Panel Decision for dispute CAC-ADREU-000130

Case number	CAC-ADREU-000130
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Domain names	engels.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Joost J.M. Engels

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

None

FACTUAL BACKGROUND

This decision arises from an appeal by the Complainant, Joost J.M.Engels, against the decision by the Respondent, EURid, to decline to register the domain name engels.eu ("the Domain Name") to the Complainant under the Sunrise period.

The Complaint is extremely brief, running to a little over four lines of text. It is possible to glean a little more information from a short response served by the Respondent. It would appear that the Complainant sought to register the Domain Name under the regime established by Article 10 (1) of Commission Regulation (EC) 874/2004 ("the Regulation") which provided for a Sunrise period during which holders of prior rights in names which were similar or identical to the Domain Name sought were accorded priority.

The Complainant's application under the Sunrise period was correctly lodged. Pursuant to Article 14, paragraph 4 of the Regulation, it submitted evidence of its Prior Rights. This comprised evidence relating to two trademarks. The first mark consisted of the slogan "ENGELS kreatief met kunststof baken", the second consisted of the word "engels".

It would seem that the Validation Agent only examined the first of these marks and concluded that the Complainant had no prior right in the word "engels" as, under the provisions of section 19 of the Sunrise Rules, only complete marks should be accepted as constituting valid Prior Rights. The Validation Agent did not examine the second trademark for the word "engels".

A. COMPLAINANT

The Complainant says that it was the only company in the Sunrise period to apply for the Domain Name. It says it provided ample proof of "the possession of the brand name, and of our companies identity" - by which is clearly meant its Rights. It says that it owns the name and it is in use in a number of countries across Europe.

B. RESPONDENT

The Respondent, having set out much of the factual information which is outlined above, accepts that the Validation Agent did not examine the mark for the word ENGELS and that it was therefore incorrect in rejecting the Complainant's application.

DISCUSSION AND FINDINGS

Article 10(1) of the Regulation provides that prior rights under the sunrise period include registered national and community trademarks. Article 10 (2) provides that registration 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 right exists.

The Complainant has established, by virtue of its trademark for ENGELS that it had prior rights in the name ENGELS. Accordingly, as the Respondent had acknowledged, its application for the Domain Name under the Sunrise Rules should have been accepted by the Respondent. The Complainant was the first, and apparently, the only applicant for the Domain Name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that EURID's decision be annulled and the domain name ENGELS be transferred to the Complainant.

PANELISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2006-07-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

This case relates to the rejection by the Respondent of an application for registration of a Domain Name under the Sunrise period created by Article 10 (1) of Commission Regulation (EC) 874/2004 (“the Regulation”) .

The Complainant asserts that the rejection was incorrect as it had a prior right (in the form of a word mark which corresponded to the Domain Name) which was valid under the Regulation and the Sunrise Rules. The Respondent accepts that this is the case. Accordingly, the Domain Name is transferred or attributed to the Complainant.