# Panel Decision for dispute CAC-ADREU-003859

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| Case number | CAC-ADREU-003859 |
| Time of filing | 2006-12-21 09:59:03 |
| Domain names | octoplus.eu |

## Case administrator

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| Name | Josef Herian |

## Complainant

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| Organization / Name | Octoplus NV |

## 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

The Panel is not aware of any other legal proceeding, pending or decided, relating to the disputed domain name.

FACTUAL BACKGROUND

On 7 February 2006, the Complainant Octoplus applied for the registration of the domain name <octoplus.eu> on the basis of the trade and company name OCTOPLUS.

As documentary evidence in support of its domain name application, the Complainant sent to the Validation Agent within the given deadline, a certificate of registration with the the Dutch Chamber of Commerce of Rijnland of the company "OctoPlus International Holding B.V.", and relevant articles of association.

Based on the documentary evidence, the Validation Agent found that the Complainant did not demonstrate that it was the holder, or the licensee of a prior right on the name OCTOPLUS. More specifically, the Validation Agent found that:

1) The Complainant did not establish that the company name or the trade name upon which the Complainant based its domain name application were protected under the law of the Netherlands since it did not submit any proof of public use in the course of trade;

2) The company name mentioned as prior right to support the domain name application does not consist of the complete name of the domain name applied for; and

3) The Complainant did not submit official documents showing that it is the same company as the company mentioned in the documentary evidence.

Therefore, the Respondent rejected the domain name application.

A. COMPLAINANT

The Complainant requests the Panel to annul the Respondent's decision and to grant the domain name <octoplus.eu> for the following reasons.

The Complainant uses the name OCTOPLUS since 2 May 1997 as it appears from the certificate of registration with the Dutch Chamber of Commerce of Rijnland of the company OctoPlus N.V., enclosed as Annex 1 to the Complaint. The Complainant further refers to the fact that under Article 1 of the Dutch Company Name Law, "the law considers as a company name those names with which trade is being done". Thus, the Complainant concludes that it is the owner of the company name OCTOPLUS.

The Complainant further points out that, although not included as prior rights in the domain name application, it is the owner of Benelux registration no. 613137 and Community registration no. 1198043 for the trademark OCTOPLUS. Copies of these registrations are enclosed with the Complaint.

The Complainant objects to the fact that it failed to demonstrate that it is the holder of the prior right over the trade and company name OCTOPLUS. It states that on 4 October 2006, the name Octoplus International Holding BV changed into Octoplus NV. Although during the domain name application the "statutionary name" of the company was Octoplus International Holding BV, the relevant and correct company name was Octoplus. In order to support this argument, the Complainant encloses with the Complaint a copy of the certificate of registration with the Chamber of Commerce of the company OctoPlus N.V. (Annex 1), and a copy of the extract of the Chamber of Commerce of Octoplus International Holding BV (Annex 3).

Moreover, the Complainant claims that the name of Octoplus International Holding without any doubt refers to the company Octoplus, taking into account that the terms “International” and “Holding” are considered as common terms in trade. Both companies, Octoplus International Holding BV and Octoplus N.V. have the same address. A plain and simple investigation in compliance with Sections 21.2 and 21.3 of the Sunrise Rules would have proved the validity of the prior rights claimed and would have convinced the Validation Agent thereof. In this respect, the Complainant refers to the Complainant's website , www.octoplus.nl (Annex 4 to the Complaint) and to the earlier ADR decisions Schoeller (No. 253) and CAPRI (No. 396).

B. RESPONDENT

According to the Respondent, the Respondent was right in rejecting the Complainant's application. In the Respondent's view, the Complainant did not clearly and certainly demonstrate that it is the holder of the claimed prior right because:

1) the Complainant did not establish that the company name or the trade name were protected under the law of the Netherlands because it did not submit any proof of public use in the course of trade;

2) the company name does not consist of the complete name of the domain name applied for; and

3) the Complainant did not submit official documents showing that it is the same company as the company mentioned in the documentary evidence.

