Panel Decision for dispute CAC-ADREU-000279

Case number	**CAC-ADREU-000279**
Time of filing	**2006-03-16 12:06:31**
Domain names	**muller.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**William Morris**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

On December 7, 2005, Muller et Cie filed an application for the registration of the domain name “MULLER” on the ground of a French registered trademark. Muller et Cie was the first applicant for said domain name.

On January 10, 2006, Muller et Cie submitted as Documentary Evidence an extract from an on-line database operated by the French Official Trademark Office.

EURid has accepted the application of Muller et Cie to register the domain name MULLER. This acceptance within the first phase registration (Sunrise period) is subject to dispute.

A. COMPLAINANT

Complainant contents that its researches among previous rights have not shown any registered trademark in France against "muller" owned by the Muller et Cie. According to the Complainant, Muller et Cie has two Community Trade Mark applications in respect of “muller”, neither has yet been granted and one is currently being opposed.

The Complainant claims that EURid's decision to accept the Application of Muller et Cie conflicts with European Union Regulations as, under Article 10 of Commission Regulation (EC) 874/2004 of 28 April 2004, the definition of Prior rights requires "registered national and community marks".

As a result, Complainant considers that in accepting the application on the basis on a pending registration, EURid erred in its interpretation of the meaning of a "registered" mark.

B. RESPONDENT

Respondent contents that the application of Muller et Cie for the domain name “MULLER” was made on the ground of a registered national trademark and was submitted in due time.

The Respondent argues that the Sunrise 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.

As a result, Respondent concludes that the Registry upon notification of the findings by the validation agent that prior rights exist regarding the domain name that is first in line has found that this applicant has demonstrated a prior right in accordance with the procedure set out in Regulation 874/2004, has accepted the application of Muller et Cie and decided to register the domain name on the first come, first served basis.

DISCUSSION AND FINDINGS

According to article 10.2 of the Commission Regulation (EC) n° 874/2004 “the 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”. By virtue to the same article, “prior rights’ shall be understood to include, inter alia, registered national and community trademarks (….)”.

According to article 13)2)ii of the Sunrise rules, in order to prove that a trademark is registered it is sufficient to submit an extract from an official on–line database operated and/or managed by the relevant national trademark office.

After review of the Documentary Evidence, the Panel finds that Muller et Cie has provided an extract from ICIMARQUE’s database which is precisely an official on-line database operated by the French Trademarks Office. Said extract demonstrates that the French trademark “MULLER” is registered by Muller et Cie since 1982 and has been duly renewed. Consequently, this document meets the requirements of article 13)2)ii of the Sunrise rules.

The Complainant contents that the Muller et Cie has two community trademark applications and that one of these applications is currently being opposed. None of these applications has mature to registration.

The Panel considers this matter irrelevant. The rules did not impose to provide several prior rights in order to register a domain name. Therefore, an established national trademark’s right is sufficient as prior right and as a base for the application during the Sunrise period according to article 10.2 of the Commission Regulation (EC) n° 874/2004

In accordance with article 14 of the Commission Regulation (EC) n° 874/2004, “the Registry shall register the domain name, on the first come, first served basis, if it finds that the applicant has demonstrated a prior right (…)”

EURid contents that Muller et Cie was the “first come” regarding the domain name <MULLER.EU> and the Complainant did not dispute this fact.

Consequently, in accordance with the article 14 of the Commission Regulation (EC) n° 874/2004, EURid shall accept the application of Muller et Cie.

As a result, the decision of EURid to accept the application of Muller et Cie does not conflict with the Commission Regulations n° 874/2004 and n° 733/2002.

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	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2006-06-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel agrees with EURid that Muller et Cie has demonstrated prior right in accordance with article 13)2)ii of the Sunrise rules and article 10.2 of the Commission Regulation (EC) n° 874/2004. The Documentary Evidence clearly demonstrates that Muller et Cie's prior right is a registered national trademark.

EURid accepted the application of Muller et Cie to register the domain name on the first come, first served basis and in accordance with article 10 and 14 of the Commission Regulation (EC) n° 874/2004.

The Panel finds that Complainant has failed to demonstrate that EURid's decision conflicts with the Commission Regulations.

As a result, the decision of EURid does not conflict with the Commission Regulations n° 874/2004 and n° 733/2002

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