Panel Decision for dispute CAC-ADREU-000501

Case number	**CAC-ADREU-000501**
Time of filing	**2006-04-06 09:37:41**
Domain names	**lode.eu, procare.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Lode B.V.**

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 pending or decided legal procedings which relate to the disputed domain names.

FACTUAL BACKGROUND

The Complainant applied for the domain name < lode.eu.> on 7 December 2006 at 11.04.08.952 and for the domain name <procare.eu> on 7 December 2005 at 11.04.36.768(the “Domain Name”) in the first part of the phased registration period. The request to register the Domain Names was based on a prior right to the names LODE and PROCARE.

EURid rejected the applications to register the Domain Names because the names LODE and PROCARE were registered in the name of Lode Holding BV and not in the name of the applicant, Lode B.V.

The Complainant initially filed a Complaint in Dutch and without signed hard copies on 30 March 2006. The ADR Centre notified the Complainant of deficiencies in the Complaint and notified the Complainant and the Respondent that the deadline for filing the amended Complaint was extended until 22 May 2006.

The amended Compliant was filed on 6 April 2006 and the Response filed within time on 7 July 2006.

A. COMPLAINANT

The substantive part of the Complaint is quiet brief and states:

“We plead to get the domain names assigned to Lode B.V.=Lode Holding B.V.”

“We plead to get the domain names assigned after all, because we by mistake applied as Lode BV and not Lode Holding B.V. (at the Benelux - Merkenbureau in The Hague
Lode Holding B.V. is registered as deposant).
Lode B.V. daily acts as licence holder of the Holding.
For your information Lode B.V. and ProCare are subsidiaries of Lode Holding B.V.”(sic)

B. RESPONDENT

In summary the Respondent submits that the Complaint should be rejected for the following reasons.

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (the “Regulation”) provides that only holders of prior rights which are recognised or established by national or Community law shall be eligible to apply to register .eu domain names during the

phased registration period. Article 14 (4) of the Regulation provides that an applicant must submit documentary evidence that shows that it is the holder of the prior right claimed on the name in question. The Complainant's applications for the Domain Names were rejected by EURid because the evidence submitted with the applications did not clearly show that the Complainant was the holder of prior rights (as required by Article 10 (1) and Article 14 (4) of the Regulation) as the name of the holder of the PROCARE and LODE trademarks mentioned on the trademark certificates differed from the name of the Complainant.

Further, Section 20 (1) of the Sunrise Rules states that if an applicant has obtained a licence for a registered trade mark in respect of which it claims a prior right, it must enclose with the documentary evidence an acknowledgement and declaration form duly completed and signed by both the licensor of the relevant registered trade mark and the applicant.

Section 21.2 of the Sunrise Rules expressly states that the Validation Agent will examine whether the applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence received. Therefore an applicant should not expect the Registry or Validation Agent to engage in speculation and/or embark upon its own enquiry in relation to the exact connection between two entities.

In support of its contentions the Respondent refers the to Case No. 00127 (BPW) and. Case No. 294 (COLT) which it submits confirms that the burden of proof is on the applicant for the domain name to prove that it has a prior right at the time it submits its documentary evidence and that the Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced.

The Respondent submits that the Complainant accepts that it made a mistake when applying for the PROCARE and LODE domain names, as the owner of those trademarks is Lode Holding BV, which is a different entity from the Complainant and that the Complainant has initiated the present ADR proceedings in order to have the mistake it made when submitting the cover letter and the documentary evidence corrected by means of this ADR procedure. However, Article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation. As the Respondent cannot be blamed for the mistakes by the Complainant, its decision may not be annulled.

DISCUSSION AND FINDINGS

According to Article 10(1) of Commission Regulation (EC) No. 874/2004 of 28th April 2004 (the “Regulation”), only the 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 names starts (the “Sunrise Period”). Prior rights will include registered, national and Community trade marks which, pursuant to Article 14 of the Regulations, must be verifiable by documentary evidence, which demonstrates that the right exists and that applicant is the holder of the prior right claimed on the name in question.

The .eu Registration Policy and Terms and Conditions For Domain Name Applications made during that Phased Registration Period (the “Sunrise Rules”) apply to all applications made during the phased registration period. The Sunrise Rules are intended to ensure the proper, fair and technically sound administration of the phased registration period. The Validation Agent, appointed by the Registry, must verify whether the documentary evidence submitted by the applicant substantiates a prior right to the name applied for by the applicant, in accordance with the requirements for documentary evidence set out in Section 8 and Chapter V of the Sunrise Rules.

The holder and/or licensee of a registered Community or national trade mark may make an application during the first part of the Phase Registration Period. According to section 20.1 of the Sunrise Rules, if an applicant is a licensee for a registered trade mark, in respect of which it claims a prior right, it must enclose with the documentary evidence the prescribed form of acknowledgement and licence declaration for a registered trade mark, duly completed and signed by both the licensor of the registered trade mark and the applicant (as licensee)

The documentary evidence submitted by the Complainant with its application showed that Lode Holding B.V. and not the Complainant, Lode B.V., was the owner of the brands in question. If the Complainant was a licensee of Lode Holding B.V., as the Complainant appears to assert in the Complaint, then the application for the domain name should have been accompanied by documentary evidence (in the prescribed form) of an acknowledgement and declaration for a registered trade mark, signed by both the licensor of the trade mark and the licensee, as required by Section 21 of the Sunrise Rules.

Section 21.3 of the Sunrise Rules expressly states that the Validation Agent is not obliged, but is permitted in its sole discretion, to conduct it own investigations into the circumstances of the application, the prior right and documentary evidence. The burden of proof is on applicant (Complaint) to show that the applicant has a prior right (see Case No. 00127 (BPW) and Case No. 294 (COLT)). The Complainant has not provided any relevant evidence regarding the relationship between the applicant, Lode B.V. and Lode Holding B.V.,

the registered holder of the relevant trade marks. On the face of it Lode B.V. and Lode Holding B.V (the owner of the relevant brands) are not the same but separate legal entities.

In this case, the documentary evidence in support of the applications for the Domain Names was incomplete in respect of the requirements set out in Section 20.1 of the Sunrise Rules. The Panel accepts that the applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant.

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	**Veronica Marion Bailey**

DATE OF PANEL DECISION 2006-08-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

EURid rejected the Complainant's applications to register the Domain Names< lode.eu.> and <procare.eu> because the names LODE and PROCARE were registered in the name of Lode Holding BV and not in the name of the Applicant (Complainant), Lode B.V.

The Complainant, Lode B.V, and Lode Holding B.V, the registered owner of the brands LODE and PROCARE are not the same legal entity. The documentary evidence in respect of a licence for the registered trade marks did not comply with the requirements set out in Section 20.1 of the Sunrise Rules.

The applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant.