Panel Decision for dispute CAC-ADREU-001504

Case number	CAC-ADREU-001504
Time of filing	2006-06-09 12:18:17
Domain names	systimax.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	CommScope Solutions Ireland, LTD, an affiliate of CommScope Europe, Mr. Al Floyd

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

None

FACTUAL BACKGROUND

The Complainant's affiliated company, CommScope Europe, submitted the domain name application for SYSTIMAX on 8 February 2006 and the documentary evidence before the deadline for the same. The documentary evidence showed that the Benelux trade mark registration, which was used as a basis of the sunrise application, was registered to CommScope Solutions Properties LLC.

The Respondent, EURid, rejected the domain name application because the owner of the prior right claimed was not the same as the applicant of the domain name.

A. COMPLAINANT

The Complainant states that it would like to change the applicant name to CommScope Solutions Ireland, Ltd, a licensee of the trade mark SYSTIMAX of CommScope Solutions Properties LLC in Europe.

The Complainant also submits license declarations to support its claim. The Complainant further states that these proceedings are brought against EURid on the grounds of non-compliance of its decision with the Commission Regulation (EC) No 874/2004 ("the Regulation"), but does not specify what the non-compliance act is.

B. RESPONDENT

The Respondent states that it rejected the application because the applicant was not the same as the owner of the prior right claimed and the applicant did not produce the declaration of license with the documentary evidence.

The Respondent states that the new documents submitted by the Complainant should not be taken into consideration and that according to Article 22(1)b if the Regulation, a decision taken by the Respondent may only be annulled when it conflicts with the Regulation. The Respondent further states that the ADR proceedings may not serve as a "second chance" for applicants to remedy their imperfect applications rejected during the sunrise period.

DISCUSSION AND FINDINGS

This Complaint is brought against the Registry. The Panel is therefore bound by Article 22(11) of the Regulation, which states that in the case of a procedure against the Registry, the Panel shall decide whether a decision taken by the Registry conflicts with the Regulation or with Regulation (EC) No 733/2002.

In other words, in proceedings against the Registry, the Panel can revoke the Registry's decision if it finds that the decision violates either of the Regulations.

In this case the question is whether or not the Respondent's decision to reject the domain name application was consistent with the Regulation.

Article 14 of the Regulation 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. It is therefore clear that the burden of proof to show that the applicant is entitled to the domain name during the sunrise period is on the applicant of the domain name.

Article 21(3) of the Sunrise Rules states that the validation agent is not obliged, but is permitted in its sole discretion, to conduct its own investigation into the circumstances of an application. As is clear from the wording, the validation agent has no obligation to conduct other investigation than to examine the documentary evidence before it.

Article 14 of the Regulation does impose an obligation on the validation agent to assess the application. This means that in unclear cases the agent must go beyond the merely technical task of comparing the domain name application with the documentary evidence. However, this Panel is of the view that this obligation can apply only when the correct information can be found in the documentary evidence – an example of this is ADR 328 (LAST-MINUTE).

In this case the application contained substantial shortcomings in that the claimed prior right was registered to another entity than the applicant of the domain name. It is therefore evident that the Registry's decision does not conflict with either of the Regulations. In fact, granting the domain based on insufficient documentary evidence would have conflicted with the Regulations.

The Complainant has also stated that they would like to change the applicant's name into that of the licensee of the trade marks in Europe and submit new documentary evidence, namely the license declarations, dated 19 May 2006.

This Panel shares the view with the Panels in cases ADR 551 (VIVENDI), ADR 810 (AHOLD), ADR 1194 (INSURESUPERMARKET) that the ADR proceedings are not intended to be a chance to remedy the mistakes of the applicant. When an ADR case is brought against the Registry, the sole task of the Panel is to determine whether or not the Registry has violated the Regulations.

Because the sunrise procedure is an exception to the general rule of first come, first served, it is reasonable to expect that all sunrise applicants adhere to all the requirements strictly and within the applicable time limits.

Holding that an applicant that has failed to submit proper documentary evidence can remedy its application through the ADR proceedings would also mean unfair disadvantage to other applicants that may be next in line for that particular domain name, because the subsequent applicants must also be able to rely that the sunrise applicant submits complete documentary evidence within set deadlines in order to take advantage of the sunrise period.

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	**Tuukka Ilkka Airaksinen**

DATE OF PANEL DECISION 2006-09-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant submitted the domain name application during the sunrise period under a name different from the owner of the prior right claimed. The Respondent rejected the application because the documentary evidence did not show that the applicant is the owner of the prior right claimed.

The Complainant filed together with the Complaint copies of trademark registrations and license declarations that showed it is the

licensee of the trade mark registration claimed in the domain name application.

However, there was no violation of the Regulation on part of the Respondent and the ADR proceedings are not meant to be a second chance for the applicant to remedy the shortcomings in its application.

Because the sunrise procedure is an exception to the main rule of first come, first served, it is reasonable to expect that all sunrise applicants adhere to all the requirements strictly.