Panel Decision for dispute CAC-ADREU-005282

Case number	CAC-ADREU-005282
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Domain names	kedke.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	CENTRAL UNION OF MUNICIPALITIES AND COMMUNITIES OF GREECE (KEDKE), MR. NIKITAS KAKLAMANIS, PRESIDENT OF KEDKE

Respondent

Organization / Name	ZHENG QINGYING

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 states in his complaint that the domain name kedke.eu is currently ON HOLD since a court procedure has been initiated by EURid against the domain name holder before the Court of First Instance of Brussels for eligibility reasons. The domain name holder challenged the on hold status of the domain name before the Court of First Instance in Brussels by initiating a summary procedure but the judge ordered that the domain names should stay on hold. The said judgment was appealed by the domain name holder. The Court of Appeals of Brussels will decide in this case. Concerning the case initiated by EURid the final hearing before the Court of First Instance of Brussels on the merits of the dispute which was scheduled for 22 September 2008 has been delayed by the judge for procedural reasons. The new date of the final hearing is 19 June 2009.

FACTUAL BACKGROUND

The domain name kedke.eu is registered by the Respondent. The complainant has come up with the fact that said domain name is registered by the Respondent who has set on the Internet said domain name available for sale through a company under the name “ONLY ONE LTD”, resided at flat 3, 10/F, Po Kai Mans, Wo Yi Hop Road, Kwai Chung, Hong Kong, with email address info@onlyone.com.hk and telephone number +852 8170 3500. The Respondent has demanded KEDKE to buy said domain name through the URL http://www.escrow.com.hk/?domain=kedke.eu following further instructions for said transaction provided through the aforementioned URL. The Respondent has confirmed that said domain name is available for sale through a company under the name “ONLY ONE LTD”, and has attempted to sale said domain name to the Complainant at a time during which said domain name has been ON HOLD pending the judicial process in front of the Court of Appeal of Brussels.
The Complainant is a legal entity which constitutes the principal institution that represents the first level of local authorities—municipalities and communities—in Greece. Each prefecture in Greece is represented by one local union which represents all local authorities in the territory. Each local union elects representatives among those locally elected (Mayors, Councilors etc). These representatives, who are all 500 members, form the General Assembly of the Central Union of Municipalities and Communities of Greece, i.e. KEDKE. The foundation of KEDKE was decided in 1927 and was promulgated by Law 4108/1929 article 52, Law 1893/1939, Law 2189/1952, and Presidential Decree 197/1978 (Government Gazette 43/A/1978) which codified past laws and provisions upon KEDKE (Law 3033/1954, Law 3388/1955, Law 3777/1957, Law 3968/1959, Law 4260/1962, Law 477/1968, Law 215/1975, Law 715/1977). Article 20 of Chapter D of Presidential Decree 48/1999 (Government Gazette 51/A/1999) provides that the Central Union of Municipalities and Communities in Greece makes use of the abbreviation KEDKE.
ΚΕΔΚΕ is the written abbreviation of the Complainant’s name in the Greek language, whereas KEDKE is the written abbreviation of the Complainant’s name in the Latin alphabet. The Complainant resides in the address 8 Gennadiou Street, Athens 10678, GREECE, and is legally represented by Mr. Nikitas Kaklamanis, the President of the Board of Director of KEDKE and the Mayor of the city of Athens, who is empowered to represent KEDKE in front of all Courts and Public Authorities, and take any measure deemed necessary for the protection and promotion of KEDKE’s interests.

According to the correspondence between Complainant and Respondent, attached to the complaint, the former has set to the awareness of the latter the legal rights of KEDKE on the domain name under dispute, with the request to transfer immediately and unconditionally said domain name from the Respondent to the Complainant. The Respondent did not act accordingly.

