Panel Decision for dispute CAC-ADREU-000376

Case number	**CAC-ADREU-000376**
Time of filing	**2006-03-24 10:15:28**
Domain names	**futbol.eu, cheaptickets.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Handys Ltd.**

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 is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain names.

FACTUAL BACKGROUND

1. On December 5th, 2005, Complainant filed an application for the registration of the Benelux trademark "FUTBOL". This Benelux trademark was registered in the name of the Complainant on December 14th, 2005. The registration number of the trademark is 0783382. (Hereinafter, this trademark shall be referred to as the "FUTBOL Trademark").

The same day, Complainant filed and application for the registration of the Benelux trademark "CHEAPTICKETS". This Benelux trademark was registered in the name of the Complainant on December 14th, 2005. The registration number of the trademark is 0783235. (Hereinafter, this trademark shall be referred to as the "CHEAPTICKETS Trademark").

2. On December 7th, 2005, Complainant filed an application for the registration of the domain name "FUTBOL.EU" on the grounds of a registered trademark, i.e. the FUTBOL Trademark. Documentary Evidence of the registered trademark was submitted to EURid by Complainant in due time.

The same day, Complainant filed another application for the registration of the domain name "CHEAPTICKETS.EU" on the basis of a registered trademark, i.e. the CHEAPTICKETS Trademark. Documentary Evidence of the registered trademark was submitted to EURid by Complainant in due time and according to the requirements provided in the .eu Registration Policy and the Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules").

3. EURid rejected the application for the registration of the domain names at hand on the following basis: (A) for "FUTBOL.EU": "TM registered after Application was received (application for TM is not a prior right)"; and (B) in the case of "CHEAPTICKETS.EU": "Documentary evidence only included an application for trademark registration, not a certificate of existence of a registered trademark. Please note that the Sunrise Rules Section 13.11 (ii) state that "A trade mark application (sic) is not considered a Prior Right"".

A. COMPLAINANT

In support of its position Complainant contends as follows:

1. On the date of application for the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" - i.e. December 7th, 2005 - Complainant was the holder of Prior Rights (as these "Prior Rights " are defined in the regulations on registration of .eu domain names), according to Section 11(3) of the Sunrise Rules. In particular, Complainant argues that it was the holder of the FUTBOL and CHEAPTICKETS Trademarks and that such Trademarks were in each instance effective since on date in which were filed with the Benelux Trademarks

Office, i.e. December 5th, 2005.

In relation to the above, Complainant states that Pursuant to the Benelux Trademarks Law the registration of the Benelux trademarks lasts 10 years which begin from the date of the application. Hence, Benelux trademarks are considered effective and valid as of the date upon which the application is made, i.e. as of December 5th, 2005 in the case of FUTBOL and CHEAPTICKETS Trademarks.

2. The Documentary Evidence provided by the Complainant - i.e. the Registration Certificates ("Certificate d'Enregistrement") issued by the Benelux Trademarks Office - fulfils the requirements provided in Section 13(2) of the Sunrise Rules. In relation to this, Complainant argues that the Registration Certificates ("Certificate d'Enregistrement") for FUTBOL and CHEAPTICKETS Trademarks cannot be considered as a mere application but a certification of the registration of such Trademarks which results from the title of the Certificates themselves.

3. Complainant also contends that EURid's rejection of the applications for the domain names at hand is in violation of the European Regulations applicable to the .eu registration process. According to Complainant, the European Regulations on the .eu registration process - among others, Commission Regulation (EC) No 874/2004 of April 28th, 2004 - establish a series of conditions for the application for .EU domain names. The first condition is that a completed registration is provided. The registrant is then provided a deadline within which to submit documentation that established that the registrant has a Prior Right in the name evidenced by the domain name. Such Regulations do not state that the documentary evidence must establish that the registrant "had prior rights as of the date of the application of the .EU domain names" but just that it "has" such rights. Therefore, the point in time referenced in the Regulation for the establishment of the Prior Right is on or before the deadline for submission of documentation, i.e. January 16th, 2006 in the case of the domain names at hand.

Both FUTBOL and CHEAPTICKETS Trademarks had been approved and fully examined on or before January 16th, 2006. Hence - even if we accept that Complainant did not hold a Prior Right as of the application date - the Complainant was the holder of such Prior Rights on or before the deadline for submission of the required documentation, the date the documents for "FUTBOL.EU" and "CHEAPTICKETS.EU" were submitted to EURid.

