Panel Decision for dispute CAC-ADREU-002788

Case number	CAC-ADREU-002788
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Domain names	mediation.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	(the independent administrative body according to Dutch law) Raad voor Rechtsbijstand

Respondent

Organization / Name	Traffic Web Holding B.V.

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 aware of two prior ADR proceedings that relate to the .eu domain name <mediation.eu>, namely ADR Case No. 335 and ADR Case No. 306. As both of these ADR proceedings have been concluded, the Panel is free to decide in this matter.

FACTUAL BACKGROUND

The Complainant is the independent administrative body according to Dutch law, De Raad voor Rechtsbijstand. The Respondent is Traffic Web Holding B.V.

On 7 December 2005, the Respondent applied for the domain name <mediation.eu>.

On 13 January 2006, the documentary evidence was received by the Validation Agent, therefore before the deadline of 16 January 2006.

On 23 December 2005 the Complainant applied for the domain name <mediation.eu>. The documentary evidence was received by the Validation Agent on 18 January 2006, therefore before the 1 February 2006 deadline.

On 4 February 2006, the Registry registered the domain name, finding that the Respondent had demonstrated a prior right. Consequently, the Complainant's application for the domain name <mediation.eu> was not considered.

On 16 March 2006, the Complainant filed a Complaint against Traffic Web Holding B.V. as first Respondent and EURid as second Respondent. The ADR Center found that the Complaint did not meet the procedural requirements to be addressed against Traffic Web Holding as a domain name holder. Accordingly, the Complaint was considered only to have been filed against EURid.

On 14 July 2006, the Panel in ADR 335 found that EURid's decision to register the domain name in favour of Traffic Web Holding was correct.

On 11 August 2006, the Complainant filed a Complaint against the Respondent. On 6 September 2006 the ADR proceedings formally commenced. On 5 October 2006 the ADR Center suspended the Complaint due to the earlier filing of another Complaint with respect to the same disputed domain name. This was the Complaint in ADR Case No. 306. The decision of the Panel in ADR Case No. 306 was filed on 22 December 2006.

On 2 January 2007 the ADR Center recommenced the suspended proceedings.

The Respondent filed its Response on 30 January 2007, which was before the 31 January 2007 deadline.

A. COMPLAINANT

The Complainant (Raad voor Rechtsbijstand) is an independent administrative body within the framework of the Dutch Ministry of Justice, responsible for the granting of (subsidised) legal aid. In this context, the Complainant also issues assignments for mediation and coordinates court referrals for mediation. On this basis, the Complainant submits that mediation is an important business identifier for its activities. The Complainant asserts that a public body as defined by article 10(1) of EC Regulation 874/2002 of 28 April 2004 (hereinafter referred to as "the Regulation") has the right to make a Sunrise Application for domain names concerning their activities and their business identifiers. Regarding this contention, the Complainant refers to ADR Case No. 475 (STOCKHOLM) and ADR Case No. 386 (HELSINKI). The Complainant has made a Sunrise application for <mediation.eu> which, as second in line after Respondent, has not been considered by EURid.

The Complainant contends that the Respondent did not undertake any business activities until November 2005 when it filed 810 urgent trademark applications in the Benelux. These were subsequently used as the basis for Sunrise applications for the registration of corresponding .eu domain names. The Respondent relied on its registration of the trademark MEDIATION as a trademark for bleaches to obtain the <mediation.eu> domain name. However, the Complainant submits that the Respondent has never undertaken any business activities relating to bleaches. Therefore, the Complainant is of the opinion that the trademark MEDIATION can be considered an abusive attempt to meet the formal criteria for the filing and validation of the disputed domain name. According to the Complainant, this constitutes bad faith as defined by article 21 of the Regulation.

Furthermore, the Complainant contends that the Respondent has no legitimate interest in the domain name, as
(a) it has not used the domain name in connection with the offering of goods or services, nor has the Respondent made demonstrable preparation to do so;
(b) it is not commonly known by the domain name;
(c) it is not making a legitimate and non-commercial or fair use of the domain name.

Finally, the Complainant points out that the Respondent and its .eu domain name registration practices are mentioned in numerous articles, weblogs and discussion boards on the internet.

B. RESPONDENT

The Respondent submits that it is a company that develops and manages a network of websites, portals and generic domain names, for creating its own web projects. According to the Respondent, it is not its intention to sell domain names.

The Respondent contends that the Complainant does not have an own right to the name ‘mediation’. The Complainant has not demonstrated that it has a registered right to the name mediation, nor has it demonstrated that it uses the name mediation as a business identifier. According to the Respondent, there is no proof of public use. The Complainant also does not own any other domain names consisting of the word mediation.

The Respondent refers to the provisions of article 16.5 of the Sunrise Rules. According to the Respondent, the Complainant did not prove the existence of a business identifier.

