Entscheidung der Schiedskommission for dispute CAC-ADREU-000081

Case number	**CAC-ADREU-000081**
Time of filing	**2006-03-28 09:25:47**
Domain names	**airticket.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Dmytriyenko Oleksiy**

Respondent

Organization / Name	**Ultimo Sport GmbH, Janusch Kurt**

ANDERE RECHTLICHE VERFAHREN

The Panel is not aware of any other pending legal proceedings relating to the disputed domain name.

SACHLAGE

The Complainant, Mr Dmytriyenko Oleksiy, is the holder of the Community trademark application AIRTICKET (No 004730297) dated November 20, 2005 (in classes 9, 16, 35, 38, 39 and 42) as well as German national trademark application AIRTICKET (N. 39543188.9) dated July 19, 2005.

The Respondent, Ultimo Sport GMBH, is a licensee authorized to use the trademark AIRTICKET No 1093176 on the basis of a licence agreement concluded with Mr Janusch Kurt, the owner of the trademark AIRTICKET (No 1093176) which was applied for registration under the Benelux Speed Procedure on November 29, 2005, and obtained protection on December 7, 2005.

On December 7, 2006, during the Phased Registration (Sunrise Period I) the Respondent applied for the disputed domain name (airticket.eu). The Complainant was the next applicant in the queue for the domain name concerned. The disputed domain name was registered for the Respondent since he demonstrated a prior right as defined in Article 10 (1) of Commission Regulation (EC) 874/2004. The Complainant’s application was not therefore considered.

A. BESCHWERDEFÜHRER

The Complainant is the owner of the Community trademark application AIRTICKET (No 004730297) dated November 20, 2005 (in classes 9, 16, 35, 38, 39 and 42) as well as German national trademark application AIRTICKET (No 39543188.9) dated July 19, 2005.

On November 29, 2005 the Respondent filed the application for the mark AIRTICKET with the Benelux Patent Office in class 38.

The Complainant contends that the Respondent trademark could not be filed due to the fact that his application was submitted earlier.

On December 7, 2005, the Respondent applied for the domain name airticket.eu.

Therefore, the Complainant claims that the Respondent did not have the right to make use of the concept "first come, first served" for registration of the domain name airticket.eu, and seeks transfer of the rights for the domain name "airticket.eu" to his company Agricopter KFT.

B. BESCHWERDEGEGNER

According to Chapter IV “Phased Registration”, Article 10 of Commission Regulation (EC) 874/2004 “prior rights shall be understood to include, inter alia, registered national and community trademarks […]”.

The trademark AIRTICKET (No 1093176) was applied for registration under the Benelux Speed Procedure on November 29, 2005, it obtained protection on December 7, 2005 and was published on January 1, 2006.

In compliance with Article 10 (2) of Commission Regulation (EC) 874/2004, “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”. Therefore, on December 7, 2006, during Phase 1 of the Phased Registration, the Respondent applied for the domain name airticket.eu. The domain name was validated by the Eurid Registry on March 28, 2006.

Furthermore, since the expression "air ticket" is in no way famous or renown, the Respondent maintains that when he applied for the domain name airticket.eu, he did not know that the Complainant had applied for a Community trademark AIRTICKET.

WÜRDIGUNG UND BEFUNDE

In accordance with Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the. eu Top Level Domain and the principles governing registration, “holders of prior rights recognised 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”.

Under Section 11.1 (i) of .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter referred to as “Sunrise Rules”), “during the first phase of the Phased Registration Period, only Domain Names that correspond to registered Community or national trade marks may be applied for by the holder and/or licensee of the Prior Right concerned.”

Furthermore, pursuant to Section 13.1 (i) of Sunrise Rules, “where the Prior Right claimed by an Applicant is a registered trademark, the trade mark must be registered by a trade mark office in one of the member states, the Benelux Trade Marks Office or the Office for Harmonisation in the Internal Market (OHIM), or it must be internationally registered and protection must have been obtained in at least one of the member states of the European Union.”

In this case, on December 7, 2005, i.e. on the date of application for a .eu domain name by the company Ultimo Sport GMBH, the trademark AIRTICKET was registered in the name of Mr Janusch Kurt, which is evidenced by the extract from the Trademark Register of the Benelux Trademark Office. Moreover, under the licence agreement concluded between Mr Janusch Kurt and the company Ultimo Sport GMBH, the latter had a right to use the mark referred to.

Given the foregoing, there are no grounds to support the charge that on the date of application for the domain name airticket.eu (December 7, 2005), the trademark AIRTICKET No 1093176 was not registered.

The Complainant’s reference to his prior application for a Community trademark AIRTICKET No 004730297 is not relevant to the decision to be issued in this case. It is beyond dispute that on the date of application for the domain name airticket.eu by Ultimo Sport GMBH (December 7, 2005) and on the date of registration thereof (March 28, 2006), the Complainant neither possessed a right to the Community registration AIRTICKET, nor did he have a right to the German trademark AIRTICKET.

It should be emphasized that, in compliance with Section 13.1 (ii) of Sunrise Rules, “a trade mark application is not considered a Prior Right.”

For that reason, the Complainant’s charges concerning lack of grounds for registration of the mark AIRTICKET filed by Mr Janusch Kurt with the Benelux Trademark Office on November 29, 2005, i.e. after the application for a Community trademark filed by the Complainant with OHIM on November 20, 2005, are not subject to this proceeding, as they are beyond the competence of the ADR Provider for .eu domain names – The Czech Arbitration Court.

Any claims referring to deficiencies in trademark registration may be pursued by the Complainant in the proceedings before offices responsible for trademark registration.

ENTSCHEIDUNG

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	**Dorota Rzazewska**

DATUM DER ENTSCHEIDUNG DER SCHIEDSKOMMISSION 2006-07-07

Summary

EINE ENGLISCHSPRACHIGE KURZFASSUNG DIESER ENTSCHEIDUNG IST ALS ANLAGE 1 BEIGEFÜGT

The Panel concludes that, in accordance with Article 10 (1) of Commission Regulation (EC) No 874/2004, Section 11.1 (i) and Section 13.1 (i) of Sunrise Rules of .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period, the Documentary Evidence submitted by Ultimo Sport GMBH clearly demonstrates that on the date of application for the domain name airticket.eu (December 7, 2005), on the basis of the licence agreement, Ultimo Sport GMBH had prior rights to use the trademark AIRTICKET No 1093176 which was registered by the Benelux Trade Marks Office on December 7, 2005.

The Panel finds that on the date of application for the domain name airticket.eu by Ultimo Sport GMBH (December 7, 2005) and on the date of registration thereof (March 28, 2006), the Complainant neither possessed a right to the Community registration AIRTICKET, nor did he have a right to the German trademark AIRTICKET.

Any claims referring to deficiencies in trademark registration may be pursued by the Complainant in the proceedings before offices responsible for trademark registration.

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