4. Finally, Complainant argues that EURid has approved Complainant's applications for the domain names "GOLFVACATIONS.EU"; "NAME.EU" and "ORGY.EU". According to Complainant, these applications were accepted on the basis of the exact same documentation submitted in connection with the domain names in issue herein.

Thus, if the documentary evidence for the above-mentioned domain names was sufficient for EURid, then the documentation containing the same information must be sufficient in order to form a decision that the Prior Rights existed in the case of "FUTBOL.EU" and "CHEAPTICKETS.EU".

As a conclusion of arguments 1, 2, 3 and 4 above, Complainant requests that the decision of EURid to not register the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" in the name of the Complainant be lifted. It also requests that the domain names at hand be registered in the name of the Complainant as the original applicant thereof.

B. RESPONDENT

In view of the Complaint, Respondent contends as follows:

1. According to Commission Regulation (EC) No 874/2004 of April 28th, 2004, the holders of Prior Rights recognised or established by national or Community law are eligible to apply to register domain names during the so called "Sunrise Period". Such Prior Rights shall include, inter alia, registered national and Community trademarks. The request to register a domain name based on Prior Rights shall include a reference to the legal basis in national or Community law for the right of the same, such as a trademark, as well as other relevant information, such as a trademark registration number.

In line with the above, under Section 13.2 of the Sunrise Rules - that apply for all applications during the so called "Sunrise Period" in accordance with article 3 (d) of the above-mentioned Regulation - it is sufficient to submit as documentary evidence a copy of an official document issued by the competent trademarks office indicating that the trademark is registered and that the applicant of the domain name is the reported owner of such registered trademark. Section 13.1 of the Sunrise Rules provides that a trademark application is not considered a Prior Right. Finally, Section 11.3 states that the applicant of the domain name must be the holder of the Prior Right no later than the date on which the application is received by EURid (the Registry) on which date the Prior Right must be valid, which means that it must be in full force and effect.

On December 7th, 2005, Complainant filed two applications one for the registration of the domain name "FUTBOL.EU" and another one

for the registration of the domain name "CHEAPTICKETS.EU". Such applications were filed on the basis of the FUTBOL and CHEAPTICKETS Trademarks. The Documentary Evidence submitted by Complainant in relation to the applications for such domain names consist in two Registration Certificates ("Certificate d'Enregistrement") issued by the Benelux Trademarks Office. According to such Certificates, both FUTBOL and CHEAPTICKETS Trademarks were filed on December 5th, 2005. However, these Certificates also evidence that the mentioned Trademarks were registered by the Benelux Trademarks Office on December 14th, 2005. Hence, FUTBOL and CHEAPTICKETS Trademarks were not in full force and effect on December 7th, 2005, i.e. the date when the registration of the domain names in issue was applied. Thus, the Documentary Evidence submitted by the Complainant did not substantiate a Prior Right on the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" and the application for registration was rejected.

2. According to the Benelux Trademark Law, the validity of a trademark is allowed retroactively after the examination by the Benelux Bureau. Thus, on the date of application for the domain names at hand - i.e. on 7th December, 2005 - it was not known whether or not the trademark would be registered. Hence, on the date of application of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" the Prior Rights were not fully enforceable nor effective.

DISCUSSION AND FINDINGS

1. Complainant first contends that on the date of application for the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" - i.e. December 7th, 2005 - Complainant was the holder of Prior Rights as such Prior Rights are regulated under Section 13 (1) of the Sunrise Rules. In particular, it was the holder of the FUTBOL and CHEAPTICKETS Trademarks which were in each instance effective since on date in which were filed with the Benelux Trademarks Office, i.e. December 5th, 2005. In order to support this statement, Complainant argues that under the Benelux Trademarks Law, the trademarks are valid for a period of 10 years which begin from the date of the application. Hence, the FUTBOL and CHEAPTICKETS Trademarks were valid and in full effect from the date of the application, i.e. December 5th, 2005.

On the contrary, Respondent contends that the FUTBOL and CHEAPTICKETS Trademarks - the ones used as grounds for the registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" - were applied on December 5th 2005 but were only registered by the Benelux Trademarks Office on December 14th, 2005. Thus, the alleged Trademarks were not in full force and effect on December 7th, 2005, i.e. the date when the registration of the domain names in issue were applied and, therefore, did not substantiate a Prior Right on the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU".

