Panel Decision for dispute CAC-ADREU-000229

Case number	**CAC-ADREU-000229**
Time of filing	**2006-03-09 09:30:40**
Domain names	**city.eu, kickboxing.eu, crawler.eu, blue.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**M. Oomens**

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 acknowledged by Panel.

FACTUAL BACKGROUND

1. M. Oomens (the Complainant) filed unsuccessful applications for the domain names CITY, CRAWLER, KICKBOXING and BLUE.
2. On December 7th, 2005 Moravia GmbH filed an application for the registration of the domain name “CITY”. Then the applicant submitted in due time, on December 19, 2005, as documentary evidence for its prior right on the name, a copy of an official document issued by the Deutsches Patentamt, a competent trademark office, certifying that the trademark is registered under nr 2913039 and that Moravia GmbH is the reported owner of the trademark.
3. On December 7th, 2005 J.H. Ter Borgh Beheer BV filed an application for the registration of the domain name “KICKBOXING”. Then the applicant submitted in due time, on January 13th, 2006, as documentary evidence for its prior right on the name a copy of an official document issued by the Benelux Merkenbureau, a competent trademark office, certifying that the trademark is registered under nr. 0778741 and that J.H. Ter Borgh Beheer BV is the reported owner of the trademark.
4. On December 7th, 2005 Sharelook Beteiligungen GmbH filed an application for the registration of the domain name “CRAWLER”. Then the applicant submitted in due time, on December 12th, 2005, as documentary evidence for its prior right on the name a copy of an official document issued by the OHIM, a competent trademark office, certifying that the trademark is registered under nr. 003611365 and that the reported owner is Sharelook GmbH.
5. On December 7th, 2005 Banco Bilbao Vizcaya Argentaria S.A. filed an application for the registration of the domain name “BLUE”. Then the applicant submitted in due time, on December 22nd, 2005 as documentary evidence for its prior right on the name a copy of an official document issued by the OHIM, a competent trademark office, certifying that the trademark is registered under nr. 001345974 and that the reported owner is Banco Bilbao Vizcaya Argentaria S.A.
6. On December 9, 2005, in a “Newsflash” directed to the .eu registrars, EURid mentioned that if had noted “that a minority of domain name applications processed since the opening of the Phased Registration Period contain erroneous information that may lead to the domain name not being registered in the domain name applicant”. The “Newsflash” stated also that “if errors have been entered in those field, such applications must be processed on the basis of the erroneous information contained therein. This will, therefore, most likely lead to the fact that the domain name applied for can not be registered in the name of the applicant mentioned in the domain name application on the basis of that application”.
7. The Registry accepted the applications as above mentioned in chapters 2, 3, 4 and 5, by arguing that the applicants demonstrated to own the prior rights.
8. At 17:03:06 on 2006-03-07 the Compliant filed the Complainant by asking the Czech Arbitration Court to cancel the decision of Eurid in accepting BLUE, KICKBOXING, CRAWLER and CITY domain names applications requested by other parties (as par. 2, 3,4 and 5).
9. At 09:30:40 on 2006-03-09 Czech Arbitration Court received the Complaint.
10. On 2006-03-16 EURid, in accordance with Paragraph B2 (b) of the .eu Dispute Resolution Rules (the ADR Rules), notified to the

Complainant some deficiencies relating to his Complaint.
11. At 12:06:18 on 2006-03-21 the Complainant filed, as requested, the amended Complaint.
12. At 17:20:04 on 2006-05-10 EURid filed the Response to Complaint.
13. At 10:52:36 on 2006-05-12 the Czech Arbitration Court appointed as Panelists: Mr. Dinant Oosterbaan, Mr. Thomas Schafft and Mr. Pierfrancesco Fasano (President).
14. At 09:49:59 on 2006-06-01 the Case Administrator notified a Non-standard Communication that points out that the amended Complaint "contains several Annexes, including six emails (Annexes 6-11). These Annexes 6-11 are in Dutch. The language of the ADR Proceeding is, however, English. The Annexes 6-11 are thus not made in the language of the ADR Proceeding. Consequently, the Panel - in accordance with Article A.3(d) of the ADR Rules - herewith orders you to submit a translation of the Annexes 6-11 in whole into English not later than on Tuesday 6 June 2006, in default of which the Panel will disregard the Annexes 6-11 in accordance with Article A.3(c) of the ADR Rules and Article B.1(d) of the Supplemental ADR Rules".
15. Notwithstanding the above mentioned Non-standard Communication, within the deadline (2006-06-06), the Complainant has not filed the requested translated annexes.

