant's application does not conflict with the Regulation and the Complainant's complaint must be rejected.

DISCUSSION AND FINDINGS

1. Complainant is a city in Germany within the Federal State of Baden Württemberg.

2. On 21 February 2006 it applied to register the domain name friedrichshafen.eu. Complainant based it’s application upon a Prior Right. It particularizing “geographical indications/designations of origin” as the Prior Right on which the application is based upon.

3. Complainant did transmit as documentary evidence a confirmation according to which it is – being a public body - listed within the list of authorized applicants (“Berechtigtenliste”).

4. Complainant agrees that the application form submitted on it’s behalf contains an error since it was not – as it should have been - based on “name of public body”.

5. Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter called “the Regulation”) states that on the one hand holders of Prior Rights recognised or established by national and/or Community law and on the other hand public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts. "Prior Rights" are, inter alia, registered national and community trademarks, geographical indications or designations of origin, and - if protected under national law - unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works. The term "Public Bodies" does include institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organisations and bodies governed by public law, and international

and intergovernmental organisations (Article 10 (1) of the Regulation).

6. The Regulation therefore accepts two groups of applicants which are allowed to register during the Sunrise Period: One group consists of holders of a Prior Right, the other group consists of public bodies.

7. As to Article 14 of the Regulation all claims for Prior Rights under Article 10 (1) and (2) of the Regulation must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists. Every applicant is obliged to submit documentary evidence that shows that he or she is the holder of the Prior Right claimed on the name in question.

8. Article 13 of the Regulation determines which validation agent is to examine the applications. The Regulation holds that there are different validation agents for – on the one hand – applications based on Prior Rights and – on the other hand - applications of public bodies.

9. Validation agents with regard to applications of public bodies are entities appointed by the Member States and communicated to the Commission. The Commission did have to notify the Registry of the appointed entities with their full addresses (Article 13 (3) of the Regulation).

10. According to Article 13 of the Regulation the documentary evidence is to be sent to these national entities for verification.

11. The homepage of EURid informs public bodies – according to Article 13 of the Regulation - that the validation of their applications is performed by Government Validation Points (GVP) which were created by every Member State (http://www.eurid.eu/en/general/pb2/information-for-public-bodies?set_language=en&cl=en). It does also inform public bodies which GVP is responsible for the validation of it's applications. With regard to Complainant this GVP is the Ministry of the Interior of the Federal State of Baden Württemberg (http://www.eurid.eu/en/general/pb2/gvp-list), which is the Ministry of Interior of that State within Complainant is located.

12. The Ministry of the Interior of the Federal State of Baden Württemberg confirms on it's homepage it's role as (national) validation agent for public bodies within this State (http://www.verwaltungsreform-bw.de/servlet/PB/menu/1146243_l1/index.html). It does also publish the rules for the validation of applications of public bodies there ("Regeln für das nationale Validierungsverfahren des Landes Baden Württemberg für die Top-Level-Domain dot.eu"; http://www.verwaltungsreform-bw.de/servlet/PB/show/1190756/Regeln%20Validierungsverfahren%20BW.pdf). According to Article 1 of these rules the Ministry of the Interior is the validation agent as to the validation of applications of public bodies within it's limits.

13. According to Section 21 (3) of the Sunrise Rules the validation agent is permitted, but not obliged to conduct its own investigation into the circumstances of the application.

14. The Panel does fist of all stress, that Article 10 (1) of the Regulation does distinguish between registrations based on a Prior Right on the one hand and registrations of public bodies on the other hand ("Holders of prior rights (…) and public bodies"). Complainant should have been aware of that fact. Therefore it should have realized that it is – during the Sunrise Period – possible to register either on the basis of a Prior Right or on the basis that it is a public body, but not on the basis of a Prior Right bringing forward the argument that it is a public body.