As far as trade name protection in the Netherlands is concerned, Annex 1 to the Sunrise Rules requires the applicant to submit "documentary evidence as referred to in Section 16(5) of the Sunrise Rules" and adds that "use of the trade name in the course of trade must be demonstrated".

Similarly, as far as company name protection in the Netherlands is concerned, Annex 1 to the Sunrise Rules requires the applicant to submit "documentary evidence as referred to in Section 16(5) of the Sunrise Rules and explains that "use of the company name in the course of trade must be demonstrated (cf trade names)".

Section 16 (5) of the Sunrise Rules states that: "Unless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16(2) respectively 16(3): where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is located):

a. an extract from that official register, mentioning the date on which the trade name was registered; and

b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state); (…)".

The Complainant submitted documentary evidence consisting of a certificate of registration with the Chamber of Commerce in Rijnland for the company "OctoPlus International Holding B.V.".

The burden of proof was with the Complainant to demonstrate that it is the holder of the claimed prior right.

Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration.

Pursuant to Article 14 of the Regulation, the applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on this documentary evidence, the Validation Agent shall examine whether the applicant has prior rights on the name.

It is therefore of crucial importance that the Respondent is provided with all the documentary evidence necessary for it to assess if the applicant is indeed the holder of a prior right. If the Complainant fails to provide adequate documentary evidence, its application must be rejected (see ADR 1886 (GBG)).

The Validation Agent received documentary evidence, which was not sufficient to establish a company name or a trade name protected in the Netherlands.

First, the Complainant's contention that it demonstrated a trade name cannot stand because in order to establish a trade name according to Section 16 (5) of the Sunrise Rules, the Complainant should have provided at least a certificate of registration for the trade name OCTOPLUS (16.5.i) or an affidavit signed by a legal practitioner (16.5.ii). No such documents were provided with the documentary evidence. The documentary evidence received only consisted of a certificate of registration with the Chamber of Commerce in Rijnland for the company "OctoPlus International Holding B.V.".

The Complainant further contends that it provided sufficient documentary evidence to establish a right on the company name on which the domain name application was granted because it submitted a certificate of incorporation as indicated in Section 16 (4.ii.) of the Sunrise Rules. However, Section 16 (4) of the Sunrise Rules is not applicable to company names in all Member States. The laws in the various Members States differ and, therefore, the conditions under which prior rights are recognised or established by national law pursuant to Article 10 (1) of the Regulation also differ.

Annex 1 to the Sunrise Rules takes into consideration the diversity of the laws recognizing or establishing prior rights and provides that, in order to be protected in the Netherlands, "use of the company name in the course of trade must be demonstrated (cf trade names)". Therefore, Annex 1 requires the applicant to submit "documentary evidence as referred to in Section 16(5) of the Sunrise Rules (and not Section 16(4) of the Sunrise Rules)".

Section 16 (5) of the Sunrise Rules states that: "Unless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16(2) respectively 16(3): where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is located):

a. an extract from that official register, mentioning the date on which the trade name was registered; and

b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state); (…)".

The Complainant in this case did not submit any proof of public use of the name prior to the date of application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state).

Therefore, the Validation Agent correctly found that the Complainant did not meet its burden of proof pursuant to Article 14 of the Regulation and the Respondent correctly rejected the Complainant's application (See also ADR 3593 (CENTRIC) and ADR 3563 (ENOVATION)).
Moreover, even if the protection of the company name was established, the Complainant's application should nevertheless have been rejected because the company name does not consist of the complete name of the domain name applied for.

Pursuant to Article 10 (2) of the Regulation, a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based, as written in the documentation, which proves that such a right exists.

Section 19.4 of the Sunrise Rules clarifies this rule, by providing that: "For trade names, company names and business identifiers, 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".

