Panel Decision for dispute CAC-ADREU-003881

Case number	**CAC-ADREU-003881**
Time of filing	**2006-12-28 11:34:47**
Domain names	**controlsolutions.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Control Solutions International, Mr. Justin Morrow**

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 unaware of any such proceedings.

FACTUAL BACKGROUND

The Complainant submitted the application for registration (hereinafter the “Application”) of the .eu domain name CONTROLSOLUTIONS (hereinafter the “Domain Name”) on 27 February 2006. The Application ranked no. 1 and no other applications for registration of the Domain Name were filed in Sunrise 1 or Sunrise 2.

The Application was based on company name / trade name / business identifier type of prior right within the meaning of Article 10 (1) of the Commission Regulation (EC) No. 874/2004 (hereinafter “Public Policy Rules”).

The deadline for filing the documentary evidence pursuant to Article 14 of Public Policy Rules was 8 April 2006 and the Complainant submitted documentary evidence on 27 March 2006 and thus within the said deadline. The documentary evidence consisted of extract from the database of the Office for Harmonization in the Internal Market (OHIM) concerning Community word trademark “CONTROL SOLUTIONS” reg. no. 003024833.

By its decision dated 16 October 2006 (hereinafter the “Decision”) the Respondent rejected the Application because the Complainant is a corporation established in the United States of America and therefore the Complainant does not meet the general eligibility requirements stipulated by Article 4 (2)(b) of the Regulation (EC) No 733/2002 (hereinafter the “Regulation 733/2002”).

On 22 November 2006 and thus within Sunrise Appeal Period as defined by Sunrise Rules the Complainant filed the complaint against the Decision, (hereinafter the “Complaint”) seeking annulment of the Decision or, alternatively, the opportunity to amend the Application to list its registered office in France.

The Respondent submitted its response to the Complaint on 14 February 2007 (hereinafter the “Response”) and thus within the deadline as stipulated by Paragraph B3 (a) of the ADR Rules.

A. COMPLAINANT

The Complainant contends the following:

(a) General eligibility requirements set forth by Article 4 (2)(b) of the Regulation 733/2002 conflict with the Article 10 (1) of Public Policy Rules stating that holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration. Moreover, general eligibility requirements conflict with Article 5

of Council Regulation (EC) No. 40/94 on the Community trade mark stating that any natural or legal person, including established under public law, may be the proprietor of a Community trademark. As a result of this conflict the holders of a Community trademark with non-European addresses are deprived from registration of .eu domain names and therefore cannot fully benefit from their Community trademarks.

(b) The Complainant is a wholly owned subsidiary of a French company, Altran Technologies S.A. Thus, the registration and use of the "CONTROL SOLUTIONS" trademark inures to the benefit of Altran Technologies S.A. as the parent company of the Complainant and the requirements of Article 4 (2)(b) of Regulation 733/2002 are satisfied by Altran Technologies S.A. having a principal place of business within the Community.

(c) Complainant also has a registered office in Paris, France that satisfies the requirements of Article 4 (2)(b) of the Regulation 733/2002.

B. RESPONDENT

The Respondent contends the following:

(i) The Complainant is not eligible to apply for .eu domain names because the Complainant is a company established in the United States of America and therefore does not meet the general eligibility requirements set forth by Article 4 (2)(b) of the Regulation 733/2002. This fact is also confirmed by the address mentioned on the extract from the OHIM database concerning the trademark "CONTROL SOLUTIONS" provided by the Complainant as documentary evidence and, at the same time, the documentary evidence did not demonstrate that the Complainant has its registered office, central administration or principal place of business within the Community. The same conclusion can be made on the basis of the Complainant's website. In support of this argument the Complainant refers to previous ADR decisions no. and 370 (KANE), 1674 (EBAGS), and 3361 (MOR, MORCOSMETICS).

(ii) The Respondent sees no contradiction between the Regulation (EC) No. 40/94 on the Community trade mark and the Regulation 733/2002. Each of the said regulations serves different purpose, the former regulates the attribution of Community trademarks and the latter sets the framework for the attribution of .EU domain names. From the mere fact that an entity domiciled outside of the EU is allowed to register a Community trademark it cannot be concluded that such entity should automatically be allowed to register an .eu domain name.

(iii) The ADR proceedings may not be used to amend the Complainant's application. Such principle has been established by a number of previous ADR decisions namely in ADR cases no. 551 (VIVENDI), 810 (AHOLD), 1194 (INSURESUPERMARKET) and 1262 (NATIONALBANK) and therefore the Complainant's contentions regarding its parent company meeting the general eligibility requirement or its registered office in France which were made for the first time in the course of these ADR proceedings cannot be taken into account by the Panel.

