# Panel Decision for dispute CAC-ADREU-003593

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| Case number | **CAC-ADREU-003593** |
| Time of filing | **2006-10-27 12:31:28** |
| Domain names | **centric.eu** |

## Case administrator

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| Name | **Tomáš Paulík** |

## Complainant

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| Organization / Name | **Centric B.V., Gerard Schurink** |

## Respondent

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| Organization / Name | **EURid** |

FACTUAL BACKGROUND

The Complainant submitted the domain name application for CENTRIC on 7 February 2006 and the documentary evidence was received by the validation agent before the deadline for the same. The documentary evidence showed that the Dutch company name registration, which was used as a basis of the sunrise application, was Centric Public Sector Solutions B.V. and the applicant's name was the same as the Complainant's, i.e. Centric B.V.

The Respondent, EURid, rejected the domain name application because the applicant did not file evidence of use of its company name, the company name did not match the domain name applied for, and the applicant did not show that he was the successor or assignee of the company name Centric B.V.

A. COMPLAINANT

The Complainant states that because the company name, which is a prior right according to Article 10(1) of EC Regulation No. 874/2004, is CENTRIC, the domain name should have been granted to the applicant, Centric B.V.

The Complainant agrees that the documentary evidence may have created some minor difficulties for the Respondent because the company name indicated in the documentary evidence related to another company in the Centric group, but stresses that minor errors in the documentary evidence should not lead to the rejection of the application.

The Complainant also refers to Article 21(3) of the Sunrise rules according to which the validation agent is permitted, but not obliged, to conduct its own investigations into the circumstances of the application. The Complainant states that in this case a small investigation would have been appropriate and would have led to the conclusion that the Complainant was entitled to the domain name.

B. RESPONDENT

The Respondent contends that as the applicant of the domain name was Centric B.V. and the company name which the application claimed as a prior right was Centric Public Sector Solutions B.V., the Complainant did not demonstrate that it was the holder of a prior right to the name CENTRIC.

The Respondent also states that the Complainant did not file any evidence of use of the company name, as required in Article 16(4) of the Sunrise Rules, and that the Complainant did not show that he was the holder, licensee, transferee or successor of the prior right holder. The Respondent also stresses that the validation agent was under no obligation conduct any investigation into the circumstances of the application.

## DISCUSSION AND FINDINGS

The Complainant's complaint is made pursuant to Article 22(1)(b) of EC Regulation No. 874/2004 (the Regulation), which provides that an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with the Regulation or with EC Regulation No. 733/2002. Pursuant to Article 22(11) second subparagraph of the Regulation, the sole purpose of these proceedings is accordingly to determine whether the decision taken by the Respondent was in accordance with the Regulation or with EC Regulation No. 733/2002.

1. The documentary evidence shows that the application was made by Centric B.V. and that the prior right claimed was the company name Centric Public Sector Solutions B.V.

According to Annex 1 of the Sunrise Rules, Dutch company names are prior rights as provided in Article 16(5) Sunrise Rules, and consequently the mere registration of the company name does not establish a prior right within the meaning of Article 10(1) of the Regulation. Therefore applicants relying on registered Dutch company names must also show use of the company name.

In this case the applicant relied on a Dutch company name registration, but did not provide any evidence of use of the name. It follows that the Respondent was correct in not considering the prior right claimed as a valid prior right and in rejecting the application on this ground.

2. According to Article 10(2) of the Regulation, the registration on the basis of a prior right shall consist of the complete name for which the prior right exists. Article 19(4) of the Sunrise Rules provides that the company type, such as B.V. may be omitted from the complete name for which the Prior Right exists.

The Complainant states that the application for the domain CENTRIC was made in the name of Centric B.V. and that this company name is a prior right within the meaning of Article 10(2) of the Regulation. This is correct, but the Complainant is overlooking the fact that the documentary evidence filed shows a prior right to the name Centric Public Sector Solutions B.V., which is not the same as Centric B.V.

Because the applied domain name CENTRIC is not the complete name for which the prior right exists, Centric Public Sector Solutions B.V., the prior right claimed by the applicant did not support the sunrise application for the domain CENTRIC. The Respondent was therefore correct in rejecting the application on this ground as well.

