Panel Decision for dispute CAC-ADREU-000315

Case number	**CAC-ADREU-000315**
Time of filing	**2006-03-21 16:12:19**
Domain names	**solex.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Sinbar**

Respondent

Organization / Name	**EURid, EURid**

FACTUAL BACKGROUND

This decision arises from a complaint filed by the French company SINBAR (“the Complainant”) against the decision by EURID (“the Respondent”), to register the domain name “solex.eu” (“the Disputed Domain Name”) to a third party, Solex PPHU (“SOLEX PPHU”).

On December 7, 2005, SOLEX PPHU applied for the Disputed Domain Name under the first part of the phased registration period. The trademark on which SOLEX PPHU relied was the polish trademark “SOLEX”, filed on February 18, 1997 and registered under the number 169.981. Documentary evidence of the registered trademark was submitted to the Respondent in due time. The evidences consist in particular of a registration excerpt and a notarized document. According to the registration excerpt, the owner of the Polish trademark was “WOLOSIUK BARBARA PPHU SOLEX”.

The Respondent accepted the application on the basis that the right of SOLEX PPHU to the name has been proven, since the sworn statement by a notary public confirms that the domain name applicant is indeed the owner of the trademark.

On March 15, 2006 the Complainant filed a complaint with the Czech Arbitration Court, asking to cancel the decision of the Respondent and accept the application for the Disputed Domain Name filed by the Complainant, which was the second in the queue for the domain name.

On May 19, 2006, the Czech Arbitration Court notified the Respondent that it failed to comply with the deadline for submitting a response.

On May 24, 2006, the Respondent submitted a Challenge of Notification of Respondent Default.

On May 30, 2006, the Czech Arbitration Court appointed Mrs Isabelle LEROUX as sole Panelist in this matter. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Paragraph B5 of the ADR Rules and Paragraph B5 of the Supplemental ADR Rules.

On June 27, 2006, the Panel submitted a non-standard communication, requesting the translation of the evidences

supported by the Respondent into England since they were drafted in Polish.

On June 29, 2006, the Respondent indicated that it refuses to translate the Polish documents in English, which is the language of this arbitration case.

A. COMPLAINANT

In support of its position Complainant contends as follows:

The application of SOLEX PPHU was filed under violation of sections 4.1, 11-1 and 13.2 of the “Eu Sunrise Rules” and thus should have been rejected by the Respondent. In that case, the applicant for the Disputed Domain Name is SOLEX PPHU whereas the applicant for the trademark is WOLOSIUK BARBARA PPHU SOLEX.

Therefore, the applicant for the Disputed Domain Name is not the reported owner of the registered trademark, as requested by section 13.2. On this basis, the Complainant considers that the domain name application for the Disputed Domain Name is not in accordance with registration criteria of the “.eu Sunrise Rules”, and should be rejected.

B. RESPONDENT

The Respondent failed to file a response before the time limit set by the Czech Arbitration Court.

On May 24, 2006, the Respondent filed a non-standard communication whereby it indicated that the documentary evidence, and in particular the sworn statement drafted by a notary public confirmed that the applicant is indeed the owner of the trademark.

DISCUSSION AND FINDINGS

The Complainant’s application is made pursuant to article 22(1) (b) of EC Regulation N)874/2004, which provides that an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with EC Regulation n°733/2002. Pursuant to Article 22(11) of EC Regulation 874/2004, the sole purpose of these proceedings is accordingly to determine whether the decision taken by the Respondent was in accordance with EC Regulation N°874/2004 and EC Regulation n°733/2002.

Article 14 of EC Regulation 874/2004 provides, in particular, that “every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question. The Documentary evidence shall be submitted to a validation agent indicated by the Registry”.

The Panel could not analyse whether the documentary evidence submitted to the validation agent could establish whether or not the applicant of the Disputed Domain Name was also the Applicant for the trademark, since such evidences were drafted into Polish.

However, in its response the Respondent indicated that “the sworn statement by a notary public joined to the documentation confirms that the applicant is indeed the owners”.

Considering that the validation agent must have correctly analysed these documentary evidences – even if the panel finds that the refusal of the validation agent to translate a document he provided from polish into English, which is the official language of the procedure, is not admissible - and that SOLEX PPHU was the first applicant for the Disputed Domain Name, the Panel finds that SOLEX PPHU was eligible to apply for the Disputed Domain Name.

DECISION

For these reasons given above, and in accordance with Article 22(1) second subparagraph of EC Regulation N°874/2004, the Panel:
- rejects the Complaint brought by the Complainant;
- considers that SOLEX PPHU is eligible to apply for the Disputed Domain Name.

PANELISTS

Name	**Isabelle Leroux**

DATE OF PANEL DECISION 2006-06-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

On December 7, 2005, SOLEX PPHU applied for the domain name <solex.eu> during the sunrise period. Such application was based on the Polish trademark .SOLEX., owned by WOLOSIUK BARBARA PPHU SOLEX, filed on February 18, 1997 and registered under the number 169981.

The Complainant contested the allocation of the domain name <solex.eu> to the applicant, considering that such allocation infringed section 13.2 of the EU Sunrise Rules since the applicant is not the same as the trademark owner.

The Respondent indicated that the disputed domain name was regularly registered since a sworn statement confirmed that the applicant was indeed the owner of the domain name.

Even though, the sworn statement was drafted into Polish, the Panel took the view that the validation agent must have correctly assessed these documents and that the SOLEX PPHU was eligible to apply for the disputed domain name.