Panel Decision for dispute CAC-ADREU-004204

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Domain names	92.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Département des Hauts de Seine

Respondent

Organization / Name	Tempus Enterprises Ltd., Fletcher Kennedy

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 Complainant initiated ADR proceeding 3928 against EURid, to be provided with the documentary evidence sent by the Respondent to the validation agent during the sunrise period. The Complainant then decided to terminate said ADR proceeding and to initiate another one against the domain name holder.

FACTUAL BACKGROUND

1. ALLOCATION OF THE DISPUTED DOMAIN NAME

1.1. The Département des Hauts de Seine ("the Complainant" - Panel's remark: The official designation is "département des Hauts-de-Seine") applied for the domain name 92.eu on April 6, 2006. EURid rejected this application, on the grounds that the name had previously been allocated to Tempus Enterprises Ltd ("the Respondent"), which had applied for it on February 7, 2006.

1.2. The Complainant initiated the ADR proceeding number 3928 against EURid before the ADR Center for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic ("the Court"), which it abandoned subsequently to the disclosure of the documentary evidence on the basis of which the name had been granted to the Respondent.

2. HISTORY OF THE ADR PROCEEDING

2.1. The Complainant launched this ADR proceeding, which formally commenced on March 26, 2007. Pursuant to Article A 4 (b) of the ADR Rules, the Complainant twice requested that the proceeding be suspended: Until June 4, 2007, first, and then until September 30. The Court accepted the first request, and granted a suspension until June 4, 2007. The term for submitting the Response expired on June 20, 2007.

2.2. The Respondent communicated several times with the Court, but did not submit a response. On June 21, the Respondent was properly notified of its default.

2.3. On June 27, 2007, this Panel was duly appointed.

A. COMPLAINANT

3. The Complainant contends as follows (annexes are not cited in the excerpts of the contentions reproduced below; Names of individuals who are not parties to this case are anonymized):

3.0. Through its first proceedings, the Complainant learnt that the Respondent grounded its application for the domain name “92.eu” on a prior right on “9?2”, protected under Estonian Law as a title of Art.
To the Complainant, “[t]he disclosure of the documentary evidence revealed that “9?2” was presented as the title of a poem created by Marta K[…] on January 24, 2006 and on which the author rights were transferred to the Respondent on January 22, 2006 (sic). This poem was published among numerous others mostly created by the same Marta K[…] on a national paper, the Baltic Times, on February 2, 2006 and on the website www.estonianpoems.co.ee. An Estonian lawyer provided an affidavit stating that the poem and its title were protected under Estonian law on February 17, 2006.”
After examining the documentary evidence, the Complainant chose to terminate its ADR proceeding against EURid and to initiate another complaint against the Respondent.

3.1. The Complainant requests the transfer of the domain name 92.eu to it, contending that Article 21.1 of EC Regulation 874/2004 applies for the following reasons.

