Panel Decision for dispute CAC-ADREU-001457

Case number	CAC-ADREU-001457
Time of filing	2006-05-24 11:59:23
Domain names	assist.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	easycare Research GmbH, Rechtsanwalt Henry Richard Lauf

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 procedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Applicant, easycare Research GmbH, In der Bruchwies 10, Merzig-Besseringen, Germany, applied for the domain name ASSIST on 24 January 2006 - i.e. during the Sunrise Period. The application was based on prior rights, i.e. the German trade mark No. 398 04 088 "ASSIST". On 30 January 2006 the Registry received supplementary Documentary Evidence, cf. article 14 of Commission Regulation (EC) No. 874/2004. As, however, the Documentary Evidence showed the owner of the German trademark "ASSIST" to be Assist Heimpflege-Bedarf GmbH, Merzig, and not the Applicant. Consequently the application was rejected. After the deadline for providing documentary evidence, 5 March 2006, the Applicant supplied the Registry with further documents pertaining to the German trademark "ASSIST" and the Applicants rights thereto.

A. COMPLAINANT

The Complainant agrees, that it is not the owner of the GERMAN trademark "ASSIST", but claims that it has a valid legal right to the use of the trademark through an intra-group agreement with Assist Heimpflege-Bedarf GmbH, which is the controlling company ("parent company") of the Complainant. A copy of this agreement along with other documents has been provided by the Complainant in connection with the complaint. Thus the decision of the Registry should be set aside and the domain name ASSIST should be granted to the Complianant.

B. RESPONDENT

The Respondent maintains that the Complainants application was rightfully rejected as, at the time of the deadline for supplying the documentary evidence, the Complainant had not - as required by article 14 of Commission Regulation (EC) No. 874/2004 - supplied any material showing that the Complainant is the owner of the German trademark "ASSIST" nor any license declaration or similar documentation, cf. section 20 (1) of the Sunrise Rules. Documentary evidence received after the deadline, cf. above, cannot be taken into account by this Panel, when deciding the case.

DISCUSSION AND FINDINGS

This Panel fully concurs with the arguments of the Respondent and with the arguments of the Panelist in the similar case No. 1323 (7X4MED), in which the legal issues at hand were identical to the issues present in this case.

In the case at hand, the Complainant did not - as otherwise clearly and unambigously required by article 14 of Commission Regulation (EC) No. 874/2004 and Section 13 (2) and Section 20 of the Sunrise Rules - provide the Registry with any Documentary Evidence

whatsoever supporting the claim that the Complainant has prior rights to the domain name ASSIST before the deadline for providing such evidence.

The reponsibility for complying with the Regulations and the Sunrise Rules lies with the applicant - and the applicant only. The Registry cannot be attributed with any duty to perform any other tasks in validating the application other than the primae facie valuation stated in Section 21 (2) of the Sunrise Rules, which the Registry shall be entitled (and in the view of this Panel even required under the circumstances) to act upon.

In this case, the fact that the Complainant provided the Registry with clear documentary evidence that the prior right in question, the German trademark "ASSIST", was owned by Assist Heimpflege-Bedarf GmbH without any further supporting documentation as to its asserted rights, entitled - and in the view of this Panel obligated - the Registry to reject the application. The claim by the Complainant that the Registry should have noted that the Complainant has the same postal address as Assist Heimpflege-Bedarf GmbH and therefore recognised the Complainant as the rightholder is without validity. On the contrary, in the view of this Panel, such "recognition" by the Registry would allow for such abusive and speculative registration without the regard to prior rights that the Sunrise procedure was designed to constitute a safeguard against.

Material provided by an applicant after the deadline provided for in section 8 (5) of the Sunrise Rules does not constitue Documentary Evidence and cannot be taken into account when deciding the case.

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	**Kim G. Hansen**

DATE OF PANEL DECISION 2006-08-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant applied for the domain name ASSIST based on a prior right, which according to the Documentary Evidence provided by the Compalinant itself, clearly and unambigously did not belong ot the Complainant. The Complainant did not provide further Documentary Evidence within the deadline.

The Panel held that the Complainant clearly failed to demonstrate its prior right within the relevant deadline as required by the Sunrise Rules. Thus the application was rightfully rejected. Documents provided after the deadline, cf. section 8 (5) of the Sunrise Rules, does not form Documentary Evidence and is not relevant for the Panel's decision

The responsibility for submitting the sufficient, accurate and satisfactory Documentary Evidence within the deadline under the Sunrise procedure lies with the applicant and the applicant only.