A. COMPLAINANT

The Complainant claims that it is a legal entity governed by Law, i.e. Presidential Decree 197/1978 and henceforth enacted laws in Greece. Regarding KEDKE's operation, the following facts based on Law are noteworthy: According to article 2 of Presidential Decree 197/1978—which has NOT been amended by article 39 of Presidential Decree 48/1999—KEDKE aims at the promotion of the municipal and community administration, the promotion of the research and study of municipal and community issues, the support of collaboration among them, and the aggregation and provision of information upon general and specific issues. More specifically, the Central Union of Municipalities and Communities in Greece presents its views upon draft laws concerning municipalities and communities, collaborates with local municipal and community unions with the aim to resolve general issues, and publishes the voucher upon the results of municipal and community action or other issues pertaining to the local administration. Additionally, the Complainant promotes its operation and goals through the URL www.kedke.gr being the legal right-holder of the domain name kedke.gr Based on the above, the Complainant claims that it is a legal entity in the Public Sector—i.e. a public body—in Greece, in accordance with Presidential Decree 197/1978 as well as article 10§§1, 2, 3 of EC Regulation 874/2004.

The Complainant makes use of the abbreviation KEDKE upon which the Complainant has legal rights since 1978 because the aforementioned abbreviation is formed by the initials of the name Central Union of Municipalities and Communities of Greece uttered in the Greek language. ΚΕΔΚΕ is the written abbreviation of the Complainant's name in the Greek language, whereas KEDKE is the written abbreviation of the Complainant's name in Latin. Thus, both written and uttered abbreviations, i.e. in the Greek and Latin languages, are almost identical in print and orally speaking, thus said abbreviations are subject to the provisions of article 21§1 of EC Regulation 874/2004.

The company under the name "ONLY ONE LTD" and the Respondent through said company do not have any legal rights upon the domain name kedke.eu in consideration of the fact that they have set said domain name available for sale over the Internet since the day of its registration. The company under the name "ONLY ONE LTD" and the Respondent through said company have been using the domain name kedke.eu in bad faith in consideration of the fact that they continue to make available for sale said domain name despite the fact that the Complainant has made the company "ONLY ONE LTD" aware of the fact that KEDKE has legal rights upon the abbreviation kedke and the domain name kedke.eu.

For the above reasons the Complainant asks for the domain name kedke.eu to be revoked in accordance with article 21§1 of EC Regulation 874/2004, as it is being used by the Respondent through the company "ONLY ONE LTD" in a speculative and abusive registration mode, because said domain name is identical with the abbreviation kedke, upon which the Complainant has prior legal rights including, inter alia, protected rights under national law in Greece, i.e. Law 4108/1929 article 52, Law 1893/1939, Law 2189/1952, and Presidential Decree 197/1978 (Government Gazette 43/A/1978) which codified past laws and provisions upon KEDKE, Presidential Decree 48/1999, and Presidential Decree 12/2007. In addition, said domain name must be revoked because the Respondent has registered said domain name without holding any prior legal right upon it, and is being used by the Respondent through the company "ONLY ONE LTD" in bad faith in accordance with article 21§3(a)(e) of EC Regulation 874/2004, i.e. it is being used (§3a) in circumstances which indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognized or established by national and/or Community law or to a public body; (§3e) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.

B. RESPONDENT

The Respondent failed to file any response.

DISCUSSION AND FINDINGS

The Complainant has paid the procedural fee as well as the Single Panellist fee of the Czech Arbitration Court, as evidenced by the case file.

The Complainant is a legal entity registered in Athens, Greece, which satisfies the general eligibility criteria set by EC Regulation 733/2002 article 4.2.b, and entitles the Complainant to ask for the transfer of said domain name to it in accordance with article 22§11 of EC Regulation 874/2004.

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.