3.1.1. IDENTITY OF THE DOMAIN NAME 92 WITH A NAME IN RESPECT OF WHICH THE COMPLAINANT HAS A RIGHT RECOGNISED OR ESTABLISHED BY NATIONAL AND/OR COMMUNITY LAW
“Article 10.1 of Commission Regulation (EC) n°874/2004 of 28 April 2004 provides that public bodies shall be eligible to apply to register domain names during the Sunrise Period and defines “public bodies” as follows: “‘Public bodies’ shall include: institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organisations and bodies governed by public law, and international and intergovernmental organisations”. Article 10.3 also specifies that: “Public bodies that are responsible for governing a particular geographic territory may also register the complete name of the territory for which they are responsible, and the name under which the territory is commonly known”.
The Complainant is an authority governed by public law and is responsible for governing a particular geographic territory, i.e. the Département des Hauts de Seine. The Complainant includes the general council (Conseil général) which is, according to Article L 3211-1 of the general code of local communities, the organ which “settles the matters of the department through deliberations”. It is not a separate body from the Complainant.
The Complainant is a public body as defined by Article 10 of Commission Regulation (EC) n°874/2004 of 28 April 2004. The Département des Hauts de Seine was created by the Law and is identified among the 100 main administrative divisions of France under number 92.
The number 92 is commonly used to designate the Département des Hauts de Seine by the Complainant himself and by the public. This common use is illustrated by various uses, for instance on car number plates or on Google.fr.
The main results provided by Google search engine on the query on “92” direct indeed to websites relating to the Département des Hauts de Seine. The first result given is a link to the Complainant’s website. The other results are links to websites of companies, organisations, associations which are located in the Département des Hauts de Seine (in cities like Nanterre or La Défense). To designate the Département des Hauts de Seine, the number 92 is used alone or as a name (“the 92”).
The Complainant communicates under number “92”. It has created a specific logo in this sole purpose. This number/logo is mentioned on its headed paper – used for instance for 92.eu application – and on its website www.hauts-de-seine.net.
The Complainant uses the number 92 in association with other names to inform the public that it is at the origin of the product or service offered to the public under this name. The Complainant is indeed the owner of three French trademarks including the number 92: 92 INITIATIVE, 92 ENTREPRENDRE and CG 92.
The Complainant also publishes two free newspapers: THE 92 [actually, LE 92], a monthly paper providing general information on the department, and 92 EXPRESS, a paper dedicated more specifically to culture and [leisure] in the department. These papers mention the number 92 on their titles in front page and, in their inside pages, on each column title (“92 zoom”, “92 reactions”, “92 in brief”, “92 useful”,…).
The number 92 is used for car registration in the Département des Hauts de Seine. Cars with a Hauts de Seine registration number have a number plate including the number 92 at the end, as for instance 2007 AB 92 (numbers XXXXX letters XXX number of the Département XX).
Companies offering their services in the Département des Hauts de Seine inform the public that their activity concerns the geographic territory governed by the Complainant and commonly known under the name 92, by using this only number. They may also add this number to their own name. Extracts of websites have been annexed to the Complaint so as to demonstrate this use:
- the estate agency REPimmo uses the number 92 on its website to identify houses and flats to sell, buy or rent in the Département des Hauts de Seine, by links on “Acheter 92” (buy 92) “vendre 92” (for sale 92);
- the website www.actualites92.com is dedicated to news connected with the Département des Hauts de Seine, as it uses the domain name “actualites94.com” for Val de Marne , or “actualites93.com” for Seine Saint Denis.
At last, the departmental documentation centre of the Hauts de Seine, independent from the Complainant, issues a newspaper entitled Moniteur 92 dedicated to information and communication technologies.
Community law and precisely Article 10.3 of Commission Regulation (EC) n°874/2004 of 28 April 2004 provides the registration by a

public body governing a particular geographic territory of the “name under which the territory is commonly known”. The Complainant is responsible for governing a particular geographic territory, i.e. the Département des Hauts de Seine, which is commonly known under the number 92.
The domain name 92 is identical to the number/name 92 on which the Complainant has a right recognised or established by national and/ or Community law.”

3.1.2. THE DOMAIN NAME 92 HAS BEEN REGISTERED BY THE RESPONDENT WITHOUT RIGHTS OR LEGITIMATE INTEREST IN THE NAME
“Article 21.1 a) of Commission Regulation (EC) n°874/2004 of 28 April 2004 provides that a registered domain name shall be revoked when it “has been registered by its holder without rights or legitimate interest in the name”.
The Respondent has applied for the domain name 92 on February 7, 2006 on the ground of a prior right on “9?2” as a title of a poem created by Ms. Marta K[…] on January 24, 2006. The poem was created just before the beginning of the second step of the Sunrise.
The Respondent provided documents to justify its right. The validation agent, who had only to proceed to a formal control of the documents so as to check the appearance of the right claimed, considered them sufficient.
The right claimed on the title “9?2” is not justified under Estonian Law and the Respondent has no legitimate right. Paragraph 4 (5) of the Estonian Copyright Act provides that the original title of a work is subject to protection on an equal basis with the work. Pursuant to Paragraph 4 (2) of the Estonian Copyright Act, one of the conditions for the work to benefit from the copyright protection is to be original. It results that a title of a work may be protected by the Estonian Law in particular
when:
- the creation which bears the title is original;
- the title is also original.
The poem entitled “9?2” reads as follows:

“Cod tongues, cod cheeks and cod loins
Were all on the menu.
They were deep fried and
Served with French fries”.

