Panel Decision for dispute CAC-ADREU-001342

Case number	**CAC-ADREU-001342**
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Domain names	**travelchannel.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**KG Travel-Overland Flugreisen GmbH & Co., Henning Stemper**

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 other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

This decision arises from a complaint filed by the German company KG Travel-Overland Flugreisen GmbH & Co. ("the Complainant"), against the decision by EURid ("the Respondent"), to reject the application for the domain name "TRAVELCHANNEL" (“the disputed Domain Name”) filed by the Complainant.

On 08 December 2005, the Complainant applied for the disputed Domain Name under the first part of the phased registration period.

The Respondent refused the application on the basis that the disputed Domain Name did not consist of the complete name of the prior right, for which documentary evidence was submitted by the Complainant with the relevant time limit.

On 15 May 2006, the Complainant filed a complaint with the Czech Arbitration Court, asking to cancel the decision of the Respondent in refuse the application for the disputed domain name.

On 16 May 2006, the Czech Arbitration Court informed the Respondent about the complaint and requested it to disclose information and documentary evidence related to the disputed Domain Name.

On 22 May 2006, the Respondent provided the requested information and evidence. According to the evidence attached to the Respondent's communication of 22 May 2006, the documents submitted by the Complainant on 06 January 2006 consisted of an excerpt of the registered German mark No. 303 60 216 "TRAVEL CHANNEL.DE" (fig.).

On 23 May 2006, the Czech Arbitration Court notified the Complainant of some deficiencies relating to his Complaint (Paragraphs B2 (b), B1 (b)(7) of the ADR Rules, Paragraph B1 (c) of the ADR Supplemental Rules). The deficiencies were corrected by the Complainant within the time limit set by the Czech Arbitration Court.

On 31 May 2006, the ADR proceedings commenced.

On 18 July 2006, the Respondent filed a response to the statements and allegations made by the Complainant.

On 19 July 2006, the Czech Arbitration Court appointed Mr. André Pohlmann as sole Panelist in this matter. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence in

compliance with Paragraph B5 of the ADR Rules and Paragraph B(5) of the Supplemental ADR Rules.

A. COMPLAINANT

In support of its position, the Complainant contends as follows:

The application for the disputed Domain Name was based on the German trademark No. 398 21 015. That trade mark consists of the word "TRAVEL CHANNEL". According to Article 10(2) of EC Regulation No. 874/2004, the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior rights exists. According to the trade mark registration No. 398 21 015, the complete name of the trademark is "TRAVEL CHANNEL". According to Article 11 of EC Regulation No. 874/2004, it is understood that, as far as the registration of complete names is concerned, where such names comprise a space between the textual or word elements, identity shall be deemed to exist between such complete names and the same names written with a hyphen between the word elements or combined in one word in the domain name applied for. The national trade mark of the Complainant should therefore be accepted as basis for the disputed Domain Name. Consequently, the annulment of the disputed decision taken by the Registry should be annulled and the disputed Domain Name should be registered in the name of the Complainant.

B. RESPONDENT

In its response, the Respondent made the following observations:

1. The Respondent rejected the Complainant's application as the domain name applied for did not consist of the complete name of the prior right on which the application was founded. The documentary evidence, which is also submitted to the Panel, shows that the validation agent was only provided with German trade mark No. 303 60 216. The documentary evidence did not contain any evidence relating to the German trade mark No. 398 21 015.

2. Article 10 (2) of EC Regulation No. 874/2004 states that a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based. To that regard, Section 19 (5) of the Sunrise Rules, which further clarifies Article 10 (2) of EC Regulation No. 874/2004, states: "If an Applicant claims a Prior Right to a name that includes an internet top-level domain (such as, but not limited to, .com, .net or .eu), the complete name for which a Prior Right exists includes that domain suffix". German trademark No. 303 60 216, which the Complainant submitted as documentary evidence, consists of the sign "TRAVEL CHANNEL.DE" whereas the Complainant applied for the domain name "TRAVELCHANNEL". There can be no doubt that the domain name does not consist of the complete name of German trademark No. 303 60 216. Indeed, when applying Section 19 of the Sunrise Rules and Article 11 of EC Regulation No. 874/2004, the complete name would be "TRAVELCHANNELDE" or "TRAVELCHANNEL-DE", but not "TRAVELCHANNEL". The wording of Section 19 of the Sunrise Rules and Article 11 of EC Regulation No. 874/2004 is very clear in this regard. Both provisions refer to the complete name, not a similar name.

