

Panel Decision for dispute CAC-ADREU-001432

Case number **CAC-ADREU-001432**

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Domain names **petitforestier.eu**

Case administrator

Name **Tereza Bartošková**

Complainant

Organization / Name **PETIT FORESTIER, Monsieur Olivier FERNANDES, Administrateur systèmes et réseaux**

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

There are no other legal proceedings of which the Panel is aware that are pending or decided relating the domain name "petitforestier"

FACTUAL BACKGROUND

On December 7, 2005, during the Sunrise Period, Mr. Olivier Fernandes acting as representative of the company Petit Forestier filed a request for registration of the domain name petitforestier.eu. This request for registration was based on the recording of the trademark "petitforestier" in the name of the company Petit Forestier.

The processing Agent received on January 6, 2006, only a cover letter dated December 7, 2005, signed by Mr. Olivier Fernandes without any Documentary Evidence required by law proving the Prior Right of the company Petit Forestier on the name "Petit Forestier."

Therefore, the Respondent rejected the request for registration on the grounds that no Documentary Evidence was submitted which provided proof for Prior Right of the company Petit Forestier on the domain name petitforestier.eu.

The Complainant filed a complaint in English against the Respondent on May 26, 2006, which was received in hardcopy by the Czech Arbitration Court on June 19, 2006. The Respondent filed a response to the Complainant which was received by the Czech Arbitration Court on August 8, 2006. On August 9, 2006, the Czech Arbitration Court appointed the undersigned herewith as a Panelist.

A. COMPLAINANT

1. The company Petit Forestier asked for the recording of the domain name petitforestier.eu based on its Prior Right materialized by the recording of its trademark "Petit Forestier."
2. The company Petit Forestier forwarded the necessary documents, i.e. domain name to be recorded, address of the company, photocopies of the certification of recording No. 003185378 of the trademark "Petit Forestier" by mail R.S.R. and within the timeframe described in article 14 of EC Regulation of April 28, 2004.
3. In consideration of all the above, the Complainant requests the acceptance of the application and attribution to the company Petit Forestier of the domain name petitforestier.eu, accordingly.

B. RESPONDENT

1. The process Agent received only the signed cover letter and not any Documentary Evidence that the Complainant and Applicant was the holder of a Prior Right.
2. Article 14(4) of the Regulation (EC) 874/2004 states 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 in such a way that it shall be received within forty days from the submission of the application for the domain name. In case an Applicant failed to submit all necessary documentation within the given timeframe, thus the Documentary Evidence was not received by the given deadline, the Applicant's application must be rejected
3. In the case at hand, the critical question is not whether the Applicant is the holder of a Prior Right but rather the question is whether the Applicant proved his Prior Right to the Validation Agent as it is required by law.

4. The burden to prove that the Applicant is the holder of a Prior Right is on the Applicant's side (case No. 00119, case No. 954, case No. 219), and the Validation Agent is not obliged to conduct any further investigation regarding the possible existence of the claimed, but not proved sufficiently, Prior Right.
5. Having failed to provide timely Documentary Evidence regarding his Prior Right on the name "Petit Forestier", the Complainant now submits new documentation which show that he is the holder of Prior Right. However, the Respondent requests this new documentation, as it was submitted for the first time to the Respondent in the framework of the present ADR proceeding, to be disregarded according to section 21(2) of the Sunrise Rules stating that "the Validation Agent examines 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..." (case No. 294, case No. 219, case No. 1549).
6. According to article 22(1)b of the Regulation (EC) 874/2004, a decision taken by the Registry may be annulled when it conflicts with this Regulation (case No. 706).