It is composed with only four lines, which do not rhyme or have any rhythm. It is a mere description of a menu. The appearance of the poem essentially derives from the text layout. This so-called poem do not meet the criteria of originality, as stated by an Estonian lawyer. The originality of the title in itself, which also conditions its protection by Estonian Law, may also be challenged as it is composed of two numbers and a question mark, that is to say of data. Under Estonian Law, data must be of free use and can not be subject of copyright protection. Nor the poem, neither its title are original and can be protected by copyright under Estonian Law. In these conditions, the Respondent can not have been transferred any author rights.
The Panel will also notice that the assignment of the copyright is dated January 22, 2006, whereas the poem is dated January 24, 2006. The affidavit was signed afterwards, on February 17, 2006, in a place which name is illegible (Toronto ?), with a witness domiciled in Canada (Ontario).
The Respondent had no legitimate right, on the name “9?2”, on the day of its application for the domain name 92.
The Respondent had no legitimate interest either on the name 92.
The Respondent has been incorporated in the United Kingdom on July 19, 2005, that is to say a few months before the beginning of the Sunrise Period and before its application for the domain name, so as to comply with the eligibility criteria. The Respondent seems to be a mere shell company as it has not provided any accounts to the Companies House and [does] not use the domain name tempusenterprises.com. It has neither answer[ed] to a complaint in a former ADR proceeding.
Its company name is Tempus Enterprises Ltd; it is not known under the name 9?2 or 92. The Respondent does not use the name 9?2 or 92.
The Respondent has no legitimate interest in the name 92.”

3.1.3. THE DOMAIN NAME 92 HAS BEEN REGISTERED BY THE RESPONDENT IN BAD FAITH
“Article 21 3. of Commission Regulation (EC) n°874/2004 of 28 April 2004 provides a non exhaustive list of clues of bad faith and in particular when: “(b) the domain name has been registered in order to prevent the holder of such a name (…) from reflecting this name in a corresponding domain name provided that: (i) a pattern of such conduct by the registrant can be demonstrated; (…)”.The Respondent did register the domain name so as to prevent prior rights holders on the name 92 to register the domain name 92.
The real existence of the Respondent is in itself doubtful. The name of the registrant, Mr. Fletcher Kennedy, corresponds to a company, Fletcher Kennedy Limited, speciali[zing] in company incorporation and domiciled at the same address as the Respondent’s. No accounts have been communicated to the UK Companies House more than one year after the incorporation date of July 19, 2005 and there is currently a proposal to strike off the company.
The Respondent’s domain name “tempusenterprises.com” is inactive.

It seems that the incorporation of the Respondent, a few months earlier, has also been done in the sole purpose of the .eu domain name registrations, so as to meet the eligibility criteria defined in Article 2 of Commission Regulation (EC) n°874/2004 of 28 April 2004 and proceed to numerous domain name registrations by bypassing the Sunrise rules.
The Respondent is already known by the Czech Arbitration Court. It has been the object of ADR case number 02781. In this case, the Respondent had registered the domain name koeln2010 and the Panel ordered its transfer to the Complainant, the city of Koeln, since it acknowledged that the Respondent had no legitimate interest in the name and had registered the domain name in bad faith.
In the present case, the Respondent applied for the domain name 92 on the first day of the second Sunrise period on the basis of a prior right born a few days earlier, since the poem "9?2" was created on January 24, 2006 and the author rights – inexistent as it has been demonstrated – are supposed to have been transferred to the Respondent on January 22, 2006 (sic).
The Respondent used a special character, in this case a question mark, in the name of the prior right invoked so as to obtain the domain name 92 according to Article 11 of Commission Regulation (EC) n°874/2004 of 28 April 2004. The recourse to special characters for abusive domain name registration has already been identified by the Arbitration Court (Cases LIVE ADR 00265, Barcelona ADR 00398). In the present case, the Complainant chose a special character that could be hardly rewritten. The two other solutions were to eliminate it or to replace it with hyphens (Article 11 of Commission Regulation (EC) n°874/2004 of 28 April 2004).
It diverted the Sunrise period from its purpose, i.e. to protect prior rights holders, by having recourse to a stratagem that gave the appearance of a prior right. The Respondent has massively used this stratagem to register domain names composed of numbers on the ground of titles of art prior rights under the Estonian Law. It has thus registered "23.eu", "94.eu", "56.eu" and "71.eu" invoking respectively rights on the following titles of art under Estonian Law: "2?3", "94*", "5*6" and "71?".
Evidence of this pattern of conduct results from the documentary evidence provided in the framework of 92 domain name application.
The publication of the poem "9?2" in the Baltic Times, an Estonian newspaper, has been done with various others which have in common the odd nature of their title – and in particular the presence of a special character – and texts, and for the most, their author and date of creation. It must be stressed that these "poems" have been published in the advertising pages of the newspaper. The Baltic Times did not [publish] them for their artistic value.
The publication on the website www.estonianpoems.co.ee to which the documentary evidence provided by the Respondent refers reveals the extent of the Respondent's behaviour. Not least than 415 "poems" with titles including a special character like "S*hows", "clonin?g", "breasts@urgery" or "pornfilms*" created by Ms. Marta K[…] or Ms. Erika K[…] have been created between January 19 and January 24, 2006.
It is indisputable that these texts have been created and published for the sole purpose of .eu domain name registrations during the Sunrise period. The above mentioned poem titles have been indeed claimed as prior rights by the Respondent to register the corresponding domain names during Sunrise 2.
In the REIFEN case (ADR 00910), where it has been justified that the Complainant had "registered over 100 German generic terms as trademarks in using repeatedly the special character &", it has been decided that "the Respondent has followed a pattern of bad faith registration". In the RESTAURANT case (ADR 00597), the Respondent had registered "more than 280 expedite word trademarks, all generic terms". The panel observed that the registrations "were filed for well considered specific classes because the terms are not descriptive of this type of goods, this clearly in order to avoid a refusal of the trademarks because of lacking distinctive nature" and that it had "used the expedite trademarks as prior rights which would entitle him to the corresponding domain names". In [both of these] cases of massive registration of trademarks used as prior rights during the sunrise period, the domain name has been transferred to the Complainant, for registration in bad faith.