3. The Complainant now refers to another German trademark with registration No. 398 21 015 and thereby seems to attempt to correct the mistake it had made when not submitting this trademark as documentary evidence. However, the Complainant did not enclose this trademark, or even refer to it in any way, with its documentary evidence. This document was provided to the Respondent for the first time in the framework of the present ADR proceedings. Section 21 (2) of the Sunrise Rules states that the validation agent will examine whether the applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence received. Thus, only the documentary evidence which the Respondent was able to examine at the time of validation of an application should be considered by the Panel. The applicant carries the burden of proof and must provide the validation agent with all information the latter needs to assess of the applicant is the holder of a prior right. Such an obligation is of great importance for the administration of a new TLD with millions of applications. The Complainant did not meet that obligation. Therefore the Respondent requests the Panel to disregard the new evidence submitted by the Complainant. For the reasons mentioned above, the Complaint must be rejected.

DISCUSSION AND FINDINGS

The Complainant’s complaint is made pursuant to Article 22(1)(b) of EC Regulation No. 874/2004, which provides that an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with this Regulation or with EC Regulation No. 733/2002. Pursuant to Article 22(11) second subparagraph of EC Regulation No. 874/2004, the sole purpose of these proceedings is accordingly to determine whether the decision taken by the Respondent was in accordance with the EC Regulation No. 874/2004 or EC Regulation No. 733/2002.

The relevant provisions of EC Regulation No. 874/2004 which require particular consideration are as follows:

Article 10(2): The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right

exists, as written in the documentation which proves that such a right exists.

Article 14 first paragraph: All claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists.

Article 14 fourth paragraph: 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. The documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected.

It is clear from the above-mentioned provisions of EC Regulation No. 874/2004 that the Complainant's application for the disputed Domain Name during the first part of the phased registration was only acceptable if the Complainant demonstrated, within forty days from the submission of the application, that its prior right consisted of the complete name of the requested domain name. The registration certificate submitted by the Complainant before 17 January 2006 (ultimate day by which documentary evidence must be received by the validation agent) referred to the German trade mark No. 303 60 216 "TRAVEL CHANNEL.DE". The disputed Domain Name "TRAVELCHANNEL" does not consist of the complete name of the earlier mark "TRAVEL CHANNEL.DE". The Respondent's decision to reject the Complainant's application was therefore correct.

This finding is not changed by the fact that the Complainant submitted a registration certificate of the earlier German mark No. 398 21 015 "TRAVEL CHANNEL" on 15 May 2006. It follows from Article 14 fourth paragraph of EC Regulation No. 874/2004 that it is the obligation of the Complainant to submit documentary evidence within forty days from the submission of the application. Bearing in mind that more than 345000 applications were filed during the "sunrise" period, it has to be ensured that the phased registration period is carried out as swiftly and economically as possible. Article 14 fourth paragraph of EC Regulation No. 874/2004 is therefore to be applied strictly. Any documentary evidence submitted after the relevant deadline has to be disregarded.

Consequently, the application for the disputed Domain Name filed by the Complainant during the first part of the phased registration on the basis of the evidence submitted within the relevant time limit was not acceptable. The decision of the Respondent to reject the application filed by the Complainant was not in conflict with EC Regulation No. 874/2004 or with EC Regulation No. 733/2002.

DECISION

For all the foregoing reasons, and in accordance with Article 22(11) second subparagraph of EC Regulation No. 874/2004, the Panel orders that

- the complaint is denied.

PANELISTS

Name	**André Pohlmann**

DATE OF PANEL DECISION 2006-07-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

This case concerns a complaint lodged against the decision by EURid to reject the application for a domain name. The Complainant failed to submit documentary evidence, within the relevant time limit, showing that the requested domain name consisted of the complete name of the claimed prior national trade mark right. The documentary evidence submitted by the Complainant during the ADR proceedings is belated and cannot be taken into account. The decision of EURid was in line with Article 10(2), Article 14 first and fourth paragraph of EC Regulation No. 874/2004. Consequently, the Panel decided to reject the complaint.