Panel Decision for dispute CAC-ADREU-000143

Case number	**CAC-ADREU-000143**
Time of filing	**2006-02-28 09:51:59**
Domain names	**vitana.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**VITANA, a.s.**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

On 27 February 2006 the Complainant submitted its complaint to the Centre in hard copy. The Complainant claims that it has prior rights to the mark VITANA than the registrant, Jean Pierre Suffert. The Complaint claims that the respondent, EURid, wrongly granted the domain to Mr Suffert.

A. COMPLAINANT

The Complainant argues that it has rights to the name VITANA that enjoy priority over those of the registrant of the domain name. These prior rights consist of, for example, a Czech national registration No 155545 with priority from 23 August 1963 whereas the registrant's French registration No 1592016 enjoys priority from 10 February 1989.

B. RESPONDENT

In its response the Respondent essentially states that the registrant was the first to apply for the contested domain name and that the registrant holds a valid trademark registration for the name. Therefore the domain was correctly granted on first come, first served basis.

DISCUSSION AND FINDINGS

According to whois-information at whois.eu, the contested domain name was registered on 28 February 2006, which is after the commencement date of these proceedings. This is confirmed by the Complainant as it states in its complaint that the Registry has not yet decided on the domain application.

At the time of submitting the complaint, there was no decision that could have been challenged by the Complainant. The Panel therefore finds that the complaint was submitted prematurely.

However, for the sake of completeness and because the domain was subsequently granted to Mr Suffert, the Panel will proceed to evaluate the factual merits of the case as they stand at the time of registration of the contested domain.

The last paragraph of Article 14 of Commission Regulation (EC) No 874/2004 provides that the Registry shall register the

domain name, on first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with paragraphs 2-4 of the same article.

The registrant duly submitted proof of such prior right and was granted the contested domain name because he was the first to submit an application for the same.

The purpose of the Regulation 874/2004 is not to ascertain that the entity which holds the first right for a trademark within the Community is granted the corresponding domain, and the purpose of these ADR proceedings is not to determine whose trademark right first came to existence.

The purpose of the Regulation 874/2004 is, inter alia, to grant domain names during the sunrise period on first come first served basis provided that the applicant can demonstrate a right which is prior to his domain name application.

The Panel finds that the registrant has met the requirements of the Regulation and that the domain was properly granted to him because he was the first to submit an application for the contested domain. The fact that the Complainant may hold an even earlier trademark right in one or more member states than the registrant is not relevant in these proceedings. The Respondent therefore correctly granted the domain name to the registrant.

DECISION

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	**Tuukka Ilkka Airaksinen**

DATE OF PANEL DECISION 2006-05-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant claimed that it has an earlier trademark than the registrant. Because the registrant also has a valid trademark corresponding to the domain name and was first to file the domain name application, the Respondent had correctly registered the domain name. Therefore the complaint must be denied.