Panel Decision for dispute CAC-ADREU-000293

Case number	CAC-ADREU-000293
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Domain names	pool.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	PISCINES WATERAIR

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

The Panel has not been notified of any other legal proceedings that relate to the disputed domain name.

FACTUAL BACKGROUND

On December 7th, 2005, Drake Ventures Limited ("Drake"), a company incorporated in Dublin, Ireland, filed an application for the registration of the domain name “POOL”. On the same day, but just two minutes later, the Complainant also lodged an application for the disputed domain name.

As Drake was first in real time with its application it was first invited to prove its entitlement to the disputed domain name. The Registry accepted the documentary evidence submitted and registered the domain to Drake.

The Complainant has lodged this Complaint against EURid's decision.

A. COMPLAINANT

The Complainant observes that Drake has registered many (in excess of 130) trademarks in order, so it contends, to be eligible to register equivalent .EU domain names. But it notes and contends that, in the Benelux region at least, no "POOL" nominative or figureative trade mark has been registered to Drake. In support of the contention, it produces seven identical or similar trademarks that are registered in the Benelux Merkenbureau. It further contends that it is not credible that Drake is a licensee of one of the registered trademarks similar to the disputed domain name. Indeed it submits that the claims to prior rights "are not true".

The Complainant states that it is entitled to have the disputed domain name transferred to it because it ranks second in the order of applications made for the disputed domain name.

B. RESPONDENT

The Registry, in its Response, summarised the procedure for registering a domain name during the "Sunrise Period" of the .top level domain. In particular it refers to Section 13 of the .eu Registration Policy and Terms and Conditions. In summary, this states that a copy of an official document issued by a competent trademark office indicating that a trademark is registered is sufficient documentary evidence to support an application for a domain name so long as the certificate clearly indicates that the applicant is the reported owner.

The Registry explained that a copy of a certificate of registration issued by the Benelux Merkenbureau, a competent trademark office, was submitted in good time by Drake. The certificate stated that the trademark was registered under nr 0775808 and that Pool.com Inc, established in Ottawa, Canada, was the reported owner of the trademark. Drake also enclosed with the documentary evidence an acknowledgement and declaration form duly completed and signed by both the licensor of the trademark and the applicant as licensee.

The Registry affirmed that it was satisified that Drake had prior rights to the disputd domain name and thus decided to register the domain name to Drake on the first come, first served basis.

DISCUSSION AND FINDINGS

Under the Sunrise Rules, applicants may be granted a domain name during the Sunrise Period if they are first in time with an application that can be verified by prior rights based in law. Appications are validated and the Registry takes a decision based on the findings of the validation. It falls to the Panel to verify whether the decision of the Registry conflicts with the .eu Regulation and Public Policy Rules.

The Panel is satisfied that the application made by Drake is based upon a lawful trade mark certificate that gives rise to prior rights to a domain name. However, Drake is not the original and current owner of the trade mark.

The Panel notes that the Complainant makes no objection or challenge to .eu Whois record of the timing and order of applications for the disputed domain name, or to the certificate of registration issued by the Benelux Merkenbureau in relation to the trade mark registered to Pool.com Inc. (which the Complainant produced).

The Panel passes no comment on the number and type of trade marks registered to Drake or the purpose for which it has registered them.

The Registry properly cites on Section 13.2 of the Sunrise Rules in relation to the procedure to apply for a domain name during the Sunrise period. Although, it is actually Section 20 that is greater relevance here. This section provides that where the applicant is not the owner of the trade mark, but a licensee, that proof of the license must be supplied within the Documentary Evidence lodged in support of an application.

After commencent of this ADR proceeding, and in accordance with procedure, the Registry supplied a copy of a License Declaration for the trademark POOL registered to Pool.com Inc. The Complainant has not had an opportunity to inspect this document prior to lodging its Complaint. But the Panel has inspected the Licence and is satisifed that it is authentic. It reveals that the trademark holder of "POOL", as licensor, authorises the applicant of the domain name, as licensee, to use the trade mark and to make an application for the disputed domain name.

Thus, the Panel is satisifed that the decision of the Registry does not conflict with the Regulations; the disputed domain name was applied for on the basis of lawful prior rights, namely a trademark registered with the Benelux Merkenbureau, and the applicant is an authorised licensee of the trade mark.

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	**Joseph DALBY**

DATE OF PANEL DECISION 2006-06-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Summary of Decision (in English)

During the Sunrise Period, the Registry had accepted an application for the disputed domain name from the first applicant in real time, by applying the first come, first served principle. The Complainant, who was the second applicant in real time, contested the Registry's decision. In support of its Complaint it produced documentary evidence that, on its face, indicated that the applicant was not in possession of prior rights to the disputed domain name, as required by the Sunrise Rules.

During the course of the proceeding, the Registry produced a copy of a License Declaration made by a lawful trademark holder that was in possession of prior rights. The Declaration was made in favour of the applicant and authorised it to make an application for the disputed domain name.

As the Complainant had not challenged the order of applications, and as the License Declaration was deemed authentic, the Panel was

satisfied that the decision of the Registry did not conflict with the .eu Regulations. The Complaint was therefore denied.