Respondent further contends that under the Benelux Trademarks Law, the validity of a trademark is allowed retroactively after the examination by the Benelux Trademarks Office. Hence, on the date of application of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" the Prior Rights were not fully enforceable nor effective. Hence the application for registration of such domain names was rejected by EURid.

In relation to the above, this Panel finds as follows:

Under Article 10 of the Commission Regulation (EC) No 874/2004 of April 28th, 2004, holders of "Prior Rights recognised or established by national and/or Community law and public bodies are eligible to apply to register domain names during the period of phased registration before general registration of .eu domain starts (i.e. during the so called "Sunrise Period"). In particular, according to Article 12.2 of the above-mentioned Regulation, during the first part of the phased registration period only registered national and Community trademarks (apart from the geographical indications and the names and acronyms applied for the Public Bodies under Article 10.3 of the said Regulation) may be applied for as domain names.

In line with the above, Section 13.1 of the Sunrise Rules states that "where a Prior Right claimed by Applicant is a registered trademark, the trademark must be registered by a trademarks office in one of the member states, the Benelux Trademarks Office [….]. A trademark application is not considered a Prior Right".

The above allows this Panel to conclude without any doubt that under the Commission Regulation (EC) No 874/2004 of April 28th, 2004 and the Sunrise Rules (without prejudice to any other possible Prior Rights) only trademarks already registered constitute Prior Rights for the application for the registration of .eu domain names during the "Sunrise Period".

According to the Registration Certificates provided by Complainant, it is clear that the FUTBOL and CHEAPTICKETS Trademarks were applied for (i.e. the "Date of Filing") on December 5th, 2005 but were registered (i.e. the "Registration Date") only on December 14th, 2005. Therefore, on December 7th 2005 - the date in which the Complainant applied for the registration of the domain names in issue herein - the trademarks used as grounds for the registration of such domain names were not registered. Therefore, according to Commission Regulation (EC) No 874/2004 of April 28th, 2004 and the Sunrise Rules, on December 7th, 2005, Complainant was not eligible for the application for registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" on the grounds of the FUTBOL

and CHEAPTICKETS Trademarks.

Therefore, the mere fact that the FUTBOL and CHEAPTICKETS Trademarks were not registered on the date of the application for the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" constitutes, in the opinion of this Panel, enough reason as to dismiss the Complaint.

Notwithstanding the above, this Panel considers appropriate to discuss all the arguments submitted by Complainant in order to support its position.

Complainant contends that the "FUTBOL" and "CHEAPTICKETS" Trademarks were valid and in full effect from the date of the application, i.e. December 5th, 2005. In relation to this, Complainant argues that under the Benelux Trademarks Law, the trademarks are valid for a period of 10 years which begin from the date of the application. Respondent challenges this statement and contends that under the Benelux Trademarks Law, the validity of a trademark is provided retroactively after the examination by the Benelux Trademarks Office. Thus, the trademark is not valid and in full effect until such examination.
In relation to this, this Panel finds as follows:

As it is stated by Complainant, under the Article 10 of the Benelux Trademarks Law the period of validity of the trademarks is calculated since the application date. However, the validity and full effect of a Benelux trademark must to be construed as a status quo in which the owner of the trademark has an exclusive right over it in the territory and for the products and services covered by the trademark.

According to this, the owner of a valid and fully effective Benelux trademark is granted with certain rights in order to prevent third parties from using the trademark in the territory and for the relevant products and services. The validity and full effect of a trademark is obviously related with its validity period, however this is not the only criteria to take into account in order to determine when a trademark is valid and has full effect.

According to Article 3.1 of the Benelux Trademarks Law, "the exclusive right over a trademark is acquired as consequence of ITS REGISTRATION" (caps added) ("[…] le droit exclusive à la marque s'acquiert par l'enregistrement de la marque". Moreover, Article 13.1 of the said Law provides that "the REGISTERED trademark grants to its owner an exclusive right" (caps added) ("la marque enregistrée confère è son titulaire un droit exclusive". Article 13.1 also grants to the owner of the exclusive rights over the trademark, certain rights in order to prevent third parties from using the trademark without the owners' consent.

