Panel Decision for dispute CAC-ADREU-001194

Case number	**CAC-ADREU-001194**
Time of filing	**2006-05-15 12:50:56**
Domain names	**insuresupermarket.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Moneysupermarket.com Financial Group Limited, Deborah Louise Chesworth**

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 other pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

On January 17, 2006 Moneysupermarket.com Limited (hereafter “the Applicant”) filed a Request for the Registration of the domain name “INSURESUPERMARKET.EU” within part one of the “so called” Sunrise Period.

On January 19, 2006, the Registry (hereafter “the Respondent”) received as documentary evidence a copy of the Certificate of Registration for the Trade mark “insuresupermarket” No. 2329471A, registered on April 15, 2003 in the name of Moneysupermarket.com Financial Group Limited under the Trade Marks Act 1994 of Great Britain and Northern Ireland.

With decision of April 12, 2006, the Respondent rejected the Request for Registration on the grounds that there was a mismatch between the name of the holder of the prior right and that of the applicant.

On May 10, 2006, Moneysupermarket.com Financial Group Limited (hereafter “the Complainant”) filed a Complaint together with the following documents:

-The certificate of incorporation and change of name for company N° 315 7344 showing that from 1st November 2002, Mortgage 2000 Limited was incorporated under the name of MONEYSUPERMARKET.COM FINANCIAL GROUP LTD.

-The certificate of incorporation N° 394 593 7 of the company MONEYSUPERMARKET.COM LTD dated March 13, 2000.

-The document submitted to PricewaterhouseCoopers showing that the Application was indeed filed in the name of MONEYSUPERMARKET.COM LTD.

-The registration certificate of the mark INSURESUPERMARKET No. 2329471A dated April 15, 2003. in the name of Moneysupermarket.com Financial Group Ltd.

- Annual return 2006 showing ownership of shares of the Complainant in Moneysupermarket.com Ltd.

On May 15, 2006, the Czech Arbitration Court acknowledged receipt of the Complaint.

On May 23, 2006, the Czech Arbitration Court notified the Commencement of ADR Proceeding.

On July 12, 2006, the Czech Arbitration Court issued a Notification of Respondent's Default.

A Nonstandard Communication was sent by the Complainant to the Czech Arbitration Court on the same day.

A. COMPLAINANT

The Complainant, which is the actual owner of the UK trademark INSURESUPERMARKET, states that the Application was inadvertently submitted in the name of the Applicant.

It specifies that the Applicant is a wholly owned subsidiary of Moneysupermarket.com Financial Group Limited.

The Complainant admits that an error has effectively been made and asserts that the application for the domain name should have been filed by Moneysupermarket.com Financial Group Ltd or that the Applicant should have been licensed by the Complainant in order to have the domain name "INSURESUPERMARKET.EU" registered.

The Complainant seeks correction of its error and argues that Moneysupermarket.com Financial Group Limited satisfies the general eligibility criteria for registration/transfer of the domain name "INSURESUPERMARKET.EU" set out in paragraph 4(2) of Regulation EC No 733/2002.

B. RESPONDENT

The Respondent did not file any Response to the Complaint within the prescribed term and was found in default by the Centre (notification of Respondent's default dated July 12, 2006).

The Respondent did not challenge the notification of default within the five-day period provided by Paragraph B3 (g) of the ADR Rules.

On July 12, 2006 (after the notification of Respondent's default) the Respondent, by way of a non-standard communication, eventually communicated with the Centre to present arguments in response to the Complaint.

It concludes to the rejection of the Complaint on the ground that the Decision of Rejection of the domain name is not in breach of any Rule or Regulation governing the principles of registration of a .EU domain name in the first Sunrise Period, in particular Articles 10 (1)-(2), 14 (4) and 22 (1) of EC Regulation No. 874/2004 as the documentary evidence supplied by the Applicant would not evidence that the same owned prior rights as required under Sunrise Period I.

The respondent relies upon decisions No. 00119 (Nagel) and No. 294 (Colt).

DISCUSSION AND FINDINGS

1. – ON THE ADMISSIBILITY OF THE RESPONDENT'S ARGUMENTS.

The Respondent was found in default for it did not reply to the Complaint on time, and did not challenge the Notification of Default of July 12, 2006 in the appropriate timeframe.

The Respondent filed a late communication after the appointment of the Panelist.

It belongs to the Panel, in its sole discretion, to accept or not out-of-time submissions by virtue of Paragraph B (8) of ADR Rules.

The Panel wishes to emphasize that the Respondent, especially being in the present case the EURID itself, is bound by the ADR Rules and by the official terms prescribed therein like any other party.

Article 4 of Regulation (EC) No. 733/2002 of April 22, 2002 makes it very clear that "the Registry must observe the rules, policies and procedures laid down in this Regulation and the contracts referred to in Article 3".

Applicants for domain name are themselves subject to official deadlines which they must necessarily comply with, save for being subject to the loss of their rights.