The Complainant submitted documentary evidence substantiating that the company name relied upon as a prior right is " OctoPlus International Holding B.V.". The part of the company names, consisting of "B.V.", refers to the company type and could therefore be omitted from the domain name applied for. However, the part consisting of “International Holding " could not be omitted and should have been included in the domain name applied for pursuant to Article 10.2 of the Regulation and Section 19 of the Sunrise Rules.

Therefore, even if the company name relied upon as a prior right had been correctly demonstrated, it could only have served as a prior right for the name “OctoPlus International Holding”, which is the complete name for which the company name exists, except for the company type.

Therefore, the Respondent correctly rejected the Complainant's application, pursuant to Article 10.2 of the Regulation (See also ADR 2471 (TAIYO-YUDEN), 3593 (CENTRIC) and other decisions).

Finally, the third reason for rejection of the application refers to the unexplained difference between the name of the Complainant and the name mentioned in the documentary evidence.

The Complainant's name is "OCTOPLUS". This is clearly established by the WHOIS database. The company mentioned in the documentary evidence is “OctoPlus International Holding B.V.".

Pursuant to Article 12 (3) of the Regulation, “During the second part of phased registration, the names that can be registered in the first part as well as names based on all other prior rights can be applied for as domain names by holders of prior rights on those names.” Article 14 of the Regulation states that "every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question”.

Section 21.2. of the Sunrise Rules states that "[t]he Validation Agent examines whether the Complainant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules". Section 21.3. of the Sunrise Rules states that "The Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced".

Accordingly, Section 21.3. of the Sunrise Rules does not impose any obligation for the Validation Agent to conduct its own investigation: it is a mere possibility that the Validation Agent can use "in its sole discretion" (see for example ADR 1483 (SUNOCO), ISL (219), 551 (VIVENDI), 2350 (PUBLICARE), and 843 (STARFISH)).

The Validation Agent did not receive documentary evidence establishing that the Complainant was the same company as “OctoPlus International Holding B.V.". This constitutes another valid ground for rejection of the Complainant's application (see also ADR 1299 (4CE), ADR 2881 (MRLODGE), ADR 810 (AHOLD) and others).

Moreover, in the present case, not only the name of the applicant is different from the name mentioned in the documentary evidence, but the documentary evidence does not clearly establish the claimed prior right. The Validation Agent should not, in any case, be expected to correct the documentary evidence itself or be held responsible to gather documentary evidence for the applicant. Providing sufficient documentary evidence must always remain the duty of the applicant, as stated in Article 14 of the Regulation (see ADR 1262 (NATIONALBANK)).

In its complaint, the Complainant also argues that it uses the name OCTOPLUS as a trade name since many years and that it is the holder of trademarks on the name OCTOPLUS. The Complainant also attaches new documents to its complaint, thereby trying to add those documents to the documentary evidence.

Pursuant to Article 14 of the Regulation, the Respondent may only accept, as documentary evidence, documents that the Validation Agent receives within 40 days from the submission of the application for the domain name. This 40 days period ended on 19 March 2006, whereas the Complainant filed its complaint on 20 November 2006.

The new documents enclosed with the complaint may not serve as documentary evidence, since those documents are submitted several months after the end of 40 days period set forth by the Regulation. Accepting these documents or any other documents received after the deadline as documentary evidence would clearly violate the Regulation.

Furthermore, Article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts

with the Regulation. Therefore, the Panel should only consider the documentary evidence that the Respondent was able to examine at the time of validation of the application to assess the validity of the Respondent's decision (see cases ADR 294 (COLT), 954 (GMP), 1549 (EPAGES), 1674 (EBAGS), 2124 (EXPOSIUM), etc. ).

This verification is the only task for the Panel in these proceedings, which may not in any case serve as a “second chance” or an additional round providing applicants an option to remedy their imperfect original application that was rejected during the Sunrise Period (see cases Nr. 551 (VIVENDI) and Nr. 810 (AHOLD)).