In light with the above, the exclusive rights over the Benelux trademarks are acquired upon its registration. Thus, as a general rule, when the Benelux trademarks are registered it is possible to prevent third parties' from using the trademark without authorisation and it is possible to conssider that the Benelux trademark is valid and has full effect.

According to the above - as it is stated by Respondent - the FUTBOL and CHEAPTICKETS Trademarks were only valid and in full effect (i.e. the Complainant was granted with the exclusive right over the Trademarks) upon their registration with the Benelux Trademarks Office (i.e. on December 14th, 2005) without prejudice to the fact that upon such registration (but nor earlier) the validity and full effect of the Trademarks were allotted with retroactive effect since their application on December 5th, 2005.
Thus, in the opinion of this Panel, on December 7th, 2005 - the date on which Complainant applied for the registration of the domain names at hand - Complainant was neither the holder of a registered trademark nor the holder of a trademark valid and in full effect. Therefore, it did not hold a "Prior Right" in order to apply for the domain names in issue herein according to Commission Regulation (EC) No 874/2004 of April 28th, 2004 or under the Sunrise Rules.

2. Complainant also contends that the Documentary Evidence provided to EURid - i.e. the Registration Certificates ("Certificate d'Enregistrement") for FUTBOL and CHEAPTICKETS Trademarks – fulfils the requirements provided in Section 13(2) of the Sunrise Rules. In relation to this, Complainant states that the Registration Certificates cannot be considered as a mere application but a certification of the registration of such Trademarks as this results from the title of the Certificates themselves.

On the contrary, Respondent states that the Registration Certificates ("Certificate d'Enregistrement") submitted by the Complainant as Documentary Evidence in connection with the application for the registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" shows that the FUTBOL and CHEAPTICKETS Trademarks were applied on December 5th 2005 but were only registered by the Benelux Trademarks Office on December 14th, 2005. Therefore, such Registration Certificates do not show that the mentioned trademarks were valid and in full effect when the domain names at hand were applied for.

In relation to the above, this Panel finds as follows:

Section 13(2) (i) of the Sunrise Rules refer to the submission as Documentary Evidence of a copy of an official document issued by the competent trademarks office indicating that the trademark is registered. Moreover, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trademark.

According to the content of the Registration Certificates ("Certificate d'Enregistrement") provided in the Complaint, FUTBOL and CHEAPTICKETS Trademarks were filed on December 5th, 2005, i.e. before the application for the registration of the domain names in issue (i.e. December 7th, 2005). However, also in accordance with such Registration Certificates, the above-mentioned Trademarks were registered by the Benelux Trademarks Office on December 14th, 2005, i.e. after the application of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU".

Therefore, the Documentary Evidence submitted by the Complainant does not prove that the trademarks used as basis for the registration of the domain names at hand were registered. Thus it neither possible for such Documentary Evidence to prove that Complainant was the owner of registered trademarks. At least, this was the case on or before the date of the application for the registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU". In relation to this, note that as it is discussed further in section 3) below, this Panel is on the opinion that the trademarks used as basis for the registration of the .eu domain names during the so called "Sunrise Period" must be duly registered on or before the application for the registration of the domain names. Therefore, although the Documentary Evidence provided by the Complainant may show that it was holder of the FUTBOL and CHEAPTICKETS Trademarks, such Documentary Evidence does not show that it was the holder of Prior Rights (i.e. a registered trademark) in the required time, i.e. on or before December 7th, 2005.

3. Complainant further contends that EURid's rejection of the applications for the domain names at hand is in violation of the European Regulations applicable to the .eu registration process. In this regard, Complainant argues that the point in time referenced in the Commission Regulation (EC) No 874/2004 of April 28th, 2004 for the establishment of the Prior Right is on or before the deadline for submission of documentation (i.e. January 16th, 2006 in the case of "FUTBOL.EU" and "CHEAPTICKETS.EU") and not - as it is construed by EURid - on or before the date of application for the registration of such domain names (i.e. December 7th, 2005 in the case of "FUTBOL.EU" and "CHEAPTICKETS.EU"). Both FUTBOL and CHEAPTICKETS Trademarks had been approved and fully examined on or before January 16th, 2006. Hence, according to Complainant's opinion, even if it was not the holder of Prior Rights when the domain names in issue were applied for, it was in any event the holder of Prior Rights on or before the deadline for submission of the required documentation.