3.2. "The domain name 92 registered by the Respondent is identical to the name 92 on which the Complainant has prior rights as a public body responsible of the governing of the Département des Hauts de Seine, commonly known under the number 92.
This domain name has been registered by the Respondent without rights of legitimate interest and in bad faith. The Complainant asks the Panel to order the transfer of the domain name 92 to its benefit" [sic].

B. RESPONDENT

4. The Respondent did not submit a response.

DISCUSSION AND FINDINGS

Pursuant to Article B 10 (a) of the ADR Rules, the Panel may consider an absence of response as an acceptance of the Complaint. Although no response was filed, the Panel will nevertheless examine whether EC Regulation 874/2004 applies to the case, and prior to this whether the pieces of evidence brought by the Complainant are admissible.

5. ADMISSIBILITY OF EVIDENCE

5.1. The Complainant attached 30 annexes to its Complaint.
The Complainant copied and pasted into Microsoft Word files:

- Excerpts from a July 10, 1964 French law and the General Code of Local Communities (Annexes 3 and 5)
- Two Wikipedia articles (Annexes 4 and 26)
- Copies of previous decisions from this Court (Annexes 15, 16, 17, 20 and 24)
- Search results from Google (Annex 6)
- Screenshots, or extracts of contents, of websites run by third parties (Annexes 7, 8, 9, 10, 14, 21, 22 and 23)
- Search results made in the .eu Whois (Annexes 18 and 19)
- An article from the BBC News website (Annex 27)
- Search results from IciMarques, the online version of the French trademark registry (Annex 28)

5.2. The fact that the Complainant copied text into MS Word documents is problematic. Such documents can be edited very easily. This is also true of screenshots, which can be edited too.
The Panel cannot be sure that all the documents are accurate, except for the French statutes (Annexes 3 and 5) – as the Panel may check whether the submitted files correctly reflect French Law – and for the ADR decisions (Annexes 15, 16, 17, 20 and 24) – as the Panel may refer to the official version of these decisions, or compare with annexes thereto.

5.3. The Panel could have checked whether the Wikipedia articles copied in Annexes 4 and 26 are the exact copy of the online version. But collaborative websites with permissive edits have little probative value. "[A]nyone can alter the content of Wikipedia at any time, casting doubt on the validity of the information contained therein", the International Trademark Association wrote in a June 23, 2006 letter (published at shapeblog.com/Beresford Wikipedia.pdf).
A Wikipedia article cannot be seen as reliable information in proceedings, as it can be manipulated before the proceedings, to serve the interests of a party (see, for an example a harsh criticism of the reliance on Wikipedia articles, in a decision of the U.S. Court of Federal Claims: Campbell v. Secretary of Health and Human Services, 69 Fed.Cl. 775, No. 02-554 V, February 14, 2006).