The Panel is of the opinion that the Respondent even though it has been afforded sufficient time and opportunity to respond to the Complainant, has ignored the official time limits imposed by the Rules and filed arguments lately.

It seems fair to the Panel therefore to consider that the Respondent's arguments must be found inadmissible and must not be taken into account in the present proceedings.

2. – ON THE COMPLAINT

The Panel wishes to emphasize that the purpose of an ADR procedure is inter alia to seek remedy when a decision taken by the Registry conflicts with (EC) Regulations No. 733/2002 or No. 874/2004.

Paragraph B.1 (10) (ii) of the ADR Rules stipulates that, in case of an ADR Proceeding against the Registry, the Complainant must explain the reasons why the decision taken by the Registry conflicts with European Union Regulations.

Section 26 (2) of the Sunrise Rules states that the sole object and purpose of an ADR proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulations.

The ADR procedure is not intended to correct domain name applicants' mistakes.

In the present case, the Complainant explains that it filed its domain name application erroneously in the name of a company which is not the proprietor of the corresponding Prior Right and seeks the registration of the domain name in the name of the right applicant.

The Panel observes that the Complainant does not justify that the applicant for the domain name would benefit from a licence granted by the holder of the prior right, nor does it develop any argument tending to establish that the Applicant for the domain name and the Complainant (holder of the prior right) should be treated as a single organisation.

The Panel further notices that the Complainant does not at any moment criticize the Decision of Rejection nor does it explain to what extent the Respondent would have violated the applicable rules and regulations.

The additional documentary evidence supplied by the Complainant shows that the actual trademark owner and the applicant for the domain name are affiliated companies.

But it does not justify that one would benefit from a licence granted by the other or that both entities should be regarded as one single organisation.

On the contrary, it clearly transpires from the explanations of the Complainant that they are two different legal entities and that the company which owns the UK trademark registration INSURESUPERMARKET is not the one which sought to register the domain name "insuresupermarket.eu".

The Complainant acknowledges that an error was made when filing the application for the domain name, which was not presented in the name of the right company.

It results therefore that the Respondent's Decision of Rejection of the said domain was well-grounded and did not breach any of the applicable rules.

(EC) Regulation No. 874/2004 states in article 10(1) of the EC Regulation 874/2004 that only the holder of a prior right is eligible to be granted the corresponding domain name.

If the prior right is a registered trademark, section 13 (2) of the Sunrise Rules, in the light of article 14 § 4 of the EC Regulation 874/2004, states that the documentary evidence must clearly evidence that the applicant is the reported owner of the registered trademark.

The application for the domain name "insuresupermarket.eu" was filed in the name of a company named MONEYSUPERMARKET.COM LIMITED and was substantiated with the copy of a UK Trade Mark Registration for INSURESUPERMARKET standing in the name of MONEYSUPERMARKET.COM FINANCIAL GROUP LTD.

Hence, and in compliance with section 21.2 of the Sunrise Rules, when examining the domain name application and the documentary evidence received, the validation agent could only observe that there was a mismatch between the domain name applicant and the trademark owner.

Even if the Validation Agent had conducted its own investigations pursuant to section 21.3 of the Sunrise Rules in order to verify whether the applicant's name might have been improperly spelled, he would have been forced to observe that the aforesaid mismatch was not due to a simple typographical error, but to the fact that the applicant for the domain name and the proprietor of the Prior Right are two different companies.

The domain name "insuresupermarket.eu" could not have been granted to the applicant anyway.

It is a constant principle in many earlier cases that the applicant for a domain name under Sunrise Period I must prove that it is the holder of a prior right, or that it benefits from a licence granted by the owner of the prior right ; otherwise, the domain name application must be rejected (see cases No. 00119 "Nagel", No. 294 "Colt", No. 00293 "Pool", No. 00596 "Restaurants", No. 00541 "Ultrasun").

Consequently, the Panel is of the opinion that the Respondent has not breached any applicable rules or regulations and that the error in the identification of the applicant in the domain name application is due to the sole Complainant's responsibility.

According to the above, the Panel concludes that he is satisfied that the decision of the Registry does not conflict with the Regulation.

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	**William LOBELSON**

DATE OF PANEL DECISION 2006-08-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contests the decision of rejection issued by the Respondent against its domain name application for "insuresupermarket.eu" under Sunrise Period I.

Rejection was based upon the fact that the documentary evidence supplied revealed a mismatch between the applicant and the holder of the prior right.

The Complainant explains that the application was erroneously filed in the name of a company affiliated to the prior right holder.

Notwithstanding the fact that the Respondent's response to the Complaint is found inadmissible, the Panel finds that the Decision of Rejection does not conflict with any of the applicable rules and regulations and that the validation agent, in view of the documentary evidence brought to him, complied with the rules and is not responsible for any error.

The ADR procedure is not intended to correct domain name applicants' mistakes.

The domain name has been filed in the name of a company which is legally different from the holder of the prior right ; the Complainant does not justify that one would benefit from a licence granted by the other or that both entities should be regarded as one single organisation.

The Complaint is denied.