Panel Decision for dispute CAC-ADREU-000778

Case number	CAC-ADREU-000778
Time of filing	2006-04-20 09:57:57
Domain names	psychology.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	European Federation of Psychologists Associations EFPA, Ms. Sabine Steyaert, Office Manager

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 of which the Panel is aware.

FACTUAL BACKGROUND

Complainant is the European Federation of Psychologists' Associations (EFPA) which is the representative body for Psychologists in Europe – both for practitioners and for academics. EFPA has 32 members (Member States) from Europe, including all the members of the European Union. EFPA represents over 200,000 psychologists across Europe and is recognised by the Council of Europe as an International Non Governmental Organisation (INGO).
On February 7, 2006, EFPA submitted an application under the Sunrise period for the domain name psychology.eu.
The Registry granted the disputed domain name to Andreas Piller, who, on December 15, 2005, submitted two applications for it, respectively at 09:04:13.820 and 16:08:28.932.
Andreas Piller claimed the Benelux trademark "PSYCHOLOGY" No. 0783593 registered on December 15, 2006, as a prior right.

The ADR Proceeding
On April 18, 2006, the Complainant submitted its Complaint against the EURid, concerning the domain name <psychology.eu> (the "disputed domain name"), in accordance with the .eu Alternative Dispute Resolution Rules (the "ADR Rules"). The Complainant is in the third position for the disputed domain name, having filed its application on February 7, 2006. The ADR Center for .eu (the "ADR Center") issued on April 20, 2006 a Request for EURid Verification. On April 24, 2006, EURid submitted its Verification for the disputed domain name. The Complaint was written partly in English and partly in German. According to Article 16.3 of the .eu Domain Name Registration Terms and Conditions (the ".eu Terms and Conditions"), any ADR Procedure initiated against the Registry shall be conducted in the English language. Accordingly, on April 27, 2006, the ADR Center issued a Notification of Deficiency in the Complaint and requested that the Complainant submit the Complaint in the proper language of the proceeding, namely the English language, and to correct the following deficiencies: (1) The designation of the Complainant and the Authorized Representative was not identical in the electronic Complaint and the hardcopy; (2) Complainant had not identified the registrar with whom the domain name was registered at the time the complaint was filed; (3) Complainant was required to send also a hardcopy of the complaint (1 signed original + 3 copies) to the Czech Arbitration Court. On May 3, 2006, the Complainant submitted its amended Complaint in the English language. On May 10, 2006 Complainant informed the ADR Center that due to a misunderstanding as to the proper name of the registrar, Complainant wanted to rectify the name of the Registrar. On May 10, 2006, the ADR Center formally notified the Respondent of the Complaint and the commencement of the ADR proceeding. On June 28, 2006, Respondent filed its response. On June 29, 2006, the ADR Center contacted the Undersigned requesting his services as a sole Panelist to consider and decide this dispute. On the same date the Undersigned accepted, signed and sent his Statement of Acceptance and Declaration of Impartiality. On June 29, 2006, the ADR Center notified the parties of appointment of the ADR Panel and Projected Decision Date. On July 4, 2006, the case file was transmitted to the Panel.

A. COMPLAINANT

Complainant affirms and contends the following:
a) that Andreas Piller applied for the .eu domain name on December 14, 2005 using the Sunrise period 1;
b) That Andreas Piller's Benelux trademark was accepted on January 01, 2006; and
c) That the registration of the disputed domain name is abusive and speculative.
Complainant's Remedies Sought are:
1. The annulment of the decision taken by the Registry, and
2. The transfer of the domain name psychology.eu to EFPA - European Federation of Psychologists' Associations (next applicant in queue).

B. RESPONDENT

Respondent contends that it has accepted Andreas Piller's application for the disputed domain name on the following grounds:
a) Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") provides that holders of prior rights recognised or established by national or Community law shall be eligible to apply for register domain names during a period of phased registration before general registration of .eu domain starts, and that prior rights shall be understood to include, inter alia, registered national and community trademarks.
b) Article 14 (7) of the Regulation states that the Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right.
c) Article 22 (b) 1 of the Regulation states that the Panel in the present ADR proceeding must determine if the decision taken by the Registry conflicts with the Regulation.
d) Article 11 (c) of the ADR Rules states that with regard to any Registry decision relating to a prior right invoked during the phased registration period a transfer and attribution will only be granted by the Panel if the Complainant is the next applicant in the queue for the domain name concerned and subject to a decision by the Registry that the Complainant satisfies all registration criteria set out in the Regulation and to the subsequent activation by the Registry of the domain name in the name of the Complainant who is the next applicant in the queue.
e) Andreas Piller (hereafter "the Applicant") applied for the domain name PSYCHOLOGY on December 15, 2005. The validation agent received the documentary evidence on January 2, 2006, before the January 24, 2006 deadline.
f) The documentary evidence showed that the Applicant was the holder of a registered trademark at the time of validation.