The Respondent further argues that it has a right to the domain name, and that its right to <mediation.eu> has been confirmed in two previous ADR proceedings.

The Respondent also contends that, since it has a valid trademark, it also has a legitimate interest in the domain name. The disputed domain name resolves to an active website that provides information on mediation.

Regarding bad faith, the Respondent argues that the category of the trademark is irrelevant, since there are no provisions in the Regulation regarding this matter. The Respondent relies on ADR Case No. 52 (YOGA) and ADR Case No. 2814 (PORN).

DISCUSSION AND FINDINGS

The Complainant has initiated an ADR procedure against the Respondent under article 22(1)(a) of the Regulation as it considers that the Respondent’s registration of the disputed domain name is speculative and abusive as defined in article 21.

Article 21(1) of the Regulation states that a registered domain name shall be subjected to revocation where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in article 10(1), and where it: (a) has been registered by its holder without rights or legitimate interests in the name; or (b) has been registered or is being used in bad faith.

On the basis of article 10(1) of the Regulation public bodies may apply to register domain names during the period of phased registration. In accordance with article 10(3) of the Regulation registration by a public body may consist of the complete name of the public body or the acronym that is generally used.

In view of article 21(1) the Regulation, the Complainant has to provide evidence that the Complaint is based on a name in respect of which a right is recognised or established by national and/or Community law. Therefore, the first question is whether or not the Complainant has such a right.

The Complainant refers in the Complaint to its Sunrise application for <mediation.eu> which apparently is second in line after the Respondent. The Panel therefore assumes that the Complainant seeks to rely on its (implied) right from the Sunrise application. In ADR 386 and ADR 475 it has been recognised that a Sunrise application may qualify as a right on which a complaint under article 21(1) of the Regulation can in principle be based. However, as set out in ADR 386, such a right has to be recognised or established, which implies that it is a valid and subsisting right. In the absence of a validation by the Validation Agent and a decision by EURid, the Panel will therefore have to assess whether the application can in principle be successful, if it were to be considered.

It is not entirely clear on which right the Sunrise application is based. On the one hand, the Complainant refers to its status as a public body and its right under article 10 to make a Sunrise application. On the other hand, the Complainant appears to rely on a prior right to a business identifier as the basis for its Sunrise application.

Article 10(3) of the Regulation provides that the right of a public body to file a Sunrise application is limited to the name of the public body or the acronym used. Clearly, 'mediation' is not Complainant's name, nor its acronym. Therefore, if the Complainant's Sunrise application is based on article 10(3) of the Regulation it will have to be dismissed, if EURid were to consider it.

If the Complainant's Sunrise application is based on a business identifier this implies that the Complainant (or at least its business) should be identified by 'mediation'. In this respect article 16.5 of the Sunrise Rules requires proof of public use of the business identifier prior to the date of Application. The Complainant has not submitted any evidence that the Complainant has made public use of the term 'mediation' to identify its business. The Complainant merely mentions that its right to the name 'mediation' is based on the fact that mediation forms an important part of its business. However, this does not mean that 'mediation' is used to identify Complainant's business.

As opposed to what the Complainant states in the Complaint, in ADR Case No. 475 (STOCKHOLM) and ADR Case No. 386 (HELSINKI), it has not been decided that a public body within the meaning of article 10(1) has the right to make a Sunrise application for domain names "concerning their activities and their business identifiers". Both cases refer to the special situation, recognised in article 10(3) of the Regulation, that a public body governing a territory makes a Sunrise application for a domain name identical to the name of that territory. However, the Complainant is not such a public body.

In view of the above, the Panel finds that the Complainant has failed to demonstrate a right to the name mediation, as required by article 21(1) of the Regulation. Therefore, the Complainant is denied.

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	**Wolter Wefers Bettink**

DATE OF PANEL DECISION 2007-03-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant has initiated an ADR procedure under article 22(1)(a) of the Regulation on the ground that the Respondent's registration of the disputed domain name <mediation.eu> is speculative and abusive as defined in article 21.
In view of article 21(1) of the Regulation, the Complainant has to provide evidence that the Complaint is based on a name in respect of which a right is recognised or established by national and/or Community law.

The Complainant seeks to rely on its (implied) right from its Sunrise application which is second in line after the Respondent. As previous Panels have considered, a Sunrise application may qualify as a right on which a complaint under article 21(1) of the Regulation can be based, provided it is a valid and subsisting right. This requires the Panel to assess whether the application, if considered by EURid, could in principle be accepted.

The Panel finds that 'Mediation' is not Complainant's name, nor its acronym. Therefore, if the Complainant's Sunrise application is based on its right as a public body under article 10(3) of the Regulation it cannot be accepted.

If the Sunrise application is based on the alleged right to the business identifier 'MEDIATION', it cannot be accepted either, since the Complainant has not submitted any evidence that it has made public use of the term 'mediation' to identify its business.

In view of the above, the Complaint is denied.