

Panel Decision for dispute CAC-ADREU-000984

Case number **CAC-ADREU-000984**

Time of filing **2006-04-28 09:24:50**

Domain names **isabella.eu**

Case administrator

Name **Josef Herian**

Complainant

Organization / Name **Rolf Rohwedder**

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.

FACTUAL BACKGROUND

The Complainant Rolf Rohwedder is a natural person. Subsequent to the Complaint itself, the Complainant's representatives have clarified by non-standard communication, that Mr Rolf Rohwedder is the contact person within the Danish company Jydsk Camping Industri A/S and that the correct Complainant should be that company. Jydsk Camping Industri A/S' line of business is described on the Danish company register as "sail maker, flag and tent factories etc". It is the proprietor of a registered Community Trademark ISABELLA dating from 31 March 1999 in Nice classification 22. It is also the proprietor of a registered Danish national trademark ISABELLA in classes 22 and 28. Jydsk Camping Industri A/S has a number of subsidiary company names registered, including Isabella A/S and Isabella Camping A/S.

An application was filed in the name of Isabella Jysk Camping A/S for the domain name isabella.eu on 7 December 2005, during the Phased Registration period. The trademark registrations for ISABELLA referred to above were provided as evidence that the Applicant satisfied the general eligibility criteria for registration in the First Sunrise Period. However, Isabella Jysk Camping A/S is the name of a company which does not exist, and the name appears to have been used by mistake. The Complainant says that the mistake was that of its Registrar Ascio Technologies Inc. Although the application in question was the first one filed in the First Sunrise Period regarding the domain name isabella.eu, the application was rejected by EURid on the basis that the Applicant was not the actual owner of the ISABELLA trademark, based upon its examination of the documentary evidence provided.

A. COMPLAINANT

The Complainant refers to what it says was its Registrar's mistake. It says that the name used in the application for isabella.eu was "an unfortunate mix of the main and the subsidiary company names".

Although the Complainant requests annulment of EURid's decision to deny registration of the domain name isabella.eu, and a decision awarding the registration to Jydsk Camping Industri A/S, it does not otherwise elaborate on the basis for that request.

B. RESPONDENT

The Respondent (EURid) replies to the Complaint as follows.

Article 10(1) of Commission Regulation No. 874/2004 ("the Regulation") states that only holders of prior rights which are recognised or established by national or community law shall be eligible to apply to register domain names during the period of Phased Registration before general registration of .eu domain starts. Section 3(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period ("the Sunrise Rules") provides that an application will only be considered complete when the Applicant provides the Registry (EURid) with its full name. In this case, EURid concluded from its examination of the documentary evidence that the Applicant was not the actual owner of the ISABELLA trademark. The extract from the Community Trademark Register submitted in support of the application mentioned a different company as the owner of the ISABELLA trademark, and the application was therefore rejected.

It is of great importance that EURid is provided with all information which allows it to assess if the Applicant is the holder of prior rights. The information in this case was incorrect.

Article 22(1)(b) of the Regulation allows an ADR procedure to be initiated against EURid, where EURid's decision conflicts with the Regulation or with

Regulation No 733/2002. The Registry's decision was correct and there are therefore no grounds for overturning EURid's decision. Any mistake made by the Applicant's Registrar cannot be attributed to the Registry, and the Complainant should turn to its Registrar for any mistakes.

DISCUSSION AND FINDINGS

The Complaint itself has been filed in the name of Rolf Rohwedder, rather than Jydsk Camping Industri A/S. However, this discrepancy has been clarified by a subsequent non-standard communication, which the Panel is allowed to admit in its sole discretion under paragraph 8 of the .eu Alternative Dispute Resolution Rules ("the ADR Rules"). The Panel is prepared to admit that document, and to treat the Complaint as filed on behalf of Jydsk Camping Industri A/S.

As regards an applicant's obligations in terms of demonstrating that it is the holder of prior rights during the Phased Registration period, in addition to Article 10(1) of the Regulation, and Section 3(1) of the Sunrise Rules which are referred to by EURid in its Response to the Complaint, the Panel also notes Section 13(2) of the Sunrise Rules. Section 13(2) requires the holders of a registered trademark to provide documentary evidence which "must clearly evidence that the Applicant is the reported owner of the registered trademark".

In this case, although documentary evidence was provided, it showed a CTM registration in the name of a company which differed substantially from the name of the Applicant itself. The names Isabella Jysk Camping A/S and Jydsk Camping Industri A/S differed from each other on 3 accounts: "Isabella" had been added to the Applicant's name; the letter "d" was missing in "Jysk"; and the word "Industri" was missing.

The Panel therefore agrees that EURid's decision to refuse the application was technically correct.

The Panel has, however, also considered whether the mistake which has been explained subsequently in the Complaint should justify the overturning of EURid's decision.

Under Article 22(1) of the Regulation the Panel is directed to "decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002".

The Panel does not see how EURid could have been expected to reach any decision other than the one it reached, without further information available to it at the time it made its decision. On the face of the application, the respective names of the Applicant, and the registered holder of the CTM were noticeably different. Section 21(3) of the Sunrise Rules allows EURid's Validation Agent to conduct its own investigations, but at the same time makes it clear that it is not obliged to do so, and that such investigations are at "its sole discretion". Section 21(3) has been the subject of consideration in other previous ADR decisions. This Panel adopts the approach of the panelist in COLT, to the effect that EURid and the Validation Agent should not be expected to have engaged in speculation and/or to have embarked on enquiries. The position may well be different in a case such as OSCAR or SCHOELLER, where the "mistakes" in the applications were either merely technical or obvious. The circumstances of such cases may be such as to put EURid and its Validation Agent on notice as to the need to take further steps to check the identity of the applicant. However the Panel does not consider that this case is one which is equivalent to either OSCAR or SCHOELLER, and the "mistake" in this case was neither merely technical nor obvious to EURid on the information before it.

As to the supposed mistake by the Complainant's Registrar, the Sunrise Rules, Section 5(3) make it clear that EURid is not a party to the agreement between an Applicant and its Registrar, and that EURid does not incur any liability. The .eu Domain Name Registration Policy, Section 6, also puts responsibility on the Registrar to enter information directly into the systems of EURid, provided the Applicant has furnished all the necessary information to the Registrar. In the circumstances, the Panel agrees with the suggestion of the Panel in 4M that any default by the Registrar should be taken up as between the Applicant and the Registrar, and is not a reason for overturning EURid's decision.

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	Jakob Plesner Mathiasen
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DATE OF PANEL DECISION 2006-07-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant challenged EURid's decision to refuse to register the disputed domain name "isabella.eu". EURid refused to register the disputed domain name, because the evidence in support of the application (an extract from the Community Trademark Register) showed the registration of the trademark ISABELLA in the name of Jydsk Camping Industri A/S, whereas the application for the disputed name had been made in the name of Isabella Jysk Camping A/S.

Isabella Jysk Camping A/S does not exist as a company. The application was made in error, when it should have been filed in the name of Jydsk Camping Industri A/S. EURid rejected the application on the basis that the applicant had not provided documentary evidence to show that it was the owner of the ISABELLA trademark.

The Complainant asked for this decision to be reviewed, on the basis of the mistake in the application, which it says was made by its Registrar.

The Panel found no reason to question the technical correctness of EURid's decision, and further found that there was no technical or obvious mistake apparent from the face of the application itself which should have put EURid on notice as to the need to make further enquiries.