DISCUSSION AND FINDINGS

1. According to article 10§1 and 2 of Regulation (EC) 874/2004, "Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain names. 'Prior rights' shall be understood to include, inter alia, registered national and community trademarks..."
2. According to article 14§4 of Regulation (EC) 874/2004, "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 documented evidence has not been received by this deadline, the application for the domain name shall be rejected."
3. According to article 22§11(c) and (d) of Regulation (EC) 874/2004, "in the case of a procedure against the Registry, the ADR Panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) 733/2002. The ADR Panel shall decide whether the decision shall be annulled and..."
4. Following section 8§5 of the Sunrise Rules, "Documentary evidence must be received by the Processing Agent within forty (40) calendar days following receipt of the Applicant by the Registry, failing which the Application will be considered to have expired."
5. Following section 13§2(i) and (ii) of the Sunrise Rules for a registered trademark it is sufficient to submit the following documentary evidence: "(i) a copy of an official document issued by the competent trademark office indicating that the trademark is registered (certificate of registration etc.) or (ii) an extract from an official online database operated and/or managed by the relevant national trademark office, the Benelux Trademarks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts." Also, "In the foregoing cases the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trademark."
6. According to section 21(1)(ii) of the Sunrise Rules, the Validation Agent shall verify whether the requirement for the existence of the Prior Right to the domain name claimed by the Applicant is fulfilled and the Validation Agent and the Respondent are not obliged to notify the Applicant where the requirement to sufficiently demonstrate the Prior Right to a domain name is not complied with. According to section 21(2), the Validation Agent examines whether the Applicant has a Prior Right to the domain name in question on the basis of prima facie review of the first set of Documentary Evidence received.
7. As it has been mentioned above, it should be reiterated that the subject of this case at hand is whether the decision of the Registry according to which the Complainant's application for the registration of the domain name petitforestier.eu was rejected, was taken in accordance with the provisions of Regulation (EC) 874/2004 and Regulation (EC) 733/2002 (article 22§11(c) and (d) of the Regulation 874/2004). The decision upon the case at hand does not concern to the examination of Prior Right of the Complainant according to Documentary Evidence which was submitted as a consequence of and in rein the frame of ADR proceedings.
8. According to article 14§4 of Regulation (EC) 874/2004, the Complainant/Applicant has the burden to prove Prior Right on the domain name during the phased registration.
9. It is an uncontested fact that the Validation Agent received only a signed cover letter without Documentary Evidence proving Prior Right of the Complainant, i.e. right on community trademarks of the Complainant within the time period of forty (40) days by the time of application for the domain name petitforestier.eu (date of application is December 7, 2005, and date of receiving the cover letter is January 6, 2006) according to section 13§2(i) and (ii) of the Sunrise Rules. Moreover, the Complainant did not provide the Czech Arbitration Court with pieces of evidence from which it may be concluded in consideration of the law that the Complainant sent all the necessary Documentary Evidence proving Prior Right upon the name "Petit Forestier" to the Processing Agent following the above.
10. Therefore, in consideration of and pursuant to the provisions of law the application for the registration of the domain name "petitforestier.eu" was rejected according to article 14§4 of the Regulation (EC) 874/2004.

Relevant decisions case No. 00894 (BEEP), case No. 01323 (7X4MED), case No. 00961 (ESSER), and case No. 00404 (ODYSSEY).

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	Alexandra Kaponi
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DATE OF PANEL DECISION: 2006-09-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel concludes that the Respondent rightfully rejected the application for the domain name petitforestier.eu in full compliance with Regulations in force at the time of its decision and orders that the Complainant is denied taking into consideration that:

1. The Complainant/Applicant failed to submit Documentary Evidence, thus no Documentary Evidence was received by the Validation Agent in due time proving Prior Right upon the name "Petit Forestier."
 2. The Complainant has the burden to prove Prior Right on the domain name.
 3. The subject to this decision is whether the decision of the Respondent was taken in accordance with the provisions of Regulation (EC) 874/2004 and Regulation (EC) 733/2002 and not the examination of Prior Right of the Complainant according to Documentary Evidence which was submitted in the frame of the ADR proceedings.
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