Panel Decision for dispute CAC-ADREU-001209

Case number	CAC-ADREU-001209
Time of filing	2006-06-20 13:50:46
Domain names	formula1.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Formula One Licensing BV, Sean Corbett

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 aware that an opposition is pending against the Benelux word trademark 780147 of Dating.nl B.V.

FACTUAL BACKGROUND

On 28 November 2005, Dating.nl B.V. filed a request for a Benelux word trademark for “formula1”.

On 29 November 2005, Dating.nl B.V. obtained the registration of the Benelux word trademark for “formula1”.

Dating.nl B.V. filed an application for the <formula1.eu> domain name on 7 December 2005 at 11:02:18.118 hrs.

EURid accepted the application.

On 5 May 2006, Complainant filed a Complaint against this decision.

For the <formula1.eu> domain name, the deadline to initiate ADR proceedings expired on 7 May 2006. For the <formula1.eu> domain name, the Complaint was, thus, not filed timely.

A. COMPLAINANT

Complainant developed arguments that can be summarized as follows:

- The Applicant abused the Benelux expedited registration when registering the Benelux word trademark “formula1”;
- The Applicant was granted a preferential treatment by his registrar;
- The registration of the domain name by the Applicant was abusive and speculative (with reference to Articles 21 and 22 of Regulation 874/2004 of 28 April 2004).

B. RESPONDENT

With regard to these three arguments, Respondent refers to Articles 10 (1) and 22 (1); to Articles 5 (2) and 14 (2) and 14 (10); and to Articles 14.7 and 22 (1)a and b of Regulation 874/2004 of 28 April 2004, to argue that the Complaint should be denied.

DISCUSSION AND FINDINGS

The Panel reminds the following basic principles:

- Holders of prior rights shall be eligible to apply to register a .eu domain name during the Sunrise period (Article 10 (1) of the Regulation);
- Prior rights include registered national trademarks (Articles 10 (1) and 12 (2) of the Regulation);
- All claims for prior rights must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists (Article 14 of the Regulation);
- The prior right claimed cannot be later than the date on which the domain name application is received by EURid: on that date, the right must be valid, which means that it must be in full force and effect (Section 11.3 of the Sunrise Rules);

According to Benelux Trademark Law, an exclusive right to a trademark is acquired by a trademark registration (Article 3).

At the time of the application for the <formula1.eu> domain name, the Benelux word trademark referred to by the applicant as a prior right, incontestably existed.

EURid has no authority to assess the validity of a trademark.

A registrar must forward the applications in the chronological order in which they are received (Article 5 (2) of the Regulation). The effective performance of this rule is to be reviewed under the contractual rules agreed upon by the registrar and the applicant. EURid has no authority to examine compliance with such contractual rules. EURid and its validation agent should only take the applications in the chronological order in which the applications are received (Articles 14 (2) and 14 (10) of the Regulation).

Finally, a decision by EURid cannot be questioned on the basis of a speculative and abusive registration by the Applicant, which can only be initiated against the Applicant himself.

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	**Flip Jan Claude Petillion**

DATE OF PANEL DECISION 2006-10-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Holders of prior rights shall be eligible to apply to register a .eu domain name during the Sunrise period.

EURid has no authority to assess the validity of a trademark.

A decision by EURid cannot be questioned on the basis of a speculative and abusive registration by the Applicant, which can only be initiated against the Applicant himself.