Panel Decision for dispute CAC-ADREU-000495

Case number	CAC-ADREU-000495
Time of filing	2006-04-04 11:28:03
Domain names	stemcell.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Tessa Strong

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

None the Panel is aware of.

FACTUAL BACKGROUND

1. On 7 December 2005, Bureau Gevers filed an application for the registration of the domain name “stemcell.eu,” during the Sunrise Period Phase I. In the allotted time, the applicant produced the Documentary Evidence for the prior rights stated in order to obtain the domain name; the request was received by EURid on 14 January 2006.

2. The processing Agent validated the application and considered the prior rights as proven.

3. On 1 April 2006 at 02:31:40, the day set as the deadline for the filing a Complaint, Tessa Strong initiated this ADR Proceeding which demands the Czech Arbitration Court (the CAC) to disclose the Documentary Evidence as defined in the Sunrise Rules and transfer the domain name in question to the next applicant in the queue, in accordance with the rule of first come, first served.

4. The Compliant was received by e-mail on 1 April 2006 at 02:31:40, and its hardcopy on 10 April 2006. The CAC acknowledged its validity and that it satisfied the formal requirements.
In accordance with Paragraph B2 (b) of the .eu Dispute Resolution Rules (the ADR Rules), on 10 April 2006 EURid notified the Complainant of certain deficiencies related to the Complaint.

5. The CAC formally commenced the ADR Proceeding On 25 April 2006.

6. On 21 June 2006, the Respondent filed its Response to the Complaint, but failed to comply with the deadline given (30 working days from the delivery of the notification of the commencement of the ADR Proceeding).

7. The CAC appointed Pierfrancesco Fasano as single Panelist (the Panel).

A. COMPLAINANT

The Complainant argues that the holder of the Benelux trademark “stemcell” is not the applicant Bureau Gevers. It maintains that the American Health Assistance Foundation is the only one to have the Prior Rights claimed and should obtain the domain name in dispute. Bureau Gevers, it states, does not meet the requirements set in the ADR Rules, and consequently, the domain name was assigned by mistake.

According to the position put forth in the Complaint (and considering the fact Stem-Cell Technologies is the next legitimate applicant in

queue), the Complainant wants the application to be rejected and the domain name transferred to the next legitimate applicant.

B. RESPONDENT

According to the Respondent, the grounds on which the Registry accepted the application for the domain name StemCell.eu are the following:
Once an applicant has demonstrated that it enjoys prior rights to a given name, the Registry assigns the domain name on the first come, first served basis.
The Sunrise Rules declare that when an applicant has obtained a license for a registered trademark, he must attach an annex to his request, which acknowledges this fact in a declaration signed by both the licensor and the licensee.
In the Documentary Evidence submitted to prove a valid Benelux trademark for the name in question, the American Health Assistance Foundation is shown to be the holder of a valid Benelux trademark for StemCell but also to have issued a valid license declaration in this regard, signed by both the Licensor (the American Health Assistance Foundation) and the Licensee (Bureau Gevers).
For these reasons, the Complaint must be dismissed.

DISCUSSION AND FINDINGS

1. As a preliminary and procedural remark, in accordance with the ADR Rules (Paragraph B3 (d)), the Response is in default. Thus, the Panel does not have to consider the late Response, but retains the right to do so and use its discretion in deciding whether or not to draw inferences from it.

2. According to Art. 22, par. 11 (2nd alinea) of Commission Regulation (EC) No. 874/2004 of 28 April 2004, the Panel: "In the case of a procedure against the Registry, the ADR Panel shall decide whether a decision taken by the Registry conflicts with this regulation or with regulation No. 733/2002."

3. According to EC Reg. No. 733/2002 Art. 4, par. 2, (alinea b): "The Registry shall: ... b) register domain names in the .eu TLD through any accredited .eu Registrar requested by any: (i) undertaking having its registered office, central administration or principal place of business within the Community, or (ii) organisation established within the Community without prejudice to the application of national law, or (iii) natural person resident within the Community." And, according to EC Reg. No. 874/2004, Art. 10, 1st alinea: "Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before the general registration of .eu domain starts."

4. According to the Panel, in this dispute the American Health Assistance Foundation seems to have the valid attributions required to obtain the domain name in question.
According to the EC Reg. No. 874/2004, Art. 14, par.1: "All claims for prior rights under art. 10 (1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists." Also, according to EC Reg. No. 874/2004, art. 12, par. 2 (3rd alinea): "During the first part of phased registration, only registered national and Community trademarks, geographical indications, and the names and acronyms referred to Article 10 (3), may be applied for as domain names by holders or licensees of prior rights and by public bodies mentioned in Article 10 (1)."#13;

5. Both the Applicant, Bureau Gevers, and the holder of the prior rights, American Health Assistance Foundation, submitted the license Declaration for a registered national (Benelux) trademark(.eu Phased Registration) on November 30th 2005; and, this document was submitted to EURid (see the annexes to the Nonstandard Communication).

6. To this extent, Bureau Gevers enclosed a copy of the trademark license agreement, in accordance with the template required by the Sunrise Rules. The Panel understands that Bureau Gevers is sufficiently entitled to apply for the domain name "STEMCELL.EU."

7. Likewise, as explained by Respondent, Bureau Gevers's prior right was sufficient for the purposes of applying for the domain name "STEMCELL.EU," since, at the time of filing the application, the "Stemcell" Benelux trademark was already registered with the Benelux Trademarks and Patents Office and a valid license on the trademark was granted in favor of Bureau Gevers.

8. The Panel will not order the Registry to investigate further whether or not a genuine license under the registered Benelux trademark was in place at the time of the application by Bureau Gevers for the domain name in dispute.

9. In this respect, the Panel believes its decision to be consistent with previous decisions on such a matter as this, e.g., Dr. Massimo Introvigne v EURid, Case no. 00449, "candy.eu"; Christophe LeClerque v EURid, Case no. 01077, "Euractiv.eu"; Mitsubishi Motors Europe B.V. v EURid, Case no. 00294, "Mitsubishi.eu"; and Mrs Suzanne Louise Phillips v. EURid, Case no. 00331, "Insight.eu".

10. In regard to the dispute, the Registry EURid (the Respondent) properly and rightly reserved the domain name “stemcell.eu” for the applicant “Bureau Gevers” (Licensee). Consequently, the Panel rules that the domain name STEMCELL must be assigned to “Bureau Gevers” (Licensee).

DECISION

For all the foregoing reasons, and in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders the Complaint Denied.

PANELISTS

Name	Pierfrancesco Fasano

DATE OF PANEL DECISION 2006-07-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In accordance with ADR Rules (Paragraph B3, d), since the Response is in default, the Panel is not required to consider it. However, the Panel can exercise its discretion and decide whether or not to draw inferences from it.

The Panel holds the following:

(i) According to the EC Reg. No. 874/2004, Art. 14, par. 1: "All claims for prior rights... must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists." And, according to EC Reg. No. 874/2004, art. 12, par. 2, 3rd alinea: "During the first part of phased registration, only registered national (omit) trademarks (omit), may be applied for as domain names by (omit) licensees of prior rights (omit)".

(ii) Both the applicant, Bureau Gevers (Licensee), and the holder of the prior rights, the American Health Assistance Foundation (Licensor), submitted a License Declaration for a registered national (Benelux) trademark (.eu Phased Registration) on 30 November 2005; and, this document was submitted to EURid.

Therefore, the Panel orders the Complaint Denied.