15. Complainant should also have been aware of that fact since it is registered in the list of authorized applicants ("Berechtigtenliste") of the Federal State of Baden Württemberg. This list refers to the rules for the validation of public bodies within that State and clearly holds – which is also confirmed in the Complaint - that this validation is performed by the Ministry of the Interior of that State. This means that Complainant should have know that the validation agent for it's application on the basis that it is a public body is the Ministry of the Interior of the Federal State of Baden Württemberg and not PricewaterhouseCoopers.

16. According to it's due diligence, Complainant had to check the provisions of the Regulation and of the Sunrise Rules closely before filing the application. If this would have been done, it would have realized that it is able to base it's application during the Sunrise Period either on a Prior Right or on the fact that it is a public body. In that case it would not have mixed these two different characteristics.

17. Complainant should have been aware of the competence of the validation agents and of the fact that there are two different validation agents as to applications based on a Prior Right and for public bodies (http://www.verwaltungsreform-bw.de/servlet/PB/menu/1146243_l1/index.html). This means that it would have been Complainant's obligation to transmit the documentary evidence to the Ministry of the Interior of the Federal State of Baden Württemberg and not to PricewaterhouseCoopers.

18. The Panel therefore comes to the conclusion that it was Complainants obligation to ensure that it's application is properly filed, that the entitlement on which the application during the Sunrise Period is based upon is properly referred to and that the documentary evidence is sent to the competent validation agent. The validation agent was not – regardless the provision of Section 21 (3) of the Sunrise Rules – obliged to inform Complainant about it's mistakes.

19. If the application would have been based on "geographical indications/designations of origin" Complainant would have had to meet the requirements as mentioned in Section 14 of the Sunrise Rules.

20. It is evident that Complainant cannot rely on a "designation of origin" (see also http://ec.europa.eu/agriculture/qual/en/de_en.htm).

21. Complainant did – as documentary evidence – transmit a declaration (signed by itself) according to which it is a public body. According to the Sunrise Rules Complainant would have had to transmit one of the documents mentioned in Section 14 (2) i - iii of the Sunrise Rules to prove it's geographical indication. The Panel holds that the burden of proof as to the ownership of a Prior Right is on the applicant i.e. on Complainant and that Complainant did (by transmitting the above mentioned declaration - not meet the requirements as to this.

22. As to the opinion of the Panel Complainant did on the one hand make several mistakes and did on the other hand not deliver the necessary documentary evidence to proof it's Prior Right. It is not the obligation of the validation agent to inform an applicant about severe mistakes within it's application. Complainant would have been – especially since it is a public body - obliged to ensure that it's application is filed properly.

23. The Panel therefore decides that the complaint is to be dismissed.

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

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| Name | **Christoph Haidlen** |

DATE OF PANEL DECISION 2006-10-27

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. Complainant is a city in Germany within the Federal State of Baden Württemberg. It applied (during the Sunrise Period) to register the domain name friedrichshafen.eu and based it's application upon a Prior Right ( "geographical indications/designations of origin"). It did transmit the documentary evidence to PricewaterhouseCoopers.

2. Complainant agrees that the application form submitted on it's behalf contains an error since it was not – as it should have been - based on "name of public body".

3. Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 states that there are two groups of applicants which are allowed to register during the Sunrise Period (Holders of a Prior Right and public bodies).

4. The homepage of EURid informs public bodies that the validation of their application is performed by Government Validation Points (GVP). With regard to Complainant this GVP is the Ministry of the Interior of the Federal State of Baden Württemberg.

5. According to it's due diligence, Complainant should have realized that it is able to base it's application either on a Prior Right or on the fact that it is a public body. It should also have been aware of the fact that it is to transmit the documentary evidence to the Ministry of the Interior of the Federal State of Baden Württemberg and not to PricewaterhouseCoopers as it based it's application on the fact that it is a public body. The validation agent was not – regardless the provision of Section 21 (3) of the Sunrise Rules – obliged to inform Complainant about it's mistakes.

6. The Panels comes to the conclusion that Complainant did on the one hand make several mistakes and did on the other hand not deliver the necessary documentary evidence to proof it's Prior Right.

7. The Panel therefore decides that the complaint is denied.