The Regulation and the Sunrise Rules give all the holders of prior rights the opportunity to demonstrate their prior rights during the phased registration, which is an exception to the basic principle of first-come first-served. In order to benefit from this opportunity to demonstrate its prior rights, the applicant must comply with the strict procedure laid out by the Regulation to make sure that the applications received during the Sunrise Period are substantiated. The Complainant in the present case did not seize this opportunity, because its application did not correctly fulfil at least three substantial requirements of this procedure. For these reasons, the complaint should be denied.

## DISCUSSION AND FINDINGS

In order to determine whether the Respondent's decision to reject the domain name application conflicts with the applicable Regulations, the Panel shall examine the two following issues:

a) whether the applicant/Complainant filed documentary evidence sufficient to support earlier trade and company name rights; and

b) whether the domain name applied for consists of the complete name for which said trade and company name rights exist according to the documentary evidence filed by the applicant.

The Panel should conclude that the Respondent was right in rejecting the domain name application if any of the two conditions mentioned above is not satisfied. Conversely, should both these conditions be met, the Panel should also examine whether the applicant successfully proved that it is the owner of the prior rights claimed in support of the disputed domain name application.

I. The documentary evidence filed in connection with the <octoplus.eu> application

The applicant filed an application for the registration of the domain name <octoplus.eu> based on a Dutch trade and company name. The applicant submitted as documentary evidence a copy of a certificate of the Chamber of Commerce of Rijnland of the company "OctoPlus International Holding B.V." and relevant articles of association.

At this stage, it is necessary to verify whether the copy of a certificate of the Chamber of Commerce of Rijnland of the company "OctoPlus International Holding B.V." and relevant articles of association supplied as documentary evidence are sufficient to prove the existence of prior trade and/or company name rights as requested by the applicable rules.

The Panel will examine under point II below whether the domain name applied for consists of the complete name for which the trade and company name rights exist according to the documentary evidence filed by the applicant.

Under Section 16 (5) of the Sunrise Rules: "[u]nless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16(2) respectively 16(3):

(i) where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is located):

a. an extract from that official register, mentioning the date on which the trade name was registered; and

b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state); (…)".

As far as trade name protection in the Netherlands is concerned, Annex 1 to the Sunrise Rules requires the applicant to submit "documentary evidence as referred to in Section 16(5) of the Sunrise Rules" and adds that "use of the trade name in the course of trade must be demonstrated".

Under Section 16(4) of the Sunrise Rules: "[u]nless otherwise provided in Annex 1 hereto, it shall be sufficient to submit the following Documentary Evidence for company names referred to in Section 16(1):

(i) an extract from the relevant companies or commercial register;

(ii) a certificate of incorporation or copy of a published notice of the incorporation or change of name of the company in the official journal or government gazette; or

(iii) a signed declaration (e.g. a certificate of goods standing) from an official companies or commercial register, a competent public authority or a notary public.

Such Documentary Evidence must clearly indicate that the name for which the Prior Right is claimed is the official company name or one of the official company names of the Applicant".

Annex 1 to the Sunrise Rules requires the applicant to submit "documentary evidence as referred to in Section 16(5) of the Sunrise Rules" and explains that "use of the company name in the course of trade must be demonstrated (cf trade names)".

It appears from the above that as far as the territory of the Netherlands is concerned, the documentary evidence to be filed in connection with company name rights is the same as the one to be filed in connection with trade names.

The applicant filed an extract from the Chamber of Commerce of Rijnland, but failed to provide any proof of public use of the trade/company name prior to the date of the domain name application through, for instance, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name is mentioned etc., as requested by Section 16(5) b. of the Sunrise Rules.