In relation to the above, this Panel finds as follows:

Under Article 10 of the Commission Regulation (EC) No 874/2004 of April 28th, 2004, during the so called "Sunrise Period" only the holders of the Prior Rights defined in such Regulation are eligible TO APPLY to register domain names (caps added). In particular, in the case of the registered trademarks during the first part of the phased registration period, Article 12.2 of the said Regulation states that only registered national and Community trademarks (inter alia) MAY BE APPLIED FOR as domain names (caps added).

Thus, when regulating the need of holding Prior Rights in connection with the registration of .eu domain names during the "Sunrise Period", Commission Regulation (EC) No 874/2004 of April 28th, 2004 refers always to the need of holding such Prior Rights in order to APPLY FOR the domain names. This is crystal clear in the case of the registered trademarks where the said Regulation provides that "only registered national and Community trademarks […] may be APPLIED FOR as domain names" (caps added).

According to the above the Sunrise Rules - which apply to all applications during the so called "Sunrise Period" in accordance with article 3 (d) of the above-mentioned Regulation – provide in Section 11.3 that "The Applicant must be the holder (or licensee where applicable) of the Prior Right claimed no later than the date on which the Application is received by the Registry, on which date the Prior Right must be valid which means it must be in full force and effect".

In light of the above, this Panel is on the opinion that the applicants for .eu domain names during the "Sunrise Period" must be the holders of Prior Rights (e.g. registered trademarks) in order to apply for the registration of the domain names, i.e. on or before such application. Hence, the fact that the FUTBOL and CHEAPTICKETS Trademarks were registered before the deadline for submission of the Documentary Evidence but after the application for the registration of the domain names, does not suffice for Complainant to be considered as holder of Prior Rights which entitled it for registering the domain names in issue herein.

As a consequence of the above, this Panel finds that the rejection by EURid of the applications for the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" is not in violation of the European Regulations.

4. Finally, Complainant contends that EURid has already approved Complainant's applications for the domain names

"GOLFVACATIONS.EU", "NAME.EU" and "ORGY.EU". These applications were accepted on the basis of the exact same documentation submitted in connection with the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU". Thus, if the documentary evidence for the above-mentioned domain names was sufficient for EURid, then the documentation containing the same information must be sufficient in order to form a decision that the Prior Rights existed in the case of domain names at hand.
As regards the above, this Panel finds as follows:

Complainant does not provide details on the application and registration dates of the registered trademarks used as grounds for the registration of the domain names "GOLFVACATIONS.EU", "NAME.EU" and "ORGY.EU". However, in order to be able to consider Complainant's statements, this Panel has carried out certain searches in the Trademarks Register of the Benelux Trademarks Office. According to the results of such searches, this Panel presumes that the mentioned domain names were registered on the grounds of the following trademarks registered in Complainant's name: trademark "GOLFVACATIONS" (registration number 0782723) applied on December 5th, 2005 and registered on December 12th, 2005; trademark "NAME" (registration number 0782747) applied on December 5th, 2005 and registered on December 12th, 2005 and trademark "ORGY" (registration number 0783465) applied on December 5th, 2005 and registered on December 15th, 2005.

Moreover, according to the documentation provided by Complainant, the domain names "GOLFVACATIONS.EU"; "NAME.EU" and "ORGY.EU" (at least in the case of the applications accepted by EURid) were applied on March 17th, 2006.

Therefore, the three domain names alleged by the Complainant were applied after the registration of the trademarks used as grounds for the application and registration of such domain names. Hence, when such domain names were applied - i.e. on or before the date of such application - the Complainant was the holder of trademarks already registered and, therefore, it was the holder of Prior Rights in order to apply for such domain names according to the which constitute Prior Rights under Commission Regulation (EC) No 874/2004 of April 28th, 2004 and Sunrise Rules. This is precisely what did not occur in the case of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" where the FUTBOL and CHEAPTICKETS Trademarks were registered after the application for the reservation of the domain names.

As a consequence of the above, this Panel concludes that the scenario in the case of the application of the domain names "GOLFVACATIONS.EU"; "NAME.EU" and "ORGY.EU" is radically different from the scenario in the case of the application for the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU". Thus, the fact that EURid accepted the registration of the first domain names cannot be used in order to challenge EURid's rejection of the domain names at hand. On the contrary, EURid's acceptation of the registration of "GOLFVACATIONS.EU"; "NAME.EU" and "ORGY.EU" vs. the rejection of "FUTBOL.EU" and "CHEAPTICKETS.EU" contributes, in opinion of this Panel, to clarify the reasons why EURid rejected the registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" and to confirm that such rejection was correct.

