Panel Decision for dispute CAC-ADREU-001481

Case number	CAC-ADREU-001481
Time of filing	2006-06-05 12:50:14
Domain names	wisdom.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	REAL ENTERPRISE SOLUTIONS NEDERLAND BV, Timo Bosma

Respondent

Organization / Name	EURid

FACTUAL BACKGROUND

On December 7, 2005, the company Real Enterprise Solutions Nederland BV (hereinafter: the Complainant) filed an application for the domain name <wisdom.eu> (hereinafter: "Domain Name"). The application was made under .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter: "Sunrise Rules").
Complainant based its application on the Benelux registered trademark "WISDOM" filed on September 14, 2004 and registered under No. 0754498 on November 1, 2004 for classes 09, 16, 18, 21, 25, 35, 38, 41 and 42. The Complainant transmitted the Documentary Evidence before the deadline of January 16, 2006. Complainant's application for the Domain Name was the first in line of applications for the Domain Name. The Documentary Evidence provided by the Complainant consisted of a copy of the Certificate of Registration of the Prior Right, issued by the Benelux Trademark Office.
The applicant's name as mentioned in the domain name application was "REAL ENTERPRISE SOLUTIONS".
On April 17, 2006, the Complainant received a notification from the Registry informing that the application for the Domain Name was rejected, due to the fact that the Documentary Evidence did not constitute sufficient ground to guarantee the Prior Right claimed. Complainant does not agree with the Registry's decision and filed a Complaint under .eu Alternative Dispute Resolution Rules (hereinafter: "ADR Rules"). Complainant requests the annulment of the rejection decision taken by the Registry and the attribution of the Domain Name to the Complainant.

A. COMPLAINANT

Complainant contends that the discrepancies between the name of the Applicant and the statutory name (as mentioned in the Documentary Evidence) can not be considered as a material inaccuracy.
Furthermore, Complainant states that the Sunrise Rules do not ask explicitly for the statutory names of companies but solely for the name of the requesting party.

B. RESPONDENT

Respondent agrees that the Validation Agent has made a mistake. As the sole difference between the name of the Applicant and the name of the trademark's holder is the term "Nederland BV", Respondent does not think that the absence of this part could leave some doubt as to whether the Complaint is the trademark's owner.

DISCUSSION AND FINDINGS

Article 20 of the Sunrise rules states that “If (…) the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right”.
Although the Sunrise rules do not ask explicitly for the statutory name of the Applicant, the Documentary Evidence must clearly indicate the name of the Applicant as being the holder of the Prior Right claimed.
The domain name’s application was filed by “Real Enterprise Solutions” and the Documentary Evidence indicates the name of the trademark’s holder as “Real Enterprise Solutions Nederland BV”.
The Panel finds that these discrepancies do not justify the rejection of the Complainant’s application. The Applicant’s address indicated in the Netherland is the same address than the trademark’s holder. Therefore, if the Validation Agent had reviewed more deeply the application, it would have concluded that the Applicant and the trademark’s holder was the same.
In the case n°00396 <capri.eu>, the Panel stated that the Registry has to “review more deeply the application and easily remove all relevant discrepancies in the .eu domain application”. The Panel -concluded that “The Registry is not only allowed but even obliged to obey all respective relevant regulations and obligations from these regulations to provide fair and complete validation process”.

Furthermore, Respondent recognized that the Validation Agent made a mistake when it concluded that the Applicant is not the trademark’s holder.

All the more, there is no provision in the European Regulations which stipulates that the name of the Applicant must be indicated in the Application as mentioned in the Documentary Evidence.

The only mention related to this matter is laid down in article 20.3 of the Sunrise rules which states that “If (…) the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right”.

The application of said provision must be in harmony with the European Regulations. If the application of said article does not comply with the Regulations, the sunrise rule should not be taken into account.

In fact, one of the essential purposes of the European Regulation n° 874/2004 is to safeguard prior rights recognized by community or national laws.

The decision of the Registry conflicts with said regulation as it refused to allocate the domain name <wisdom.eu> to the Complainant which owns a Benelux trademark registration “WISDOM” recognized by European law. Besides, said decision conflicts with Article 4(2) (b) of Regulation (EC) no. 733/2002 and article 14 of the Regulation (EC) n° 874/2004 as it did not allocate the domain name to the Complainant which complies with all the conditions contained in the European Regulations.

Moreover, the Panel, in the case n° 00431 <cashcontrol.eu> has decided that if the Complainant has brought evidence, before the court, that it is eligible to register the domain name and that it was the first applicant for that domain name, the decision made by the Registry must be considered in conflict with the European Regulations.

Given the above, and since the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation 874/2004 and/or with the Regulation 733/2002, the Panel concludes that the rejection by Respondent of the application for the Domain Name by Complainant conflicts with the aforementioned Regulations.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the EURID's decision be annulled and the domain name WISDOM be transferred to the Complainant

PANELISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2006-08-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The domain name application was filed by “Real Enterprise Solutions” and the Documentary Evidence indicates the name of the trademark’s holder as “Real Enterprise Solutions Nederland BV”.
The Validation Agent concluded that the Applicant is not the trademark’s holder. The Panel finds that these discrepancies do not justify the rejection of the Complainant’s application. The Applicant’s address indicated in the Netherland which is the same address of the trademark’s holder. Therefore, if the Validation Agent had reviewed more deeply the application, it would have concluded that the Applicant and the trademark’s holder are the same.
Furthermore, Respondent has recognized that the Validation Agent made a mistake when it concluded that the Applicant is not the trademark’s holder.

The decision of the Registry conflicts with Article 4(2) (b) of Regulation (EC) no. 733/2002 and article 14 of the Regulation (EC) n° 874/2004 as it did not allocate the domain name to the Complainant which complies with all the conditions contained in the European Regulations.

Given the above, and since the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation 874/2004 and/or with the Regulation 733/2002, the Panel concludes that the rejection by Respondent of the application for the Domain Name by Complainant conflicts with the aforementioned Regulations.