Respondent's response to complainant's contentions is here below reported.

Respondent arguments that:

a) the Complainant seems to be applying article 21 of the Regulation, which is entitled "Speculative and abusive registrations". However, pursuant to article 22 (1) b of the Regulation an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002;
b) that article 14.7 of the Regulation provides that under the phased registration the Registry shall register the domain name if it finds that the applicant has demonstrated a prior right. Therefore, during the phased registration period, the decision by the Registry whether or not to register the domain name, can only be taken on the ground of the findings whether or not the applicant has demonstrated a prior right;
d) that there is no legal ground in the Regulation for the Registry to reject an application for a domain name on the presumption that the application may have been made in bad faith or for speculative reasons. As there is no obligation under the Regulation for the Registry to assess the bad faith of the applicant and as article 22 (1) b states that a decision by the Registry can only be annulled when its decision conflicts with the Regulation, the Complaint must be dismissed;
e) that in the case of a speculative and abusive registration, ADR proceedings must be initiated against the domain name holder itself, not the Registry;
d) that with regard to the Complainant's request to have the domain name transferred, the Registry would like to refer the Panel to article 11 (c) of the ADR Rules. Two conditions need to be met before the Panel may order the transfer of a domain name:
• the Complainant must be the next applicant in the queue for the domain name concerned;
• the Registry must decide that the Complainant satisfies all registration criteria set out in the Regulation.
The Registry must first assess, via the normal validation procedure, whether the Complainant's application satisfies the requirements of the Regulation. Therefore, the Complainant's transfer request must be rejected.
For the reasons mentioned, Respondent affirms that the Complaint must be rejected.

DISCUSSION AND FINDINGS

Article 22 of the Regulation 874/2004 provides that in the case of a procedure against the Registry (i.e. Respondent), the ADR Panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with the European Parliament and the Council

