Panel Decision for dispute CAC-ADREU-001318

Case number	CAC-ADREU-001318
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Domain names	sys.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Dr Massimo Introvigne

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 legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Tecno Center S.r.l., filed an application on 24 January 2006 for the domain name sys.eu ("the Domain Name") during the Sunrise period. Complainant is the proprietor of the Italian trademark registration No. 718.595 SYS, registered on 8 January 1996, and renewed on 8 September 2005.

Documentary evidence submitted to the validation agent was received on 25 January 2006, prior to the deadline of 5 March 2006. The application was refused on grounds that the documentary evidence was not sufficient to prove the claimed prior right, as the submitted trademark registration certificate did not contain information on the renewal of the trademark. Therefore, validation agent concluded from its examination that the submitted evidence only showed that the trademark had been registered until 26 October 2005 and in the absence of evidence to the contrary, ruled that the applicant had failed to prove that it is the holder of a validly registered prior right when the application was filed.

ADR proceedings were initiated by the Complainant to annul the disputed decision and to attribute the Domain Name to the Complainant.

The Respondent, EURid, has failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding for the submission of its Response. The Panel therefore considers the deficient Response only for information purposes.

A. COMPLAINANT

The Complainant contends that it is the proprietor of the Italian trademark registration No. 718.595 SYS and that the submitted copies of the corresponding registration and renewal certificate should have been sufficient in proving the existence of a valid prior right.

B. RESPONDENT

The Respondent contends that the renewal certificate was only submitted during the course of the ADR proceedings, and the documentary evidence provided by the Complainant at the time of the filing of the application for the Domain Name did not show that the claimed prior right, Italian trademark registration No. 718.595 SYS was valid, as it only evidenced that the said trademark registration was in force until 26 October 2005. The Respondent submits that the documentary evidence proving that the trademark SYS was duly renewed and thus valid at the time of the application should be disregarded, as it was only provided during the course of the ADR proceedings.

The Respondent also contends that the mere fact that the said trademark at some point in the past had been valid is not sufficient to prove the existence of a prior right at the time of the filing of the application for the Domain Name. The Respondent submits that the Complaint must be rejected.

DISCUSSION AND FINDINGS

It is set forth in Article 14 (4) of the Commission Regulation (EC) 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the.eu Top Level Domain and the principles governing registration 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. Section 13 (2) of .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter "the Sunrise Rules") reflects the requirements in more detail, mentioning in subsection (i) also renewal certificates.

The trademark registration certificate that the Complainant submitted during the validation process indicated that the Italian trademark registration No. 718.595 SYS had been applied for on 26 October 1995 and that it had been valid for a ten-year period, i.e. until 26 October 2005. The renewal certificate for the said registration, which evidenced that the trademark registration was indeed renewed on 8 September 2005, was only submitted during the course of the ADR proceedings and was therefore not at the validation agent's disposal during the validation process.

Regarding the examination of documentary evidence concerning prior right claims, the central question before the Panel is, should more emphasis be placed on the Section 21.2 or 21.3 of the Sunrise Rules? Whilst it is stated in Section 21.2 that the validation agent determines exclusively on the basis of a prima facie review of the submitted documentary evidence if the applicant has a valid prior right to the applied domain name, Section 21.3 gives the validation agent a possibility to conduct further investigations into the circumstances of the application.

It would appear that the ratio of Section 21.3 of the Sunrise Rules could not be to oblige the validation agent to investigate all circumstances of the application, but rather to allow the validation agent at his own discretion to correct obvious deficiencies in applications, inter alia clerical errors and deficiencies which are solely caused by technical matters.

Without a renewal certificate it was unclear from the submitted documentary evidence whether the underlying Italian trademark registration No. 718.595 SYS was still valid or if it had only been valid until 26 October 2005. As the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, the Panel does not find the rejection of the application unreasonable, as the said requirement was not met.

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	**Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2006-08-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's application for the domain name sys.eu was refused on grounds that the submitted documentary evidence was not sufficient to prove the claimed prior right, since the trademark registration certificate did not contain information on the renewal of the trademark. The Respondent, EURid, stated that the submitted documentary evidence should have shown that the trademark is still valid, and that the mere fact that it at some point in the past had been valid, was not sufficient to prove the existence of a prior right at the time of the filing of the application.

Section 21.3 of the Sunrise Rules does not oblige the validation agent to investigate all circumstances of the application. The Panel ruled that since the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, it is not unreasonable to reject the application as the said requirement was not met.