# Panel Decision for dispute CAC-ADREU-003856

| | |
|---|---|
| Case number | **CAC-ADREU-003856** |
| Time of filing | **2006-11-24 09:29:13** |
| Domain names | **118218.eu** |

## Case administrator

| | |
|---|---|
| Name | **Tereza Bartošková** |

## Complainant

| | |
|---|---|
| Organization / Name | **118218 LE NUMERO, Céline FRONVAL** |

## 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

The Panel is not aware any other pending legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

In the lottery draw for the attribution of telephone numbers for directory assistance services in France the company „Le Numéro France“ was awarded the number „118218“ (ARCEP decision 05-0585).

The request for the registration of the domain name “ 118218” was filed by a French company called „118218 LE NUMERO”.

The Registry denied the request for registration on the ground that no proof of the Applicant being the holder of a prior right to the awarded number „118218“ has been submitted.

A. COMPLAINANT

The Complainant contents the company "Le Numéro France" changed its name to "118 218 LE NUMERO ".

The Complainant submits that the Respondent’s refusal to register the domain name „118218“ constitutes a breach of the principle by which the Respondent is bound by its own decisions to register the domain names „118880“, „118075“, „118-218“, „118220“ and „118910“ based on the same ARCEP decision 05-0585 and the principles of the protection of legitimate expectations and of good faith.

B. RESPONDENT

The Respondent argues that the Regulation (EC) No 874/2004 clearly and certainly provide that the burden of proof is with the applicant to demonstrate that it is the holder of the prior right claimed in its application. When there is a difference between the name of the applicant and the name of the owner of the prior right, the applicant must submit official documents explaining this difference. If the applicant fails to do so, its application must be rejected.

The Respondent also concludes that if previous decisions should have been unlawful they can in no way justify a new decision.

DISCUSSION AND FINDINGS

When examining an application for a domain name, the Respndant’s obligation is to examine whether the applicant holds a prior right to the domain name (Article 14 Regulation (EC) No 874/2004). The right must be verifiable by the presented documentary evidence. This shall demonstrate that the right exists and that the applicant is the holder of this right claimed on the domain name. In the presented case the documentary evidence submitted by the Applicant showed that the „Le Numéro France“, and not the „118218 LE NUMERO” is

the holder of the awarded number „118218“. Therefore, the documentary evidence in support of the application for the domain name „118218“ was incomplete and the Respndent was entitled to dismiss the request for registration (see Panel decision 01625 - TELEDRIVE).

The refusal of the application does not constitutes a breach of the principle by which the Registry is bound by its own decisions to register other domain names based on the same ARCEP decision 05-0585 because it must be observed, that decisions concerning registration of a domain name which the Registry are called on to take under the Regulation (EC) No 874/2004 are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, the legality of the decisions must be assessed solely on the basis of Regulation (EC) No 874/2004 and not on the basis of a previous decision-making practice of the Respondent. If, by accepting, in a previous case, the registrability of a domain name, the Respondent correctly applied the relevant provisions of Regulation (EC) No 874/2004 and, in a later case comparable to the previous one, the Respondent adopted a contrary decision, the Panel will be required to annul the latter decision because of infringement of the relevant provisions of Regulation (EC) No 874/2004. On the other hand, if, by accepting in an earlier case the registrability of a domain name, the Respondent erred in law and, in a later case, comparable to the previous one, the Respondent adopted a contrary decision, the first decision cannot be successfully relied on to support an application for the annulment of the latter decision (see EuG Case T-106/00 ECR 2002 II-723 - STREAMSERVE).

DECISION

For all the foregoing reasons the Panel orders that

the Complaint is Denied

## PANELISTS

| | |
|---|---|
| Name | **Dr. Lambert Grosskopf, LL.M.Eur.** |

DATE OF PANEL DECISION 2007-02-03

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The refusal of the application does not constitutes a breach of the principle by which the Registry is bound by its own decisions to register other domain names because it must be observed, that decisions concerning registration of a domain name which the Registry are called on to take under the Regulation (EC) No 874/2004 are adopted in the exercise of circumscribed powers and are not a matter of discretion.

Accordingly, the legality of the decisions must be assessed solely on the basis of Regulation (EC) No 874/2004 and not on the basis of a previous decision-making practice of the Registry.

If, by accepting, in a previous case, the registrability of a domain name, the Registry correctly applied the relevant provisions of Regulation (EC) No 874/2004 and, in a later case comparable to the previous one, the Registry adopted a contrary decision, the Panel will be required to annul the latter decision because of infringement of the relevant provisions of Regulation (EC) No 874/2004.

On the other hand, if, by accepting in an earlier case the registrability of a domain name, the Registry erred in law and, in a later case, comparable to the previous one, the Registry adopted a contrary decision, the first decision cannot be successfully relied on to support an application for the annulment of the latter decision (see EuG Case T-106/00 ECR 2002 II-723 - STREAMSERVE).