A. ON THE RIGHTS OF THE COMPLAINANT TO THE DOMAIN NAME

The Complainant's fundament for seeking the transfer of the domain name kedke.eu lies on its claimed right, according to Art. 10.1 in conjunction with Art. 21.1 Regulation 874/2004.
Article 21.1 of Regulation 874/2004 stipulates that a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in article 10.1 of EC Regulation 874/2004, and where it (a) has been registered by its holder without rights or legitimate interest in the name; or (b) has been registered or is being used in bad faith. The issue in need of verification is whether the Complainant actually has a right recognized or established by national and/or Community law, falling within the ambit of Art. 10.1 Regulation 874/2004.
Art. 10.1 provides that (§1): 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 before general registration of. eu domain starts. "Prior rights" shall be understood to include, inter alia, registered 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. "Public bodies" shall include: institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organizations and bodies governed by public law, and international and intergovernmental organizations. (§2): 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. (§3): The registration by a public body may consist of the complete name of the public body or the acronym that is generally used. 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 seems to base its complaint mainly on its legal nature as a public body; to this end, the Complainant describes itself as "a legal entity in the Public Sector – i.e. a public body – in Greece", and mentions a number of Greek laws and decrees, which are attached to the complaint in Greek and English. The Complainant omits however to specify the category under which it could come under, pursuant to Para. 3 of Art. 10.1 Regulation 874/2004. What therefore needs to be clarified is the legal nature of the complainant and its incorporation into one of the categories set forth under Art. 10.1 Para. 3 Regulation 874/2004.
Since the complainant explicitly describes itself as a Greek legal entity, the categories of Community institutions and bodies, as well as international and intergovernmental organisations are irrelevant to the case at hand. The complainant does not fall into the categories of national and local governments or governmental bodies also. It is true that it is the principal institution representing local governments – if one accepts that municipalities and communities constitute local governments; however, the complainant itself is not a local government or a governmental body, therefore the decisions of the CAC in cases 475 (helsinki.eu), 4690 (firenze.eu), 5162 (munich.eu), and 4204 (92.eu) cannot serve as supporting evidence in favour of the complainant, which is quite probably the reason why they were not mentioned in the complaint. The next step is whether KEDKE could be described as an authority / organisation and/or body governed by public law, namely the remaining categories mentioned under Art. 10.1 Para. 3 Reg. 874/2004. The view of this Panel is that the complainant did not prove that it does constitute one of the above categories for the following reasons: As it is clearly stipulated in Art. 1 § 3 of Presidential Decree 197/1978, KEDKE is a private entity recognized as such by virtue of the same act, operating under the supervision of the Ministry for the Interior. The latter is not to be understood as interfering to the legal nature of the complainant, as evidenced by relevant Greek case law (see the decision of the Athens Court of Appeal Nr. 676/2005, published in the Greek legal review "Helliniki Dikaiosyni" 2005, p. 1513 et seq., where it is clearly said that both local and the central union of municipalities are private entities, therefore decisions taken by their general assemblies are subjected to nullification pursuant to Art. 101 of the Greek Civil Code, i.e. the status governing private entities). This view is also supported by the legal opinion Nr. 54/2007 of the Legal Council of State, where a clear distinction is made between KEDKE (private entities) and municipalities (sui generis public entities). Noteworthy is also the fact that said provision was not abolished by Presidential Decree 48/1999, since Art. 1 Presidential Decree 197/1978 is not mentioned in Art. 39 of Presidential Decree 48/1999, i.e. the provision which enumerates the articles of the former decree abolished by the latter.
However, the complainant is entitled to ask for the transfer of the domain name under dispute, because it fulfils the requirements according to Art. 10.1 in conjunction with Art. 10.2 Reg. 874/2004. In particular, the complainant is the holder of prior rights, despite the fact that it has not demonstrated any of the rights mentioned under the above provisions, since the enumeration of prior rights is clearly indicative, as evidenced by Art. 10.2 Reg. 874/2004 (similarly Mietzel, Die ersten 200 ADR-Entscheidungen zu .eu Domains. Im Spagat zwischen Recht und Gerechtigkeit, MMR 2007, p. 287 [III/3], and Malte-Müller, .eu – Domains: Erkenntnisse aus dem ersten Jahr Spruchpraxis, p. 991 [III/1]. Accordingly, names of legal entities, whether public or private, are to be treated in a similar fashion; thus, they constitute prior rights pursuant to Art. 10.1 and 10.2 Reg. 874/2004, although not explicitly mentioned (see Bettinger, Alternative Streitbeilegung für .EU, WRP 2006, 557 [3.2.1]. Beyond any doubt, it is the duty of the complainant to describe exactly the type of rights

