Sentence arbitrale for dispute CAC-ADREU-000672

Case number	CAC-ADREU-000672
Time of filing	2006-04-14 09:43:20
Domain names	carpo.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Michael Urban

Respondent

Organization / Name	Targa GmbH, Michael Urban

AUTRES PROCÉDURES JURIDIQUES

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

SITUATION DE FAIT

The Complainant registered the carpo.eu domain name during the Sunrise Period on 7 December 2005 and submitted proof of a prior right on 19 December 2005. The Complainant claims to have submitted other documents in addition to the cover page, said documents proving that the Complainant is the holder of a prior right. The Registry took the decision not to register the domain name in the name of the Complainant, on the grounds that, contrary to the assertion by the Complainant, only the cover page was received by the Registry, but no other documents within fourteen days after the Registry had received the application.

On 12 April 2006, the Complainant requested ADR proceedings against the Registry, claiming that he was the “owner of the registered trademark ‘Targa’, who is owner of the registered trademark ‘Carpo’”, even though he enclosed with his application extracts from CTM-Online relating to the word marks “Targa” (trade mark number 004510161) and “Carpo” (trade mark number 004451258) registered for TARGA GmbH as owner. The Complainant also submitted an uncertified extract from the companies register for Carpo Germany GmbH (Düsseldorf Local Court, no. HRB 52973), showing that a Mr. Steffen Ebner is a director with sole power of representation in respect of Carpo Germany GmbH.

On 24 April 2004, in accordance with ADR Rules B2 (b), the Arbitration Court notified the Complainant of various deficiencies in the ADR complaint and requested the Complainant to correct these defects within seven days. The Complainant failed to respond within the period provided. On 5 May 2006, the Arbitration Court set the Complainant a final deadline of 11 May 2006 and called on the Complainant to submit the ADR complaint once again in compliance with the ADR Rules. The Complainant submitted a new complaint on 5 May 2006, in which the Complainant named himself personally as the Respondent. On 28 June 2006, the Arbitration Court asked the Complainant whether the Registry was not supposed to be the Respondent. On 4 July 2006, the Complainant informed the Arbitration Court that he wished the name of the Respondent to be amended. The Respondent was now to be TARGA GmbH, but the contact information for said company was not provided.

The Arbitration Court complied with the wish expressed by the Complainant and appointed the undersigned as Panelist, without sending the ADR Complaint to TARGA GmbH.

A. PARTIE REQUÉRANTE

The Complainant complains to the Registry that he submitted documents with his application, in addition to the cover sheet, showing that the Complainant is the owner of a prior right. Said documents are claimed to be those submitted with his first submissions in the ADR proceedings.

The Complainant now asserts a claim against the Respondent he has finally designated that the Respondent attempted to register the carpo.eu domain name.

B. PARTIE DÉFENDANTE

The Registry, as the first Respondent, disputes the arguments brought by the Complainant and argues, in its response of 7 July 2006 to the complaint and with reference to case no. 00127 (BPW) that “the burden of proof is on the applicant to show that it is the holder of a prior right”, and with reference to case no. 294 (COLT) that “the basis of a prima facie review are the first set of Documentary Evidence received by the register and new documents submitted by the Complainant for the first time in the framework of an ADR proceeding are submitted too late to be considered”. The Registry also argues, to quote:

“Moreover, and merely for the sake of completeness, the Respondent would like to note that the Complainant is not the owner of the trademarks it refers to in its Complaint. Indeed, these trademarks refer to a company called Targa GmbH as the owner. The Complainant, a natural person, is not entitled to use these trademarks without a licence declaration.”

TARGA GmbH, as the new Respondent, has not and could not submit a response, because TARGA GmbH was not notified by the Arbitration Court of the pending ADR proceedings.

DÉBATS ET CONSTATATIONS

Any person or entity may initiate an ADR Proceeding by submitting a Complaint in accordance with the Procedural Rules. A Complaint may be filed (1) against a Domain Name Holder in respect of which domain name the Complaint is initiated; or (2) against the Registry. The Complaint shall provide the name of the Respondent and, in case of an ADR Proceeding against a Domain Name Holder provide all information known to the Complainant on how to contact the Respondent or any representative of the Respondent, including contact information based on pre-Complaint dealings, in sufficient detail to allow to send the Complaint to the Respondent as described in ADR Rules A2(a).

First the Complainant initiate an ADR Proceeding against the Registry. Later the Complainant named himself personally as the Respondent and changed on request of the Arbitration Court the Respondent to TARGA GmbH. In respect of ADR Rules B1 (b) it is the principle task of the Complainant to provide the name of the Respondent. The Arbitration Court and the Panelist are bound – as any court – to the decision of the Complainant especially in cases the Arbitration Court asked the Complainant explicit whether the Registry was not supposed to be the Respondent instead of the named Respondent.

With regard to the change of Respondent, it is therefore irrelevant whether the Complainant submitted with his application extracts from CTM-Online relating to the word marks “Targa” (trade mark number 004510161) and “Carpo” (trade mark number 004451258) registered for TARGA GmbH, because even if these extracts had been presented by the Complainant at the time, the Registry would have had to decide not to register the domain name under the name of the Complainant, since it was beyond any doubt that TARGA GmbH and not the Complainant was the proprietor of the prior rights to the designation “carpo”, and the Complainant did not submit any documents showing whether the Complainant has been granted a licence to the trade mark by TARGA GmbH.

However, it is also irrelevant whether the Arbitration Court acted in breach of ADR Rule A2 (a) by not duly notifying TARGA GmbH about the pending arbitration court proceedings, since TARGA GmbH did not make any attempt at all to register the carpo.eu domain name and because the domain name is not registered for TARGA GmbH. Yet even if the domain name had been registered for TARGA GmbH, the Complainant could not have successfully opposed such registration, because there is

no doubt whatsoever that TARGA GmbH and not the Respondent is the proprietor of the prior rights to the designation “carpo”.

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	**Lambert Grosskopf**

DATE DE LA SENTENCE ARBITRALE 2006-07-21

Summary

LE RÉSUMÉ EN ANGLAIS DE LA SENTENCE ARBITRALE SE TROUVE À L´ANNEXE 1

Any person or entity may initiate an ADR Proceeding by submitting a Complaint in accordance with the Procedural Rules. A Complaint may be filed (1) against a Domain Name Holder in respect of which domain name the Complaint is initiated; or (2) against the Registry. The Complaint shall provide the name of the Respondent and, in case of an ADR Proceeding against a Domain Name Holder provide all information known to the Complainant.

In respect of ADR Rules B1 (b) it is the principle task of the Complainant to name the Respondent. The Arbitration Court and the Panelist are bound – as any court – to the decision of the Complainant especially in cases the Arbitration Court asked the Complainant explicit whether the first named Respondant was not supposed to be the Respondent instead of a later named Respondent.

Is a Complain filed against a Respondent who did not make any attempt at all to register a disputed domain name or who is not the holder of the disputed domain name the Panel is obliged to dismiss the Complain as unfounded.

In respect of a final decision of a Complainant to name a Respondant who is not the holder of the disputed domain name the breach of ADR Rule A2 (a) by the Arbitration Court is negligible for the decision of the panel.