In its complaint, the Complainant merely asserts that "Complainant uses the name Octoplus since May 2, 1997", and refers to the extract of the company Octoplus N.V. supplied as Annex 1 to the Complaint. This assertion does not comply with the requirement of Section 16(5) b. of the Sunrise Rules, as it does not prove any use of the trade and/or company name Octoplus inteh course of trade.

Moreover, according to Article 22 (11) of the Regulation, the only duty of the Panel in this ADR proceeding, is to examine whether the challenged decision conflicts with the applicable regulations. Under Article 14 of the Regulation, any application received during the phased registration shall be supported by documentary evidence showing that the applicant is the holder of the prior right claimed on the name in question. The applicant shall submit the evidence to the validation agent within forty days from the submission of the domain name application. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected.

It results from the above that only the documents supplied as documentary evidence within forty days as of the filing of the domain name application shall be taken into consideration in order to assess whether the applicant is entitled to the requested domain name. Any other document supplied at a later stage shall be disregarded. The Panel is not entitled to validate the Complainant's application on the basis of documents filed at a later stage.

In the light of the foregoing, the Panel concludes that the applicant failed to demonstrate that it is the holder of the claimed trade and/or company name prior rights. This circumstance is already sufficient to reject the Complaint's assertions and to confirm the Respondent's decision to reject the domain name application. However, for the sake of completeness, the Panel will also examine the second issue mentioned above.

II. The compliance with Article 10(2) of the Regulation

According to Article 10 (2) of the Regulation, "[t]he 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".

In other words, but for the exception mentioned below, the prior rights cited as a basis of the disputed domain name application as appearing in the documentary evidence and the domain name applied for should match exactly. If there is a discrepancy between the trade/company name cited as a basis of the domain name application and the domain name, the application should be rejected.

In the case at issue the applicant filed evidence referring to the company OctoPlus International Holding B.V., while the domain name

applied for is <octoplus.eu>. It is apparent that there is no coincidence between the two names.

The Complainant tries to overcome this issue by alleging that "although during the application the statutionary name of the company was OctoPlus International Holding B.V., the relevant and correct name of the company was Octoplus". In order to support this argument, the Complainant refers to the documents filed under Annexes 1 and 3 to the Complaint.

The Panel already mentioned that any document not included within the documentary evidence, shall not be taken into consideration for the reasons explained above. The mere assertion that the correct name of the company is Octoplus, rather than OctoPlus International Holding B.V., is irrelevant and groundless.

The Complainant adds that on 4 October 2006 OctoPlus International Holding B.V. changed its name into Octoplus B.V.. However, also this circumstance is irrelevant, since the change of name occurred after the filing of the domain name application and submission of the documentary evidence.

Finally, the Complainant argues that the company name OctoPlus International Holding B.V. should have been considered capable of supporting the registration of the domain name <octoplus.eu> because the terms "International " and "Holding" are considered common in the course of trade.

The Panel does not share this view. According to Section 19(5) of the Sunrise Rules, "[f]or trade names, company names and business identifiers, 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". Nowhere else are there provisions stating that other elements of company or trade names may be disregarded at the time of the registration of a domain name during the second phased registration period. Therefore, as far as company and trade names are concerned, the only exception to the general rule of Article 10(2) of the Regulation 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", is that of Section 19(5) of the Sunrise Rules, mentioned above.

In the company name "OctoPlus International Holding B.V.", the terms "International" and "Holding" do not designate the type of company. Only the initials "B.V." do. Accordingly, the terms "International" and "Holding" cannot be disregarded for the purpose of Article 10(2) of the Regulation.

The Complainant also claims to own prior rights over the trademark OCTOPLUS and to this aim encloses as Annex 2 to the Complaint a copy of the Benelux and Community trademark registrations. As mentioned above, the Panel cannot take into consideration these additional documents as the OCTOPLUS trademarks were not among the prior rights cited as a basis of the domain name application. Accepting to examine these additional documents and perhaps to annul the Respondent's decision to reject the domain name application on the basis of these trademark registrations would be equivalent to grant a second chance to the Complainant, permitting him to correct the mistakes made at the time of the filing of the application and documentary evidence. This would clearly fall outside the scope of the phased registration, which grants the holder of prior rights the opportunity to register domain names in advance provided they comply with the specific requirements set forth by the applicable regulations. As already stated, the scope of this ADR proceeding is to assess whether the Registry/Respondent's decision is in contrast with the applicable regulations, not to allow a second chance to the Complainant for the registration of the rejected domain name application.

Finally, the Panel cannot share the Complainant's assertion that the Validation Agent should have conducted investigations as to the fact that the applicant owned earlier rights over the name Octoplus.

According to Section 21(2) of the Sunrise Rules, "[t]he Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (...)". Section 21(3) of the Sunrise Rules further state that "[t]he Validation Agent is not obliged, but is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced".

Thus, as the Respondent correctly points out, the Validation Agent is under no obligation, but is only permitted to conduct its own investigations into the circumstances of the application and the contents of the documentary evidence. Stating the contrary would mean that through his personal investigations the Validation Agent should correct the applicants' mistakes in their domain name applications, which clearly goes beyond the Validation Agent's powers and outside the scope of the phased registration period outlined above.

The Complainant cites two case law precedent in its favour, namely the ADR decisions Schoeller (No. 253) and Capri (No. 396). The Panel shares the fact that the Validation Agent is not exempted from the requirement to act reasonably as the extent of the discretion

granted to the Validation Agent implies a higher standard of care and reasonableness, as expressed by the Panel in the Schoeller decision. Nevertheless, in the case at issue the task requested to the Validation Agent went far beyond the requirement to "act reasonably", as the Validation Agent should not have merely checked a discrepancy between the applicant's address and the address shown in the documentary evidence. In the case at issue the Validation Agent should have checked whether the company called OctoPlus International Holding B.V. was in fact named Octoplus per se, and whether Octoplus was a trade/company name used in the course of trade. It goes without saying that the Validation Agent would have had great difficulties in accomplishing this task. Should the Validation Agent have conducted this kind of investigation it would have certainly exceeded its powers, impaired the right of other applicants to be treated equally, and contravened the contents of Article 14 of the Regulation, which places the onus of proving the existence of prior rights over the claimed domain name exclusively on the applicant.

For all the reasons mentioned above, even if the documentary evidence supplied had been considered sufficient to prove the existence of prior trade and/or company name rights, the domain name requested would not have consisted in the complete name for which the prior right exists, as written in the documentation which proves that such a right exists.

Therefore, also for this reason the Respondent was right in rejecting the application for the domain name <octoplus.eu>

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 | **Angelica Lodigiani** |

DATE OF PANEL DECISION 2007-03-11

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

On 7 February 2006, the Complainant Octoplus applied for the registration of the domain name <octoplus.eu> on the basis of the trade and company name OCTOPLUS.

As documentary evidence in support of its domain name application, the Complainant sent to the Validation Agent within the given deadline, a certificate of registration with the the Dutch Chamber of Commerce of Rijnland of the company "OctoPlus International Holding B.V." and relevant articles of association.

Based on the documentary evidence, the Validation Agent found that the Complainant did not demonstrate that it was the holder, or the licensee of a prior right on the name OCTOPLUS. Therefore, the Respondent rejected the domain name application.

The Panel deems that: (i) the Complainant did not establish that the company name or the trade name upon which the Complainant based its domain name application were protected under the law of the Netherlands since it did not submit any proof of public use in the course of trade; and (ii) the company name mentioned as prior right to support the domain name application does not consist of the complete name of the domain name applied for.

According to the Panel the new evidence supplied along with the Complaint cannot be taken into consideration, nor the Validation Agent had any obligation to investigate the prior rights mentioned as the basis of the domain name application.

For all these reasons the Panel dismisses the Complaint.