Panel Decision for dispute CAC-ADREU-000493

Case number	CAC-ADREU-000493
Time of filing	2006-04-13 10:37:50
Domain names	gallus.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Christof Haust

Respondent

Organization / Name	Domain Trustees GmbH, Mogens Nielsen

FACTUAL BACKGROUND

The complainant challenges the granting of the eu.domain name GALLUS to Domain Trustees GmbH on the part of EURid for understanding that Domain Trustees GmbH was not entitled to apply for domain gallus.eu accrding to the Eurid rules arguing that Domain Trustees GmbH does not have a licence agreement either on a trademark named "Gallus".

A. COMPLAINANT

Domain Trustees GmbH ist not entitled to apply for domain gallus.eu according to the Eurid Rules for sunrise period 1, because they do neither have a valid EU nor IR Trademark though stated in the response from Eurid to our office. Domain Trustess GmbH hasn' t a valid licence for a corresponding trademark "Gallus" either. We consider Domain Trustees GmbH to be a strawman company, in particular since both the registrar Ascio and Domain Trustees have the same address in Munich, there might be an information advantage in time, when registrar and applicant are actually the same person. This is against the rules and the spirit of sunrise period 1 where all participants with trademark rights should have equal chances. As we can see from the documents respondent filed there is a difference in ownership of trademarks and the participants of the licence agreement, therefore the agreement is void. Cancellation of gallus.eu in favor of Domain Trustees GmbH is requested.

B. RESPONDENT

No response

DISCUSSION AND FINDINGS

According to the ADR Rules, in article 10 it is said that:

“a) In the event that a Party does not comply with any of the time periods established by these ADRRules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.
(b) Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom

as it considers appropriate."

In the case herein, this Panel wants to make clear that the Respondent failed to answer in time to the Claimant's complaint. To this Panel's mind, according to article 10.b above referred, although it is an important omission on the part of the Respondent, it is appropriate to go to the heart of the matter and make a decision based on the principles that must govern this Panel.

Taking in consideration the arguments contained in the complaint, This Panel deems suitable to bring section 11.1 of the Sunrise Rules up:

"1. During the first phase of the Phased Registration Period, only Domain Names that correspond to
(i) registered Community or national trade marks or
(ii) geographical indications or designations of origin
may be applied for by the holder and/or licensee (where applicable) of the Prior Right concerned, without prejudice to the names that may be applied for by Public Bodies, as referred to in Article 10(3) of the Public Policy Rules."

If one reads below can find as well the requirements to be met regarding documentary evidence.

The Claimant argues that on the one part, Eurid informed that the domain name gallus.eu was given to Domain Trustees having an IR or Community trademark, and he (the Claimant) affirms as well that after performing a search, the result was that "Domain trustees does not own any Community or IR Trademark which comprises 'Gallus'".

To this regard this Panel intends to be cautious and state that besides the fact that such search took place or not, no evidences have been provided on the part of the Claimant so as to prove that indeed Domain Trustees GmbH is not in possession of any Community or IR Trademark comprising "Gallus".

The ADR rules (B. Conduct of the proceedings; 1. The Complaint, b.16), reads that the Complaint shall:

"Annex any documentary or other evidence, including any evidence concerning the rights upon which the Complaint relies, together with a schedule indexing such evidence"

There is no doubt that both the Sunrise Rules and the ADR Rules give a great importance to documentary evidence.

It would be a lack of responsibility on the part of this Panel if every time it has to take a decision, the only basis for taking such decision were the factual grounds merely described by the parties. This Panel needs a good reason based on legal grounds and evidences provided by the parties when deciding on issues of this nature.

Regrefully this Panel must affirm that no clear evidences have been provided by the parties.

And so this Panel finds no legal and documentary grounds enough so as to cancel the decision to assign the domain "gallus.eu" to Domain Trustees GmbH.

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	**Berta Ramos Palenzuela**

DATE OF PANEL DECISION 2006-08-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

According to the ADR Rules, if a Party does not comply with any provision of, or requirement under, the ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the case herein, the Panel deems appropriate to go to the heart of the matter and make a decision based on the principles that must govern the Panel.

With his intention to be cautious, the Panel states that no evidences have been provided so as to prove that indeed Domain Trustees GmbH is not in possession of any Community or IR Trademark comprising “Gallus”. According to the ADR rules regarding documentary evidence, the Panel affirms that no clear evidences have been provided by the parties, and so finds no legal and documentary grounds enough so as to cancel the decision to assign the domain “gallus.eu” to Domain Trustees GmbH.