5.4. Anyhow, the Panel is not obliged to check whether the content copied in the annexes cited above is correct (see ADR Rules, B 7 (a)). Would it want to do so, it would not necessarily find this content online. Websites happen to be inaccessible, and pages may have expired permanently.
Would it want to do so, it would not necessarily find the same content online. There are websites which home page, or content, depends on the IP address of the internet users who visit them. As IP addresses usually depend on a physical location, the users may find customized pages which are written in the language spoken in the country they are based in, or content suitable to their needs.
The Panel expressly refers to a recent judgment of the EC court of first instance, in which the court found it was not able to review the validity of a decision based on “internet links which [were] inaccessible at the time of the Court’s investigation of the case”, or on “accessible links whose content has changed or might have changed” since that decision (February 7, 2007, case T-317/05, Kustom Musical Amplification, Inc. v. Office for Harmonisation in the Internal Market, at § 58 and 59).

5.5. Content change matters are particularly relevant as regards search results. In Annex 6, Complainant copied the first 30 results returned by Google after a search on “92”. When searching on Google, display order of the results may vary depending on the version used (searches made on google.de and google.co.uk, for example, may either produce different results, or results displayed in a different order), possibly on the IP address, on the preferences (if any) saved by the user, and maybe other parameters.

5.6. The Panel also points out that it is unable to check with accuracy the date the content was copied in the documents. The date may be of relevance when it comes to examining whether legal conditions are met to order the transfer of the name sought by the Complainant.

5.7. Nevertheless, Complainant warranted that all information provided was complete and accurate, pursuant to article B 1 (b) (15) of the ADR Rules. Although the Complainant gave such warranty, the Panel is still empowered to examining the evidence. Pursuant to article B 7 (d) of the ADR Rules, “the Panel shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence”. There is no contradiction between these two provisions.

5.8. The fact that Complainant gave such a warranty does not transform the above cited annexes into useful or relevant evidence, for the reasons explained above. The Panel will refer to some of these weak annexes, but the more they are questionable, the more the Panel will regard them with circumspection.

6. DOES THE COMPLAINANT HAVE RIGHTS ON THE SIGN 92?

Under Article 21.1 of EC Regulation 874/2004, “[a] registered domain name shall be subject to revocation (…) where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1)”, and where it “has been registered by its holder without rights or legitimate interest in the

name" or "has been registered or is being used in bad faith".
Before examining the issue of identity or confusion, the Panel must find first whether the Complainant has a right on the sign 92, and then whether said right is recognised or established by French law or Community law.

6.1. Territorial communities of the French State are referred to in article 72 of the French Constitution. Pursuant to this article, these Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level. In the conditions provided for by statute, these communities shall be self-governing through elected councils and shall have power to make regulations for matters coming within their jurisdiction.
"Départements" (administrative regions) are at the second level of territorial communities. The Complainant is one of these Départements. Without any doubt, the Complainant is a public body under article 10.1 of EC Regulation 874/2004, which defines them as "institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organisations and bodies governed by public law, and international and intergovernmental organisations".

6.2. During the period of phased registration described in article 10, public bodies were able to register "the complete name of the public body or the acronym that is generally used", and public bodies that are responsible for governing a particular geographic territory could also register "the complete name of the territory for which they are responsible, and the name under which the territory is commonly known".
The Panel emphasizes that this was only an option, which was provided for during the sole period of phased registration. This provision distinguishes between "holder of prior rights" and "public bodies", and does not grant to public bodies any right on "the name under which the territory is commonly known".
Public bodies being legal persons, they also could, during the same phased registration period, register names on which they hold prior rights, such as "national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works" (article 10.1).

6.3. Under the ADR Rules, the Complainant must "[s]pecify the names in respect of which a right is recognized or established by the national law of a Member State and/or Community law" and, for each name, "describe exactly the type of right(s) claimed, specify the law or law(s) as well as the conditions under which the right is recognized and/or established" (Article B 1 (b) (9)).