claimed, and specify the law or the laws as well as the conditions under which the right is recognized and/or established. The wording in Art. B 1 b (9) of ADR Rules is clear in this respect; still, pursuant to Art. B 7 (a) ADR Rules, the Panel is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case. By virtue of this provision, the Panel wishes to underline the significance of Art. 58 of the Greek Civil Code, namely the provision granting protection to holders of names both for persons and legal entities. As evidenced by the complainant, the abbreviation KEDKE and / or ΚΕΔΚΕ, is linked undoubtedly to the complainant. To the mind of the average Greek citizen this abbreviation stands for the Central Union of Municipalities and Communities of Greece. Additionally, the supporting legislative evidence attached to the complaint (as mentioned above) serves as full proof in favour of this affirmation. Finally, the fact that names of private entities constitute a prior right recognized by national (in the present case: Greek) law, as required by Art. 10.1 Reg. 874/2004, is evidenced in the ad hoc decision of the Court of first Instance Lassithion Nr. 496/2000 (published in the legal review "Chronika Idiotikou Dikaiou" 2001, p. 80 et seq.), where it has been decided that the holder of the name of an association or union is to be protected by any unlawful registration of its abbreviation (eetem.gr) pursuant to art. 58 of the Greek Civil Code and art. 1 of law 146/1914 on unfair competition.
For all the above reasons, the Panel decides that the complainant is the holder of prior rights in respect of the domain name kedke.eu.

B. ON THE BAD FAITH OF THE RESPONDENT

The complainant invokes art. 21.3 (a) and (e) reg. 874/2004, in order to demonstrate the respondent's bad faith. Both assertions are accurate.
First, as evidenced by the e-mail correspondence between the parties under dispute, there was an unambiguous, straight forward attempt of the respondent to sell the domain name kedke.eu to the complainant, which constitutes bad faith per definition, as stipulated under Art. 21.3 (a) Reg. 874/2004.
Secondly, bearing in mind the respondent's reluctance to state any response to the complaint, he did not show any demonstrable link between himself and the domain name he registered, thus leaving to the Panel no other way as to fully accept the complainant's argumentation in regard to his bad faith pursuant to Art. 21.3 (e) Reg. 874/2004. Moreover, the Panel, once again making use of the rule stipulated under Art. B 7 (a) ADR Rules, wishes to emphasize the vast amount of decisions issued against the respondent from the CAC, a fact demonstrating that he is following a pattern of behaviour, leading to his undisputed bad faith registration of several domain names. The list goes as follows:

- CAC Case No. 2429, Ericpol Telecom sp. z o.o. v. Zheng Qingying – ERICPOOL;

- CAC Case No. 2325, Glen Dimplex UK Limited v. Zheng Qingying – GLENDIMPLEX;

- CAC Case No. 3588, Merck KGaA v. Zheng Qingying - XIRONA, LEVOTHYROX;

- CAC Case No. 3444, Ursula Hahn v. Zheng Qingying – OCUNET;

- CAC Case No. 3510, Big Dutchman AG v. Zheng Qingying – BIGDUTCHMAN;

- CAC Case No. 2986, Security Center GmbH & Co. KG v. Zheng Qin – TERXON;

- CAC Case No. 3368, BB C - SERVICES, s.r.o. v. Zheng Qingying – BBCENTRUM;

- CAC Case No. 3885, FGSPORT S.r.l. v. Zheng Qingying – WORLDSBK;

- CAC Case No. 3773, Merck Santé v. Zheng Qingying – MONOT;

- CAC Case No. 3641, Fundació Esade v. Zheng Qingying – ESADE;

- CAC Case No. 2651, LEGUIDE.COM SA v. Zheng Qingying – ANTAG;

- CAC Case No. 4229, Ornellaia Società Agricola S.r.l. v. Zheng Qingying – ORNELLAIA;

- CAC Case No. 4309, OSRAM GmbH v. Zheng Qingying – OSRAM-OS;

- CAC Case No. 4187, DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH v. Zheng Qingying – DEGINVEST; and

- CAC Case No. 1185, Degussa GmbH v. Zheng Qingying – AQURA, CHEMSITE.

