Panel Decision for dispute CAC-ADREU-003282

Case number	**CAC-ADREU-003282**
Time of filing	**2006-10-09 11:25:18**
Domain names	**prosoft.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Prosoft spol. s r.o., Ing. Vladimír Houba**

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

N/A

FACTUAL BACKGROUND

The domain name “prosoft” was registered in favour of proSoft EDV-Lösungen GmbH & Co. KG on the basis of a prior right claimed – company’s name, trade name. The Complainant is of the opinion that the registration of this domain name in favour of the company proSoft EDV-Lösungen GmbH & Co. KG is in a violation of the applicable EU regulations because when prior right is claimed on the basis of the company name, trade name then the full complete official name as defined mainly in the Sunrise rules has to be applied with only exception which is that only the company form (type – such as GmbH, limited liability company) may be omitted.

The Complainant is therefore of the opinion that the decision of EURid shall bee annulled and the disputed domain name “prosoft” shall be transferred to the Complainant which was second in the queue for the domain name and which trade name is “Prosoft s.r.o.”.

A. COMPLAINANT

The Complainant holds the view that the disputed decision of EURid to except the application for the domain name “PROSOFT” of PROSOFT EDV-Loesungen GmbH & Co. KG in the Sunrise period on basis of prior right is in violation of applicable EU regulations.

The Complainant is therefore asking that the decision on the registration of the domain name in favour of the Applicant/the company PROSOFT EDV-Loesungen GmbH & Co. KG be annulled and the domain name “PROSOFT” to be transferred to the Complainant in accordance with the Paragraph B11 (b) and (c) of the ADR Rules.

The Complainant holds the view that the disputed decision of EURid to accept the application for the above domain name on basis of prior right as specified by the company PROSOFT EDV-Loesungen GmbH & Co. KG is in violation of applicable EU regulations.

The claimed prior right was the Applicant’s company name, trade name. The Applicant’s company name is “PROSOFT EDV-Loesungen GmbH & Co. KG”. Under Article 10 (2) of the Commission Regulation (EC) No. 874/2004, the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists. This governing principle of complete official name (Section 16 (1) of the Sunrise Rules) is defined in Section 19 (4) of the Sunrise Rules so that only the company type (such as GmbH) may be omitted from the company name. The acceptance of an application with a broader omission of a part of the company name is in violation of the complete official name principle for prior right as set forth by the quoted provisions of the governing EU regulations.

The Complainant argued further that such interpretation is also in conformity with other case law of the Arbitration Court in ADR proceedings, namely in ADR decision No. 1427 “BONOLLO”.

The Complainant further argued that, on the contrary, the Complainant fulfills the criteria for acceptance of prior right within the Sunrise period, because the Complainant's company name "PROSOFT s.r.o." is fully contained within the domain name and appropriate rules for its registration.

B. RESPONDENT

The Respondent – EURid in its response stated main references to the applicable regulations. Article 10 (1) of the Commission Regulation (EC) No. 874/2004 states that only holders of prior rights which are recognized or established by national or Community law shall be eligible to apply to register domain name. Article 10 (2) of the above mentioned regulation states that the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists.

PROSOFT EDV-Loesungen GmbH & Co. KG applied for the domain name "PROSOFT" on February 7, 2006. The documentary evidence confirming the prior right consisted of an abstract from a company register stating that the company "proSoft EDV-Lösungen GmbH & Co. KG" was duly registered. Pursuant to Article 10 (2) of this regulation, this establishes a prior right on the name "proSoft EDV-Lösungen" which could not be used for the application of the domain name "PROSOFT". The Applicant did not provide documentary evidence that could establish a prior right on the trade name PROSOFT alone, although it could probably have easily done so.

The Complainant concluded that for these reasons and unless the Panel finds otherwise, the Respondent believes that, as correctly pointed out by the Complainant, the Applicant's application for the domain name "PROSOFT" should have been rejected.

DISCUSSION AND FINDINGS

1. All procedure requirements for .eu dispute resolution (ADR) were met.

2. The main question for the decision is whether the Applicant when applying for the domain name "PROSOFT" had a right to apply for it and has proven that he had the respective prior rights.

3. The Panel/the Panelist carefully reviewed all issues concerning the case and relevant rules and by-laws, namely the Commission Regulation (EC) No. 874/2004 and so-called Sunrise Rules.

