Panel Decision for dispute CAC-ADREU-000451

Case number	**CAC-ADREU-000451**
Time of filing	**2006-06-20 13:46:58**
Domain names	**fidia.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Dr Massimo Introvigne**

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 any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

Fidia SpA (“Complainant”) which is a leading manufacturer of industrial machines and machine tools. It has worldwide trademark rights in FIDIA since 1978.

Complainant filed an application for the registration of the disputed domain name <fidia.eu> (the “Domain Name”) on 7 December 2005. As it failed to timely submit documentary evidence in support of the existence of a prior right, Respondent rejected the application pursuant to Article 14(4) of Commission Regulation (EC) No. 874/2004 (the “Public Policy”).

Fidia Farmaceutici SpA applied for the registration of the Domain Name on 5 February 2006, and was the second applicant for the Domain Name after Complainant, invoking a prior right of the name FIDIA in the form of Italian trademark FIDIA of 26 November 2002, of which it timely submitted evidentiary documentation. The validation agent informed Defendant that it found that a prior right existed, and Defendant accepted the application of Fidia Farmaceutici SpA.

A. COMPLAINANT

Complainant argues that, upon its information and belief, Fidia Farmaceutici SpA is owner of the trademark FIDIA FARMACEUTICI, which was registered in 2005, and never used the mark FIDIA per se.

In its nonstandard communication of 27 June 2006 after receipt of the evidentiary documentation which was submitted by Fidia Farmaceutici SpA, Complaint further argued that Respondent had made a mistake because it confused the documentary evidence of Complainant with that of another company by the same name Fidia SpA, which is established in a different part of Italy, which confusion explains the rejection of Complainant’s Domain Name application.

For these reasons, Complainant claims that Respondent’s decision to assign the Domain Name to Fidia Farmaceutici SpA should be annulled and the Domain Name should be attributed to Complainant, who is next in the registration queue.

B. RESPONDENT

Respondent argues that it accepted the Domain Name application by Fidia Farmaceutici SpA by referring to Article 10(1) Public Policy, which states that only holders of prior rights which are recognized or established by national or Community law shall be eligible to apply to register domain names during a period of phase registration, as well as Article 14(4) of the Public Policy which states that documentary evidence of such prior rights should be submitted to the validation agent within 40 days after submission of the application

of the domain name. Fidia Farmaceutici SpA was the second applicant for the Domain Name after Complaint. As Complainant had not timely submitted evidence of its prior right, the application was rejected, so that the application of Fidia Farmaceutici SpA was assessed and, after timely submission of documentary evidence of the prior right it invoked, accepted.

Respondent understands Complainant's claim as that Complainant believes that the prior right of Fidia Farmaceutici SpA in support of its application for the Domain Name was not a trademark for FIDIA but rather for FIDIA FAMACEUTICI, which was registered more than twenty years after Complainant's FIDIA trademark, so that Respondent should have refused the application of Fidia Farmaceutici because of Complainant's older rights.

Respondent claims that it correctly applied Articles 10 and 14 of the Public Policy because it dealt with the applications in strict chronological order when it receives mores than one claim for the same domain name during the phased registration period. Respondent must only determine if the applicant had demonstrated that it is holder of a prior right at the time of the registration, without Respondent having to consider seniority of prior rights invoked by other applicants who came later in the queue, or conduct investigations if the applicant actually used the prior right.

Respondent argues that Complainant does not contest that it was the first applicant for the Domain Name, but failed to timely submit evidentiary documents so that Respondent's decision to reject the application was rightfully made. Respondent then had to examine the next application, which was filed by Fidia Farmaceutici SpA, who demonstrated its prior right by submitting evidence of Italian trademark FIDIA in its name. Accordingly, Respondent had no choice but to validate this first valid application.

Respondent therefore concludes that the complaint must be rejected.

DISCUSSION AND FINDINGS

Complaint accepts that it did not timely submit documentary evidence of the prior rights it invoked in its application for the Domain Name on 7 December 2005, for which reason Respondent rejected the application pursuant to Article 14(7) and 14(4) of the Public Policy. Complainant further accepts that Fidia Farmaceutici SpA was the second applicant for the Domain Name.

The documentary evidence of the prior right on which the application of Fidia Farmaceutici SpA relied is a valid trademark FIDIA of said applicant, with a registration date that is prior to the date of the application for the Domain Name, which trademark is in according to Article 14(1) of the Public Policy which requires that all prior rights "must be verifiable by documentary evidence which demonstrates the right under the law by virtue by which its exists". This provision does not require Respondent to consider or investigate third parties' rights which outdate the applicant's prior right, which follows from Article 14(10) of the Public Policy which explicitly accepts the principle of 'first come, first serve'. Complainant did not argue that the application of Fidia Farmaceutici SpA should have been rejected as a result of violation of other provisions of the Public Policy and/or the other rules that apply to .eu domain name registration.

The Panelist disagrees with Complainant that the documentary evidence which was submitted by Fidia Farmaceutici SpA is evidence of a mistake made by Respondent because it would have confused Complainant with another company by the same name. The document shows the name Fidia SpA, but the correct address of Fidia Farmaceutici SpA as mentioned in the application and WHOIS register, so that Fidia Farmaceutici SpA is likely to (also) use the name Fidia SpA.

The Panelist is satisfied that Respondent correctly applied Article 14 of the Public Policy and was correct in rejecting the application for the Domain Name of Complainant and accepting the application for the Domain Name of Fidia Farmaceutici SpA.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) of the Rules, the Panel orders that

the Complaint is Denied

PANELISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2006-09-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is holder of a trademark FIDIA which was registered in 1978, and filed an application for the domain name <fidia.eu> on

the basis of this trademark as prior right. The application was, however, rejected by Respondent because Complainant failed to timely submit documentary evidence of the prior right. The subsequent applicant for the domain name relied on a trademark FIDIA of 2005, which was accepted by the validation agent so that this application was accepted by Respondent.

Complaint argued that the application should have been rejected because it believed that the second applicant could not rely on a trademark FIDIA, Complainant's FIDIA trademark was older than the second applicant's trademark, and because the documentary evidence which was submitted by the second applicant showed that Respondent confused Complainant with another company by the same name.

The Panelist found that Respondent correctly applied Article 14 of the Public Policy and was satisfied that the documentary evidence submitted by the second applicant was sufficient proof of the prior right invoked, and it did not show the alleged confusion. Further, as a result of the principle 'first come, first serve' of article 14(100 of the Public Policy, Respondent was not required to consider or investigate third parties' older rights when assessing documentary evidence of an applicant's prior rights pursuant to Article 14(7) of the Public Policy.