3. The Respondent states that the applicant had not provided for a license declaration or evidence showing the he is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right.

When the applicant's name and the prior right holder's name differ, the applicant must show that he is the licensee, transferee or other successor to the prior right holder, as per Article 20 of the Sunrise Rules.

The Panel does not doubt the Complainant's argument that the companies Centric B.V. and Centric Public Sector Solutions B.V. belong to the same group of companies, but finds that even if evidence of this relationship was submitted in the documentary evidence, it would not have fulfilled the requirement of Article 20 of the Sunrise Rules that if the applicant is not the holder of the prior right claimed, he must show that he is the licensee, transferee or other successor of the holder of the prior right. The mere (full or partial) ownership by the applicant of the prior right holder (or vice versa) is insufficient for the purposes of Article 20 Sunrise Rules.

Without any indications in the documentary evidence as to the acquisition of the prior right claimed, the Respondent could have legitimate doubts as to whether the Complainant and the right holder were the same company. There may well be several companies in the Netherlands with the name Centric, so it is important to ensure that the applicant is the same as the holder of the prior right to avoid illegitimate domain name registrations. The Complainant did not file any evidence showing that he is the licensee, transferee or other successor of the holder of the prior right. The Respondent was therefore correct in rejecting the application on this ground, too.

4. The remaining issue is the question of whether the Respondent should have conducted its own investigations into the circumstances of the application as per Article 21(3) of the Sunrise Rules. The Complainant contends that the Respondent should have carried our further investigations, while the Respondent stresses that according to the wording of Article 21(3), it is under no obligation to conduct such investigations.

The Panel is aware that this question is raised in most, if not all, complaints brought against the EURid for not accepting the documentary evidence and that Panels have had different views on what the validation agent's obligations under Article 21(3) of the Sunrise Rules are.

It may be that in some cases it is appropriate for the Respondent to conduct its own investigations, for example when there are only minor discrepancies in the identification of the applicant and the prior right holder.

However, in this case there were three clear reasons for not accepting the applied domain name: the Complainant did not produce evidence of use of the company name, the company name claimed did not exactly match the domain name applied for, and the Complainant did not demonstrate that it is entitled to the prior right claimed. None of these can be considered as minor or insignificant shortcomings, but rather serious material deficiencies in the application.

The Panel finds that it cannot be the Respondent's duty to investigate deficient applications or to contact the applicants in order to have the applications corrected, especially when the application is simply incorrectly made.

The Panel also notes that the Sunrise period is an exception to the first come, first served –rule and thus it is reasonable to expect that applicants benefiting from such an exception take due care that their applications meet all the requirements set for being eligible to file a Sunrise application.

Because the Complainant did not file evidence of use of the company name, the Complainant did not show that he is the licensee, transferee or successor to the prior right holder and because the domain name applied for was not the complete name for which the claimed prior right existed, the Respondent was correct in rejecting the application.

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 | **Tuukka Ilkka Airaksinen** |

DATE OF PANEL DECISION 2007-01-09

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a Sunrise II application for CENTRIC based on its Dutch company name registration Centric Public Sector Solutions B.V.

According to Annex 1 of the Sunrise Rules, a Dutch company name is a right within the meaning of Article 16(5) of the

Sunrise Rules, which means that in addition to the registration, also evidence of use of the company name must be filed to support the prior right. The Complainant had not filed such evidence.

The prior right relied upon was not CENTRIC but Centric Public Sector Solutions B.V. The Panel found that the domain applied for was not the complete name of the prior right as provided in Article 10(2) of the Regulation.

The applicant was not the holder of the prior right claimed and did not submit evidence that he was the licensee, transferee or other successor of the prior right holder. The Panel found that merely belonging to the same group of companies does not satisfy the requirements in Article 20 of the Sunrise Rules.

Finally, the Complainant claimed that the Respondent should have made investigations in to the circumstances of the application as provided in Article 21(3) of the Regulations. The Panel found that the Respondent was correct in not conducting such investigations.