A. COMPLAINANT

The Complainant claims that, according to the newsflash published by the Registry on December 9th, 2005, the Registry announced that inaccuracies in the fields of the electronic request form can not be corrected. Reference is made to the following EPP fields from the apply domain section in the form: domain :name, :right, :prior-right-on-name and :prior-right-country.

The Complainant assumed that the said request forms, of which the application details are published in the WHOIS database, contained erroneous information in the said EPP fields. However, the Complainant did not point out which fields of which applications do contain which errors and that therefore the applications should have been rejected.

B. RESPONDENT

According to the Respondent the grounds on which the Registry accepted the application for the domain names CITY by Moravia Gmbh, KICKBOXING by J.H. Ter Borgh Beheer BV, CRAWLER by Sharelook Beteiligungen GmbH and BLUE by Banco Bilbao Vizcaya Argentaria S.A. are:

- Art. 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 provides that holders of prior rights recognised or established by national or Community law shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts, and that prior rights shall be understood to include, inter alia, registered national and community trademarks.
- According to art. 12.3 of the same Regulation the request to register a domain name based on a prior right shall include a reference to the legal basis in national or Community law for the right to the name, such as a trademark, as well as other relevant information, such as trademark registration number.
- The .eu Registration Policy and the Terms and Conditions, referred to as the Sunrise Rules, that apply for all applications during the phased registration period due to art. 3 (d) of the said Regulation, provide under section 13.1 (1) that where the prior right claimed by an applicant is a registered trademark, the trademark must be registered by a trademark office in one of the member states.
- The same Rules provide under section 13.2 that it is sufficient to submit as documentary evidence a copy of an official document issued by the competent trademark office indicating that the trademark is registered, such as a certificate of registration. The documentary evidence must clearly evidence that the applicant is the reported owner of the registered trademark.

The Respondent concludes that, nonobstant the errors made by the applicants in the said EPP fields, the validation agent did find that the request did include a reference to the legal basis in national or Community law for the right to the name, and that prior rights exit for these particular names and has notified to the Registry accordingly.

DISCUSSION AND FINDINGS

In accordance with Article A.3(c) of the ADR Rules and Article B.1(d) of the supplemental ADR Rules, the Panel will disregard that part of the complaint and the amended complaint which is not written in English as the language of the ADR proceedings.

Art. 22, paragraph 1, b), of the Commission Regulation No. 874/2004 (EC) provide that in the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002.

In the opinion of the Panel, it is not up to the Panel to independently investigate all details of an application in the event a Complainant does not specify the basis for its complaint nor the specific facts why the contested applications are incorrect. For completeness sake the Panel mentions that the fact that an applicant may have filled in the "Prior Right on" field in an electronic form with the name of the applicant organisation and not with the name of the prior right (trademark) would not lead to a conflict with the above mentioned

Regulations as in the substantive documentation submitted during the validation process the name of the trademark for which the prior right exists and for which the identical domain name is applied for is mentioned. According to the Panel, in such circumstances it is not for the Panel to decide whether EURid should have applied the strictest possible measures.

Therefore, in the opinion of the Panel, EURid, according to Art. 14 of Commission Regulation (EC) No. 874/2004 of 28 April 2004, was right to grant the CITY, BLUE, CRAWLER and KICKBOXING applications, to the respective applicants.

DECISION

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

PANELISTS

Name	**Dinant Oosterbaan**

DATE OF PANEL DECISION 2006-06-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Art. 22, paragraph 1, b), of the Commission Regulation No. 874/2004 (EC) provide that in the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002.

It is not up to the Panel to independently investigate all details of an application in the event a Complainant does not specify neither the basis for its complaint nor the specific facts claimed by the claimant for the uncorrectness of applicant's requests. The fact that an applicant may have filled in the “Prior Right on” field in an electronic form with the name of the applicant organisation and not with the name of the prior right (trademark) would not lead to a conflict with the above mentioned Regulations. Infact in the substantive documentation submitted during the validation process the name of the trademark for which the prior right exists and for which the identical domain name is applied for is mentioned. According to the Panel, in such circumstances it is not for the Panel to decide whether EURid should have applied the strictest possible measures.