- CAC Case No. 4253, EUROPART Holding GmbH, Mark Siebert v. Zheng Qingying – EUROPART

- CAC Case No. 4517 Reale Mutua Assicurazioni, Mr Filippo Manassero v. Zheng Qingying – REALEMUTUA

- CAC Case No. 4620, ELTRO Gesellschaft für Elektrotechnik mbH, ELTRO v. Zheng Qingying – ELTROPLUS

- CAC Case No. 4515, Camlock Systems Limited, Mr. Brian John Heasman v. Zheng Qingying – CAMLOCK

- CAC Case No. 4661, Bayer AG, Kristina Kersten v. Zheng Qingying – BAYERGARDEN

- CAC Case No. 4656, GLS Gemeinschaftsbank eG, Uwe Nehrkorn v. Zheng Qingying – GLS-BANK, GLS-GEMEINSCHAFTSBANK, GLSTREUHAND

- CAC Case No. 4880, Labco SAS, Lucie Boedts v. Zheng Qingying – LABCO

- CAC Case No. 4859, Laboratoire Biosthétique Kosmetik GmbH & Co. KG, Laboratoire Biosthétique Kosmetik GmbH & Co. KG v. Zheng Qingying – LABIOSTHETIQUE

- CAC Case No. 4955, Colliers International Property Consultants Inc and Colliers CRE Plc v. Zheng Qingying – COLLIERSCRE;

- CAC Case No. 4970, H.Vollmer GmbH, Günther Vollmer v. Zheng Qingying – HEITRONIC

- CAC Case No. 5002, BenQ Europe BV, Paul Zwagerman v. Zheng Qingying – BENQ

- CAC Case No. 5094, DDR Museum Berlin GmbH, Robert Rückel v. Zheng Qingying – DDR-MUSEUM

- CAC Case No. 5218, H.D. Duijts Holding B.V., Hendrikus Dorotheus Duijts v. Zheng Qingying – JOALPE

DECISION

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

the domain name KEDKE be transferred to the Complainant

PANELISTS

Name	**Apostolos Anthimos**

DATE OF PANEL DECISION 2009-02-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the Central Union of Municipalities and Communities in Greece, a Greek legal entity by the abbreviation KEDKE (ΚΕΔΚΕ in Greek). The Complainant promotes its operation and goals through the URL www.kedke.gr being the legal right-holder of the domain name kedke.gr Based on the above, the Complainant claims that it is a legal entity in the Public Sector—i.e. a public body—in Greece, in accordance with Presidential Decree 197/1978 as well as article 10 §§ 1, 2, 3 of EC Regulation 874/2004. The company under the name “ONLY ONE LTD” and the Respondent through said company have set said domain name available for sale over the Internet since the day of its registration. For the above reasons the Complainant asks for the domain name kedke.eu to be revoked in accordance with article 21 § 1 of EC Regulation 874/2004, as it is being used by the Respondent through the company “ONLY ONE LTD” in a speculative and abusive registration mode, because said domain name is identical with the abbreviation kedke, upon which the Complainant has prior legal rights.
The Complainant failed to specify the category under which it could come under pursuant to Para. 3 of Art. 10.1 Regulation 874/2004. The complainant did not prove that its legal nature is equal or similar to one of the categories included in said provision, since Art. 1 § 3 of Presidential Decree 197/1978 clearly stipulates that KEDKE is a private entity recognized as such by virtue of the same act.
The complainant is entitled to ask for the transfer of the domain name under dispute, because it fulfils the requirements according to Art. 10.1 in conjunction with Art. 10.2 Reg. 874/2004: He is the holder of prior rights, despite the fact that it has not demonstrated any of the rights mentioned under the above provisions, since the enumeration of prior rights is clearly indicative, as evidenced by Art. 10.2 Reg.

874/2004. Accordingly, names of legal entities, whether public or private, are to be treated in a similar fashion; thus, they constitute prior rights pursuant to Art. 10.1 and 10.2 Reg. 874/2004, although not explicitly mentioned.
It is the duty of the complainant to describe exactly the type of rights claimed, and specify the law or the laws as well as the conditions under which the right is recognized and/or established (Art. B 1 b (9) of ADR Rules). Still, pursuant to Art. B 7 (a) ADR Rules, the Panel is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case.
The domain name kedke.eu must be revoked because the Respondent has registered said domain name without holding any prior legal right upon it, and is being used by the Respondent through the company “ONLY ONE LTD” in bad faith in accordance with article 21 § 3 (a) (e) of EC Regulation 874/2004, i.e. it is being used primarily for the purpose of selling the domain name to the holder of a name in respect of which a right is recognized or established by national law, and no demonstrable link exists between the domain name holder and the domain name registered.