Panel Decision for dispute CAC-ADREU-000897

Case number	CAC-ADREU-000897
Time of filing	2006-05-18 12:08:40
Domain names	roxio.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Robert Petersen

Respondent

Organization / Name	Roxio UK, Ltd., Robert Petersen

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

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FACTUAL BACKGROUND

Complainant Robert Petersen filed the application for the domain name roxio.eu on February 6, 2006. EURid rejected the application. The grounds on which the rejection was based is not specified by the Complainant. The rejection concerns the registration of domain names within the first sunrise phase. This rejection is subject to dispute.

A. COMPLAINANT

Complainant is of the opinion that he should be the official registrant of the domain name roxio.eu, however he does not provide any information on reasons why the rejection of the application must be annulled. Complainant provided the Respondent information as the registrar technical contact. According to Complainant the documentation evidencing the ownership of the priority right is represented by the Trade Mark Licence Declaration for a Registered Trade Mark and the Trade Mark Licence Agreement as annexes to the complaint, however it is not clear whether these documents have been sent as a Documentary Evidence within the application process and if yes, whether these formed a complete set of the Documentary Evidence provided to the Respondent, or not.

B. RESPONDENT

The Respondent according to Complainant is Registrar technical contact, however EURid confirmed its role of Respondent in its nonstandard communication from May 23, 2006 – answer to request No.2. Since the complaint did not contain any reasoning why the rejection of his application conflicts with the European Union Regulations, Respondent did not responded to the complaint.

DISCUSSION AND FINDINGS

The complaint of the Complainant and all the other documentation and communication was duly reviewed.

The purpose of the Regulation 874/2004 is, inter alia, to grant domain names during the Sunrise period on first come first served basis as properly claims Complainant provided that the applicant can demonstrate a right which is prior to his domain name application.

The last paragraph of Article 14 of Commission Regulation (EC) No 874/2004 provides that the Registry shall register the domain name, on first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with paragraphs 2-4 of the same article.
The paragraph 4 of Article 14 of the said Regulation provides that every applicant shall submit Documentary Evidence that shows that he or she is the holder of the prior right claimed on the name in question.

In compliance with the Article 14 of Commission Regulation (EC) No 874/2004 the .eu Registration Policy and the Terms and Conditions, (.eu Sunrise Rules), that apply for all applications during the phased registration period in accordance with art. 3 (d) of the said Regulation, provides under Section 13(2), inter alia, that the Documentary Evidence must clearly evidence that the applicant is the reported owner or licensee or transferee of the registered trademark.

Pursuant to Article 12 (2) of the EC Regulation 874/2004 licensees of trademark owner may also apply for the corresponding domain name.

Section 20 (1) of the .eu Sunrise Rules, states that when 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 states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence it has received.

In other words, where the prior right claimed is a trade mark, the burden of proof is on the applicant (Complainant) side, ownership evidence inclusive.

Complainant did not recognise properly the person of Respondent, but this failure does not formally allow the Arbitration Court to cancel the proceeding according to the ADR Rules, if all formal requirements of complaint are met. According to the ADR Rules, namely Paragraph B1(b)(10)(ii) the Complainant is required to describe the reasons why a decision taken by the Registry (EURid) conflicts with European Union Regulations.

The Panel did not find in the complaint or other documentation delivered any information about the reasons why a decision taken by the Respondent (EURid) conflicts with European Union Regulations or any evidence supporting such a standpoint.

Summarizing the above stated, I did not find the contested decision to reject the application of the applicant made by the Respondent in conflict with any of the European Union Regulations.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) of the Rules, the Panel orders that

the Complaint is Denied

PANELISTS

Name	**Tomáš Borec**

DATE OF PANEL DECISION 2006-11-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant claimed that he should be the official registrant of the domain name roxio.eu.

According to the ADR Rules, namely Paragraph B1(b)(10)(ii) the Complainant is required to describe the reasons why a decision taken by the Registry (EURid) conflicts with European Union Regulations. The Panel did not find in the complaint or other documentation delivered any information about the reasons why a decision taken by the Respondent (EURid) conflicts with European Union Regulations or any evidence supporting such a standpoint
Therefore Panel cannot find any breach of any of the European Union Regulations. The Panel denied the complaint.