4. Article 10 (2) of the Commission Regulation (EC) No. 874/2004 clearly says that "the 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".

This principle is further developed in Section 16 (1) of the Sunrise Rules and in Section 19 (4) of the Sunrise Rules so the complete official name means that only the company type (such as, but not limited to, "SA", "GmbH", "Ltd.", or "LLP") may be omitted from the complete name for which the prior right exists.

5. It is clear from the statement of the Respondent that only prior right on the basis of the company name was applied for. It is proven from the extract from the company register provided by the Applicant with the application that the company name (full company name) is: "proSoft EDV-Lösungen GmbH & Co. KG" and it is therefore clear that the domain name which would have been registerable under such prior right is probably "proSoft EDV-Lösungen" but not just the word "proSoft".

6. It was also confirmed by the Respondent in its Response to Complaint where the Respondent is saying "for these reasons (as quoted in the findings above) unless the Panel finds otherwise, the Respondent believes that, as correctly pointed out by the Complainant, the Applicant's application for the domain name "PROSOFT" should have been rejected".

7. It was proven that the Complainant was next in the queue in the Sunrise period.

8. The Panel/the Panelist therefore came to the following conclusions:

a) It was proven that domain name "PROSOFT" was registered for the Applicant/the company proSoft EDV-Lösungen GmbH & Co. KG on a prior right which consisted only of the company name.

b) It was proven without any doubt that there was no rights of the Applicant/the company proSoft EDV-Lösungen GmbH & Co. KG to apply for the domain name "PROSOFT" just on the basis of the company trade name because such trade name consists of more words than just "PROSOFT" and only the form of the company can be omitted.

c) The Complainant has proven that he has a right for a domain name “PROSOFT” to be registered in his favour because his company name consists only of one word “PROSOFT” and the form of the company (in Slovak language “spol. s r.o.”) which means limited liability company abbreviation.

d) It was also proven by the Complainant and from public sources that the Complainant satisfied the general criteria for the registration set out in Paragraph 4 (2) (b) of the Regulation (EC) No. 733/2002.

For all the above reasons the Panel/the Panelist came to the decision as defined below.

DECISION

The Panel/the Panelist orders that the decision of the Respondent concerning registration of the domain name “PROSOFT” in favour of the company proSoft EDV-Lösungen GmbH & Co. KG is hereby annulled.

For all the foregoing reasons, in accordance with Paragraphs B12 of the ADR Rules and B11 (b) of the ADR Rules, the Panel/the Panelist further orders that the domain name “PROSOFT” shall be transferred to the Complainant, i.e. the company Prosoft spol. s r.o. with its registered seat at Kuzmányho 8, 010 01 Žilina, Slovak Republic. This decision shall be implemented by the registry within thirty (30) days after the notification of the decision to the parties, unless the Respondent initiates Court proceedings in a Mutual Jurisdiction.

PANELISTS

Name	**Vit Horacek**

DATE OF PANEL DECISION 2006-12-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant requested the disputed domain name “PROSOFT” to be transferred to the Complainant and initial decision of the Registry to be annulled. The Complainant applied for the domain name “PROSOFT” as second in the queue and also has proven its legibility criteria under Article 4 (2) (b) of the Regulation (EC) No. 733/2002. The initial Applicant for which the domain name “PROSOFT” was registered was a German company “proSoft EDV-Lösungen GmbH & Co. KG”. This applicant has applied in Sunrise period arguing that it has a prior right based on its trade name, business name of the company as quoted. To register a domain name “PROSOFT” just on prior right of the trade name “PROSOFT EDV- Loesungen GmbH & Co. KG” is in violation of applicable EU regulations. The appropriate laws namely Article 10 (2) of the Commission Regulation (EC) No. 874/2004 in conjunction with Section 16 (1) of the Sunrise Rules and Section 19 (4) of the Sunrise Rules clearly say that the registration on the basis of prior rights shall consists of the registration of the complete name for which the prior right exists. The only form of the company (like “GmbH” or “Ltd.”) can be omitted from the domain name. In this case, it was a mistake of the registry, EURid, which confirmed that also in its Response to Complaint and confirmed that the appropriate laws have been breached by its decision. The Panel/the Panelist also verified the trade name of the Complainant – company “Prosoft spol. s r.o.” and its illegibility for registration of the domain name and came to the conclusion to annual the decision of EURid and transfer the domain name “PROSOFT” to the Complainant.