6.3.1. The Complainant claims it is entitled to protection of the 92 sign relying alternately on its alleged use of this sign as a public body, or on its holding of trademark rights thereon, or, as it mentions once, on its use of the sign as a logo. It fails however to demonstrate clearly which of these rights it claims.

6.3.2. As the Complainant itself states, "[t]he number 92 is commonly used to designate the Département des Hauts de Seine by the Complainant himself and by the public". The fact that this number is "commonly" used does not demonstrate that the Complainant has rights on it.
In its Complaint, the Complainant gives examples of legal persons which use the number 92. They use it to refer to their place of business, as a metonymy to designate a geographical territory, not an administrative territory. They do not use 92 to refer to the public body which has jurisdiction in this geographical territory, i.e. to refer to the Complainant.

6.3.3. The Complainant states that it "communicates under the number "92"", and then adds that it uses this number "in association with other names". The Complainant states its own three trademarks (92 INITIATIVE, 92 ENTREPRENDRE, CG 92), none of which consist of the number 92 alone. The newspapers published by the Complainant bear the name "LE 92" and "92 EXPRESS", which is another evidence that the Complainant does not use the number 92 alone (furthermore, as for the second newspaper, there is no evidence that it is not published by a separate entity than the Complainant).
It does not appear from the evidence that the Complainant uses the sign 92 alone.

6.3.4. The Complainant states it "has created a specific logo", and adds that "[t]his number/logo is mentioned on its headed paper – used for instance for 92.eu application – and on its website www.hauts-de-seine.net".
Although this logo is said to appear on the header of the Complainant's letters, there is only one evidence of this, which is… the letter sent to apply for the disputed domain name! The header shows that the full name of the Complainant, "Conseil Général des Hauts-de-Seine", appears above the logo, in a same field.
From the screenshot of the homepage of Complainant's website, it appears that the logo does not only consist of the number 92. The number overhangs the words "HAUTS DE SEINE", which are written in the same colour as the number, and in the space delimited by the size of the number (the distance from the first letter to the last one is exactly the same as the distance from the first figure to the last one). Together, the number and the words form a square.
It appears that this logo does not consist of the number 92 alone, but of this number combined with the name of the Complainant.

6.3.5. The Panel also observes that the Complainant mentions it has a website named “hauts-de-seine.net”, and thus does not use the number 92 in its electronic sign.

6.3.6. The Complainant indicates that cars registered in the administrative region which the Complainant governs all have a plate ending with the number 92. This does not prove at all that the Complainant uses this number. It only reflects that it is compulsory for cars to have plates mentioning an administrative number which indicates where they are administratively registered (article R 317-8 of the French Code de la Route).
The fact that such an administrative obligation exists contributes to the common use of the number 92.
By these French administrative rules, Départements are given a number for policing purposes; These administrative rules do not grant rights on these numbers.
The Panel also points out that the Département des Hauts-de-Seine was created in 1964, whereas the use of plates ending with a two figure number dates back to a “circulaire interministérielle” of March 11, 1950.

6.4. For all these reasons, the Panel is not satisfied that the Complainant proved it has on the sign 92 a right which is recognised or established, as required by article 21.1 of EC Regulation 874/2004 and Article B 1 (b) (9) of the ADR Rules.
Absent this condition, the disputed domain name cannot be subject to revocation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint be denied.

PANELISTS

Name	**Cedric Manara**

DATE OF PANEL DECISION 2007-07-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the Département des Hauts de Seine, a French public body. The disputed domain name is 92.eu.
The number 92 is used to designate the geographical territory in which the Complainant has jurisdiction. The Complainant fails to prove this number designates it as a public body and that it has a right on it.
The Complainant asserts rights on three trademarks which include the number 92. These trademarks are composed of this number and a word. The Complainant cannot allege it has trademark rights on the number 92 alone.
The Complainant fails to prove it has rights on a logo composed exclusively of the number 92.
Under Article 21.1 of EC Regulation 874/2004, “[a] registered domain name shall be subject to revocation (…) where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law”.
Article B 1 (b) (9) of the ADR Rules states that the Complainant must “[s]pecify the names in respect of which a right is recognized or established by the national law of a Member State and/or Community law” and, for each name, “describe exactly the type of right(s) claimed, specify the law or law(s) as well as the conditions under which the right is recognized and/or established”.
The Panel finds the Complainant failed in demonstrating it has a right on the 92 sign and that said right is recognised or established by French law or Community law.