

Panel Decision for dispute CAC-ADREU-001483

Case number **CAC-ADREU-001483**

Time of filing **2006-05-30 14:24:55**

Domain names **sunoco.eu**

Case administrator

Name **Tereza Bartošková**

Complainant

Organization / Name **Sun Oil Company (Belgium) NV, Mr. Eddy François Mannaerts**

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 names

FACTUAL BACKGROUND

Complainant filed an application for the <Sunoco.eu> domain name on 21 December 2005 at 18:11:46.168 hrs.

On 26 December 2005, Complainant filed a trademark license agreement between Sunoco Overseas, Inc. and Complainant, dated 29 November 2005. The trademark referred to in this agreement was not attached.

EURid rejected the application.

On 19 May 2006, at 11:45:09 hrs, Complainant filed a Complaint against this decision. The Complaint had to be filed on 20 May 2006 at the latest. The Complaint was, thus, filed timely.

During the ADR procedure, Complainant filed a License declaration for a Community trademark, registered under number 3720646.

The proof of a registered trade mark was not produced as documentary evidence, not during the application period, nor during the ADR procedure.

The Panel found out that Sunoco Overseas, Inc. indeed holds said Community trademark.

A. COMPLAINANT

Complainant limits its argument to the statement that it has been granted a license agreement for a trademark through an official licensing and trademark agreement with Sunoco Overseas, Inc., USA. Complainant refers to the license which was submitted with the original Complaint.

B. RESPONDENT

Respondent refers to article 14 of Regulation 874/2004 of 28 April 2004 according to which 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.

Respondent also refers to Section 21.2 of the Sunrise Rules according to which 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 and scanned and in accordance with the provisions of the Sunrise Rules.

As the documentary evidence did not contain any proof of trademark registration, Respondent rejected the application.

Respondent also argues that the license filed by Complainant during the ADR procedure may not be taken into consideration in view of article 21.2 of the Sunrise Rules.

DISCUSSION AND FINDINGS

Timely filing of documentary evidence

The Panel reminds that, as the Complainant filed an application during the Sunrise period, Complainant should have complied with Article 14 of the Regulation and Section 21.2 of the Sunrise Rules.

By virtue of these articles, Complainant should have filed a proof the existence of a valid trademark registration at the time of the application. Such proof should have been filed before the deadline for filing documentary evidence, i.e., before 30 January 2006.

Documents filed after this date, e.g., during the ADR procedure, cannot be taken into account.

Therefore, the copy of a license between Sunoco Overseas, Inc. and Complainant, dated 16 and 18 May 2006, filed by Complainant during the ADR procedure, must be disregarded. Anyhow, the production of such additional document during the ADR procedure, still did not include the production of the proof of a registered trademark that was valid at the date of application of the domain name. For the sake of clarity, even if Complainant had produced proof of such registered trademark during the ADR procedure, such proof had also to be disregarded because not timely produced.

Indeed, the task of the Panel is to examine whether or not EURid had rejected the application for the <Sunoco.eu> domain name in compliance with the applicable Regulation and the Sunrise Rules. The task of the Panel is not to do the examination all over again in view of documents produced after the expiry of the relevant period for the production of documentary evidence. Such examination would have given an inadmissible advantage to Complainant in comparison with any other interested party in the <Sunoco.eu> domain name, which is not provided in, nor meant by the applicable Regulation and Sunrise Rules.

The free investigation right of the Validation Agent

As, by virtue of Section 21.2 of the Sunrise Rules, the Validation Agent proceeds to a prima facie review of the documentary evidence that is produced and as, by virtue of Section 21.3 of the Sunrise Rules, the Validation Agent is not obliged to conduct its own investigations into the circumstance of the application, the prior right claimed and the documentary evidence produced, Complainant had no right to expect that its reference to a trade mark registration would be automatically checked by the Validation Agent.

Said Section 21.3 of the Sunrise Rules is clear and does not require any interpretation: the Validation Agent has a right to investigation. This right is not an obligation. Instead, it can decide, in its sole discretion, whether or not it proceeds with an investigation. When it decides not to investigate, a complainant cannot argue that the investigation should have been conducted. When it decides to investigate, a complainant cannot argue that the outcome of the investigation cannot be relied upon. The Sunrise Rules grant a freedom to the Validation Agent and this freedom is unquestionably unconditional and absolute.

The decision of the Validation Agent is final in that it is not to the Panel to envisage or not whether it should, in the case that is at hand, proceed with an investigation for the simple reason that it has been appointed to rule a decision upon examination of the Complaint. Such option is not granted to the Panel. The Panel has a strict task. The Panel cannot initiate such investigation with a view to making the final decision in this Complaint depending upon it, even if the Panel may have received information that the Validation Agent or EURid did not have at the time of the examination of the application, and even if the Validation Agent could have gathered such information, had it used its discretionary right to proceed with an investigation of the circumstances of the application, the prior right claimed by Complainant and the documentary evidence produced by Complainant. Therefore, the fact that, during the ADR procedure, the Panel found out that Sunoco Overseas, Inc. indeed holds the Community trademark as argued by Complainant, cannot be taken into account in this decision. It was to Complainant to produce such evidence in due time in the application process and it has not done so, despite the clear applicable rules which Complainant accepted at the time of the filing of the application.

In this matter, the Panel is not there to express sympathy with an applicant who fails to obtain the registration of a domain name. Instead, when accepting to act in a case on a domain name complaint, the Panel has to go in search of the applicable rules and the relevant facts, and apply the former to the latter. In this case, the applicable rules are crystal clear and the facts are unmistakable. Therefore, the request is conclusively denied.

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	Flip Jan Claude Petillion
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DATE OF PANEL DECISION	2006-08-25
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Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In the Sunrise period, the proof of a prior right has to be filed before the deadline for filing documentary evidence.

Information on the existence of a prior right received by the Panel during the ADR proceedings but not produced timely by the applicant must be disregarded in the handling of the complaint. The Panel is expected to examine whether or not EURid had rejected the application for the domain name in compliance with the applicable Regulation and the Sunrise Rules. The task of the Panel is not to do the examination all over again in view of documents produced after the expiry of the relevant period for the production of documentary evidence. Such examination would have given an inadmissible advantage to Complainant in comparison with any other interested party in the domain name.

The Validation Agent has a right – not an obligation - to investigation. It can decide, in its sole discretion, whether or not it proceeds with an investigation.