For the foregoing reasons the Respondent seeks the denial of the Complaint.

DISCUSSION AND FINDINGS

The Panel is with the Respondent.

As it ensues from Article 4 (2)(b) of the Regulation 733/2002 only undertakings having a registered office, central administration or principal place of business within the Community are eligible for .eu domain name registration.

In the Application, the Complainant has stated an address in Spain, however, from the extract from OHIM database submitted by the Complainant as documentary evidence as well as from the Complaint itself it ensues that the Complainant is in fact a U.S. entity. The same conclusion can be made on the basis of the Complainant's website (http://www.controlsolutions.com) and on the basis of the extracts from the annual reports of Complainant's parent company (Annex F to the Complaint, page 28). Therefore, the Plaintiff concurs with the Respondent that the Complainant is a U.S. entity and therefore it does not meet the general eligibility requirements for registration of .eu domain name as set forth by Article 4 (2)(b) of the Regulation 733/2002.

The Panel concurs with the Respondent that there is no contradiction between the Regulation (EC) No. 40/94 on the Community trade mark and the Regulation 733/2002. While the former regulates the attribution of Community trademarks the latter sets the framework for the attribution of .eu domain names. Therefore neither of the said Regulations is violated if the owner of Community trade mark is not permitted to register .eu domain name due to non-compliance with the general eligibility requirements. The Panel further adds that the Complainant's interpretation of Article 10 (1) of the Public Policy Rules is incorrect. The provision of the said Article must be interpreted

in the way that only holders of the prior rights who, at the same time, satisfy the general eligibility requirements set forth by Article 4 (2) (b) of the Regulation 733/2002 are eligible for .eu domain name registration in the Sunrise Period.

The Panel also agrees with the Respondent that the Complainant's assertions regarding its registered office in France or meeting the general eligibility requirements through its parent company which were made for the first time in these ADR proceedings cannot be taken into account by the Panel. It has been well established by the Panels in several previous ADR cases that the ADR proceedings are not designed for correction of errors made in the Application and the Panel in the case at hand does not see any reason to depart from this principle. However, for the sake of completeness the Panel also adds that it would certainly not be possible for the Complainant to fulfill the general eligibility requirements through its parent company. With regard to Complainant's assertion as to its registered office in France the Panel would like to emphasize that the term "registered office" used in Article 4 (2)(b) of the Regulation 733/2002 cannot be interpreted in the way that it means any office or business representation of the Complainant. In the opinion of the Panel, the term "registered office" actually means an official corporate seat of the Complainant. The Panel is aware that the terms "registered office" or "official corporate seat" may have different interpretation in different legal systems. However, in the case at hand it clearly ensues from the available evidence that the Complainant is a corporation domiciled in the United States of America and the Complainant has not submitted any evidence demonstrating that the Complainant has a registered office in France. Therefore, even if such assertion could be taken into account in these ADR proceedings the Panel would not accept it without further substantiation.

The Panel is also of the view that the Application could not stand even if the Complainant met the general eligibility requirements. The Complainant has applied for the Domain Name on the basis of company name / trade name / business identifier type of prior right. According to Section 10 (2) of the Public Policy Rules the domain name registration on the basis of a prior right shall consist of the registration of the complete name for which the prior rights exists. In the case at hand the Complainant's complete name is Control Solutions International, however the Complainant applied for the domain name controlsolutions.eu. Therefore, the Respondent would have to conclude that the Complainant does not have the asserted prior right with respect to the Domain Name. In addition to that the Complainant did not submit any documentary evidence for a company name / trade name / business identifier prior right as required by Section 16 of the Sunrise Rules. Instead the Complainant submitted the registration certificate for the trademark, however, the prior right based on the trademark was not asserted by the Complainant in the Application. As a result, the Respondent would have to reject the Application for non-compliance with Public Policy Rules and Sunrise Rules.

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	**Michal Matejka**

DATE OF PANEL DECISION 2007-03-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, a U.S. entity, applied for the domain name controlsolutions.eu. The Registry rejected the Complainant's application because the Complainant did not meet the general eligibility requirements for .eu domain name registration set forth by Article 4 (2)(b) of the Regulation (EC) No. 733/2002. The Panel held that such decision of the Registry was in compliance with the said Regulation and Public Policy Rules.

The Panel also found out that the application for the aforesaid domain name would in any case have to be rejected by the Registry, as the domain name applied for did not consist of the complete name for which the asserted prior right existed. The Complainant did not sufficiently document the asserted prior right either.

Therefore, the Panel denied the complaint.