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	**Gonzalo Gállego**

DATE OF PANEL DECISION 2006-06-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. On December 7th, 2005 (during the so called "Sunrise Period"), Complainant applied for the registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" on the grounds of the Benelux trademarks "FUTBOL" and "CHEAPTICKETS" both filled with the Benelux Trademarks Office on December 5th, 2005 and registered on December 14th, 2005 (the "Trademarks").

Respondent (EURid) rejected the application for the above-mentioned domain names on the basis that the alleged Trademarks were not registered on the date of application for the registration of the domain names.

2. In summary, Complainant contends that under the Benelux Trademarks Law the Benelux trademarks are considered effective and valid as of the date upon which the application is made, i.e. as of December 5th, 2005 in the case of the Trademarks. Therefore, Complainant was the holder of effective and valid trademarks (i.e. a Prior Right) on the date of the application for the registration of the domain names in issue.

Complainant also contends that EURid's rejection of the applications for the domain names at hand is in violation of the European Regulations applicable to the .eu registration process. In relation to this, Complainant states that the point in time referenced in the Commission Regulation (EC) No 874/2004 of April 28th, 2004, for the establishment of the Prior Right is on or before the deadline for submission of documentation and not on or before the application for the registration of the domain names (as it is construed by EURid). In any event, the Trademarks were registered (and therefore, Complainant was the holder of Prior Rights) on or before the deadline for submission of the Documentary Evidence.

3. In summary, Respondent contends that the Documentary Evidence submitted by Complainant in relation to the applications for the domain names in issue shows that the Trademarks were filed on December 5th, 2005 but registered on December 14th, 2005. Hence, the Trademarks were not in full force and effect on December 7th, 2005, i.e. the date when the registration of the domain names in issue was applied. Thus, the Documentary Evidence submitted by the Complainant did not substantiate a Prior Right on the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" and the application for registration was rejected.

Moreover, Respondent contends that under the Benelux Trademarks Law, the validity of a trademark is allowed retroactively after the examination by the Benelux Trademarks Office. Hence, on the date of application of the domain names at hand, the Trademarks were not fully enforceable nor effective.

3. In relation to the above, this Panel finds as follows:

3.1. Under the Commission Regulation (EC) No 874/2004 of April 28th, 2004 and the Sunrise Rules (without prejudice to any other possible Prior Rights) only trademarks already registered constitute Prior Rights for the application for the registration of .eu domain names during the "Sunrise Period". According to the Registration Certificates provided by Complainant, the Trademarks were applied for on December 5th, 2005 but were registered only on December 14th, 2005. Therefore, on December 7th 2005 - the date in which the Complainant applied for the registration of the domain names in issue herein - the trademarks used as grounds for the registration of such domain names were not registered and Complainant was not eligible for the application for registration of the domain names "FUTBOL.EU" and "CHEAPTICKETS.EU" on the grounds of the Trademarks.

3.2. Under the Benelux Trademarks Law, the exclusive rights over the trademarks are acquired upon its registration. Thus, the Trademarks were only valid and in full effect upon their registration with the Benelux Trademarks Office (i.e. on December 14th, 2005) without prejudice to the fact that upon such registration (but nor earlier) the validity and full effect of the Trademarks were allotted with retroactive effect since their application on December 5th, 2005. Therefore, on the date on which Complainant applied for the registration of the domain names at hand, Complainant was neither the holder of a registered trademark nor the holder of a trademark valid and in full effect.

3.3. Under the Commission Regulation (EC) No 874/2004 of April 28th, 2004, during the so called "Sunrise Period" only the holders of the Prior Rights defined in such Regulation are eligible TO APPLY to register domain names (caps added). Thus, under such Regulation the applicants for .eu domain names during the "Sunrise Period" must be the holders of Prior Rights (e.g. registered trademarks) in order TO APPLY for the registration of the domain names, i.e. on or before such application. Hence, the fact that the Trademarks were registered before the deadline for submission of the Documentary Evidence but after the application for the registration of the domain names, does not suffice for Complainant to be considered as holder of Prior Rights which entitled it for registering the domain names in issue herein.

For all the foregoing reasons, the Panel orders that the Complaint is Denied.