

Nachdem die ICANN im Jahre 2000 die Einführung einer neuen ccTLD „eu“ beschlossen hat, ist diese ab dem 7. Dezember 2005 sehr erfolgreich gestartet. Seit diesem Zeitpunkt war es für die Inhaber registrierter Marken<sup>1</sup> und öffentlicher Einrichtungen im Rahmen der sog. „landrush-period“ möglich, die Vergabe der „eu“-Domains zu beantragen. Zwei Monate später, also ab dem 7. Februar 2006, konnten dann sonstige Rechteinhaber eine Domain unter der TLD „eu“ beantragen („landrush-period II“). Innerhalb dieser Zeiträume galt für Rechteinhaber das sog. „Windhundprinzip“; wer als erster seinen Registrierungsantrag bei der zuständigen Behörde EuRID18 einreichte, der erhielt die Domain. Die jeweiligen kennzeichenrechtlichen Positionen mussten innerhalb einer Frist von 40 Tagen bei dem Unternehmen Price Waterhouse Coopers zur Prüfung vorgelegt werden. Die Dokumentation der entsprechenden kennzeichenrechtlichen Positionen erforderte eine besondere Sorgfalt, da bereits formale Fehler (fehlendes Deckblatt der Anmeldung etc.) zu einer Abweisung führten. Eine solche Abweisung bedeutete zwar noch keinen vollständigen Verlust der Domain, jedoch war eine Nachbesserung nicht möglich und zwischenzeitlich eingereichte Registrierungswünsche für die Domain erhielten eine bessere Priorität.

Bei Streitigkeiten über eine EU-Domain gibt es sechs verschiedene Wege, tätig zu werden. Zunächst empfiehlt sich als Hauptweg die Anrufung einer Streitschlichtungsinstanz, in diesem Fall des tschechischen Schiedsgerichtshofes, der zentral alle Aufgaben der Streitschlichtung für die EU-Domain wahrnimmt. Art. 21 der Verordnung 2004 bestimmt, dass sich eine Streitschlichtung ausschließlich auf Marken- oder Namensrechte beziehen kann, gegen die die EU-Domain verstößt. Der entsprechende Rechteinhaber muss vortragen, dass die Gegenseite kein Gegenrecht oder legitimes Interesse geltend machen kann oder die entsprechende Domain bösgläubig registriert oder nutzt. Das Streitschlichtungsverfahren unterscheidet sich hier fundamental von der UDRP, die das Fehlen eines Gegenrechtes kumulativ zur Bösgläubigkeit prüft und eine Bösgläubigkeit bei Registrierung und bei der Nutzung verlangt. Ein legitimes Interesse liegt vor, wenn die entsprechende Bezeichnung bereits vorher vom Domain-Inhaber genutzt worden war. Zu beachten sind insbesondere die Interessen von Händlern, die mit der Benutzung der Domain auf ihre Waren hinweisen wollen. Eine Bösgläubigkeit der Registrierung oder Nutzung liegt vor, wenn die entsprechenden Vorgänge unlauter sind, insbesondere wenn die Domain zur wettbewerbswidrigen Verunglimpfung oder Unterdrückung des Markenrechtinhabers genutzt werden soll. Neu ist auch gegenüber der UDRP, dass eine zweijährige Nichtbenutzung ebenfalls unter die bösgläubige Registrierung fällt und zum nach-träglichen Widerruf der Domain führt.

Der EuGH stellte mit der Entscheidung in der Sache reifen.eu klar, dass die Auflistung der Bösgläubigkeitsfälle in Art. 21 III VO (EG) 874/2004 nicht abschließend ist.<sup>19</sup> So muss die Beurteilung des nationalen Gerichts vielmehr aufgrund einer umfassenden Würdigung der Umstände erfolgen. Dabei ist nach Auffassung des Gerichts insbesondere zu berücksichtigen, ob der Markeninhaber beabsichtigte, die Marke auf dem Markt zu benutzen, für den Schutz beantragt wurde, und ob die Marke so gestaltet wurde, dass eine Gattungsbezeichnung kaschiert wurde. Bösgläubigkeit könne darüber hinaus durch die Registrierung einer Vielzahl vergleichbarer Marken, sowie deren Eintragung kurz vor Beginn der ersten Phase für die Registrierung von EU-Domains indiziert werden.<sup>20</sup>

Zusammen mit 33 anderen aus Gattungsbegriffen bestehenden Marken hatte die Klägerin die Marke &R&E&I&F&E&N& für Sicherheitsgurte angemeldet. Dabei fügte sie jeweils das Sonderzeichen „&“ vor und nach jedem Buchstaben ein. Die Klägerin beabsichtigte nicht, die Marke &R&E&I&F&E&N& für Sicherheitsgurte tatsächlich zu benutzen. In der ersten Phase der gestaffelten Registrierung ließ sie auf der Einreichung der Marke &R&E&I&F&E&N& die Domain reifen.eu registrieren. Als auch dies in der 10. Mi-



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**G Psacharopoulos**



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