Regulation (EC) No. 733/2002 of April 22, 2002 on the implementation of the .eu Top Level Domain.
While the principal obligations of EURid regarding its decisions to register .eu domain names during the phased registration period are regulated by Article 14 of the Public Policy Rules, the final paragraph of that Article states that EURid shall register the domain name on a first come, first served basis if it finds that the applicant has demonstrated a prior right in accordance with the procedure set out in the second, third and fourth paragraphs of Article 14. In addition, article 12(1) of the Public Policy Rules requires EURid to publish a detailed description of all the technical and administrative measures that it shall use to ensure a proper, fair and technically sound administration of the phased registration period. Those measures are set out in the Sunrise Rules.
In this case, before accepting Andreas Piller's application, EURid should have verified whether or not the Benelux trademark "PSYCHOLOGY" No. 0783593 registered by Andreas Piller on December 15, 2006 constituted a valid prior right in order to enable the holder to apply for a corresponding domain name during the first part of the phased registration period. In other words, EURid should have verified: a) whether Andreas Piller was eligible to request the disputed domain name; b) whether the domain name applied for corresponded to a registered national or Community trademark; and c) whether the trademark claimed as a prior right (i.e. PSYCHOLOGY) was valid, namely in full force and effect.
As regards the eligibility of Andreas Piller, it should be noted that Article 10 (1) of the regulation states that: «Holder of prior rights recognised or established by national or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts. "Prior rights" shall be understood to be, inter alia, registered national and community trademarks…».
In addition, Paragraph 3. Section 11 of the Sunrise Rules (Chapter V. Validation of prior rights) specifies that: «The Applicant must be the holder of the Prior Right claimed no later than the date on which the Application is received by the Registry, on which date the Prior Right must be valid, which means that it must be in full force and effect».
Complainant contends that Andreas Piller requested the disputed domain name on December 14, 2005, while Piller's trademark was accepted only on January 1, 2006. Thus, Complainant alleges that Piller was not the holder of a prior right when he applied for the disputed domain name. Therefore, Complainant requests the annulment of EURid decision to accept Piller's application.
However, from the case file it results that these statements are not correct. From the WhoIs database published on EURid web site, it appears that Andreas Piller's first application for the disputed domain name was filed on December 15, 2005. From the Official Benelux Trademark office online database, it results that the trademark Psychology reg. No. 0783593, filed on December 14, 2005 was registered the following December 15, 2005. The date of the publication of the registration was in fact January 1, 2006.
Consequently, it appears that the trademark PSYCHOLOGY is identical to the disputed domain name psychology.eu and that it was registered and valid on the date of Piller's application for the disputed domain name.
For the sake of completeness, it should be noted that according to the "Reglementation Benelux en matiere de marques, Loi uniforme Benelux sur les marques" (Regulation of the Benelux in the matter of Trademarks), Article 2 states that: «… the exclusive right to use a trademark is acquired with the registration of the trademark…». Unfortunately the BENELUX Trademark Office (like most Patent and Trademark Offices) does not show the hour of the registration in the related trademark registration certificate but it only indicates the Date i.e. December 15, 2005.
Therefore, considering Paragraph 2. Section 21 of the Sunrise Rules (Chapter VI. Examination of prior right claims) which 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» and the absence of a different and specific indication regarding the timing of the registration of the trademark, this Panel considers that EURid, in accordance with, Paragraph 3. Section 11 of the Sunrise Rules, correctly verified that The Applicant was the holder of the Prior Right claimed at the date on which the Application was received by the Registry.
In addition, it is the Panel's view that, in the absence of a clear indication of the exact time, date and hour at which the trademark was registered, considering that in virtue of the most commonly used time notation system in the world, i.e. the 24-hour clock convention of time-keeping, the day begins at midnight, 00:00, and the last minute of the day is that beginning at 23:59, it is then reasonable to consider that the registration entered in force at the beginning of the day noted on the related certificate. Therefore, at the date of his first application for the disputed domain name (i.e. On December, 15, 2005, 09:04:13.820), Andreas Piller was the holder of a prior right (the Psychology trademark) registered and in force since December 15, 2005, 00.00.
As regards Complainant's contention that the registration of the disputed domain name is an abusive and speculative registration, the Panel notes and agrees with EURid's conclusion that there is no legal ground in the Regulation for the Registry to reject an application for a domain name on the presumption that the application may have been made in bad faith or for speculative reasons. EURid's obligations as to registration of domain names in the phased registration period are specified in Article 14 of the Public Policy Rules. EURid has no authority during the phased registration period to investigate whether or not an application is made in bad faith within the meaning of Article 21 of the Public Policy Rules. It is the panel's view that a complaint brought against the registration of a domain name, which is deemed to constitute a speculative and abusive registration, suggests a procedure where the holder of the domain name should be the respondent, and not EURid.
Finally, concerning Complainant's request to transfer the domain name psychology.eu to EFPA - European Federation of Psychologists' Associations and Complainant's affirmation to be "next applicant in queue", the Panel wishes to point out that Mr. Piller, on December 15, 2005, filed two different applications for the disputed domain name, therefore in the event this Panel should have decided to annul Eurid's decision, Mr. Piller would still be the next applicant in line, since Complainant's application for the disputed domain name was

filed on February 7, 2006.
This ADR Panel finds that the decision taken by Respondent to accept Mr Piller's application does not conflict with the Regulation 874/2004.

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.

Date of Panel Decision: July 25, 2006

PANELISTS

Name	**Fabrizio Bedarida**

DATE OF PANEL DECISION 2006-07-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant contends that Andreas Piller requested the disputed domain name on December 14, 2005, while Piller's trademark was accepted only on January 1, 2006. Thus, Complainant alleges that Piller was not the holder of a prior right when he applied for the disputed domain name. Therefore, Complainant requests the annulment of EURid decision to accept Piller's application.
However, from the case file it results that these statements are not correct. In fact, from the WhoIs database published on EURid web site, it appears that Andreas Piller's first domain name application was filed on December 15, 2005 and, from the Official Benelux Trademark office online database, it results that the trademark Psychology reg. No. 0783593, was filed on December 14, 2005 and registered the following December 15, 2005. The date of the publication of the registration was in fact January 1, 2006..
As regards Complainant's contention that the registration of the disputed domain name is abusive and speculative, the Panel notes and agrees with EURid's conclusion that there is no legal ground in the Regulation for the Registry to reject an application for a domain name on the presumption that the application may have been made in bad faith or for speculative reasons. EURid's obligations as to registration of domain names in the phased registration period are specified in Article 14 of the Public Policy Rules. EURid has no authority during the phased registration period to investigate whether or not an application is made in bad faith within the meaning of Article 21 of the Public Policy Rules.
Concerning Complainant's request to transfer the domain name psychology.eu to EFPA - European Federation of Psychologists' Associations and Complainant's affirmation to be "next applicant in queue", the Panel points out that Mr. Piller, on December 15, 2005, filed two different applications for the disputed domain name, therefore in the event this Panel should have decided to annul Eurid's decision, Mr. Piller would still be the next applicant in line.
Decision:
For all the foregoing reasons, in accordance with Paragraphs B12 of the Rules, the Panel orders that the Complaint is denied.