Panel Decision for dispute CAC-ADREU-001537

Case number	**CAC-ADREU-001537**
Time of filing	**2006-05-30 11:46:39**
Domain names	**solo.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Nordea Bank Finland Abp, Liisa Friman**

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

In Case the Complaint is filed against the decision(s) of EURID: The decision dated from April 17, 2006, according to which the Application for the domain name was rejected by EURid
Decision(s) Number(s) or another specification provided by EURID: -
Date of Issue of decision: 17.4.2006
Case File: Case File information is hereby attached as Annex 2
Other Legal Proceedings:
The Panel is not aware of any other legal proceedings pending or decisions which are related to the domain name under dispute.

FACTUAL BACKGROUND

On 7 December 2005, Identity and Communications Nordea Group, with its address at Netbanking FI-00020 Nordea Finland, made an application for the domain name SOLO.
The processing agent received the documentary evidence on 10 January 2006, which was before the 16 January 2006 deadline. The documentary evidence relied upon was consisted of a Finnish trademark No. 233447 "SOLO", registered by "NORDEA BANK FINLAND ABP, Helsinki, FI", which appears to be the complainant at the present ADR proceedings (hereafter “the Complainant”). The validation agent concluded from the documentary evidence that the applicant (i.e. Identity and Communications Nordea) did not demonstrate that it was the holder of a prior right, since there was a complete mismatch between the name of the holder of the prior right and that of the applicant. Consequently, the dispute concerns the rejection of the application filed on December the 7th 2005 for the registration of the domain name solo.eu.
The Complaint submitted by Nordea Bank Finland Abp was received by e-mail on 24.5.2006, and in hardcopy on 25.5.2006 by the Czech Arbitration Court. The Time of Filing was set at 30.5.2006 11:46:39. In accordance with Paragraph B2 (a) of the .eu Dispute Resolution Rules (ADR Rules), the Czech Arbitration Court has verified that the Complaint satisfies the formal requirements of the ADR Rules and ADR Supplemental Rules of the Czech Arbitration Court. The payment in the required amount to the Czech Arbitration Court has been made by the Complainant. On the 7th of June 2006 EURid furnished the necessary information package concerning the disputed domain name. The CAC set as the formal date of the commencement of the ADR Proceeding the 8th of June 2006. The Respondent requested the Provider on 26.7.2006 pursuant to paragraph § A2 (i) of the ADR Rules to extend the term of submission of its response in 4 working days. On 28.7.2006 the case administrator of the Czech Arbitration Court confirmed that the deadline for delivering the Response in the above ADR Proceeding has been prolonged by 4 working days. An acknowledgement of receipt of the Response was posted on the case file by the Czech Arbitration Court on 07.08.2006. The complainant received at the same day a copy of the response. Two days later the case administrator posted a Notification of Respondent's Default, informing the respondent on the consequences of its default. The case administrator notified the parties about the Panelists appointment on the 16th of August 2006.

A. COMPLAINANT

According to the complaint's statement the electronic application for the domain name "solo.eu" was filed at 11:04:55.342 on 7 December 2005 during the first phase of the Sunrise period, which made the application first in the queue for the domain name under dispute. The electronic application was supported by the timely submission of documentary evidence in the form of Finnish Registered Trade mark No. 223447. The trade mark name is "solo" and the registered owner of the trade mark is the Complainant, Nordea Bank Finland ABP. The documentary evidence was received by the validation agent on January 10, 2006.
The complainant is referring to two data consistency issues affecting the electronic application, both of which are [in his view] merely clerical/administrative errors and immaterial in terms of observing the overall requirement that the Sunrise Period/"Phased Registration" should "safeguard prior rights recognised by Community or national law" (Preamble (12) of Regulation (EC) No. 874/2004.) The inconsistencies do not affect the fact that the application fulfils the requirements of a request for a domain name registration, as it is set out in Article 3 of the Regulation (EC) No. 874/2004.
1. The complainant claims that the application is complete as required by Regulation 874/2004. The application was technically correct and was received first by the Registry. Furthermore the complainant supports the view that its application does not contain a material inaccuracy as listed in Article 3 Reg. 874/2004. Accordingly, the Application satisfies the Regulation. Still, if, which is not accepted by the complainant, the application is incorrect, the error is immaterial and may be corrected.
The complainant is referring to Article 3.1(vii) of the Sunrise Rules, which provides that an application must contain the "complete name for which a Prior Right is claimed". To this extent the Complainant submits that the Application comprises the original electronic filing together with the supporting Documentary Evidence. It was clear from the Documentary Evidence that the domain name applied for by the Applicant correctly corresponds to the trademark owned by the Applicant and contains the "complete name for which a Prior Right is claimed".
The complainant refers to a decision of the European Court of Justice (Biogen v SmithKlineBeecham), according to which where the substance of an application is complied with, an immaterial defect in an application is not a bar to registration. Further on, the complainant compares the present case to already accepted applications suffering from the same issue, wherein the validation agent has deemed this error as immaterial and exercised its discretion, as permitted by Section 21(3) of the Sunrise Rules, to conduct its own investigations, should it choose. While the Complainant is aware of the disclaimer concerning the FAQs on the validation agent's web site ("Any response given or issue raised herein shall not be binding for the Registry, the Validation Agent, the Government Validation Points and the Panellists, nor can they be considered guidelines on the interpretation of the legal framework concerning the .eu TLD"), the Complainant still refers to the FAQ and the statement: Self-Assessment for rejected applications which notes that it will show some flexibility in relation to "obvious incorrect information mentioned in certain fields (such as the name of the organisation in the field "Prior Right on Name)". It is clear that the Validation Agent has exercised its discretion in exactly these circumstances in favour of other applicants and accordingly, the Complainant ought to be shown a similar degree of flexibility.
2. The second data inconsistency affecting the submission of the Application resulted in the omission of the "Organisation" in the Application Section. The data inconsistency was caused by only the "Applicant Name" field being filled out when the application was submitted, instead of both the "Applicant Name" field and the "Applicant Organisation" field. The consequence was that there was no organisation name listed in the Applicant section, only the name of the responsible position within the Complainant's organisation which in the present case was "Identity and Communications Nordea Group". However, the organisation name is still listed in the "prior right on name" field and all the contact information in the Applicant section of the electronic application corresponds to the one presented in the documentary evidence. The Applicant Name was subsequently clarified by the Documentary Evidence which should be viewed together with the electronic application to form the whole application. It is therefore clear that the entity holding the trademark rights in the name SOLO, is also the entity applying for the corresponding domain name.
This should be deemed an immaterial error and treated with the same flexibility the validation agent has shown applications where the text in the organisation field says N/A or NULL. Again, the Complainant refers to the Validation Agent's FAQ. The Validation Agent has exercised its discretion in exactly these circumstances in favour of other applicants and accordingly, the Complainant ought to be shown a similar degree of flexibility.
It is further submitted that the Sunrise Process should be considered as a process designed to ensure the attribution of a .eu domain name to an entity that demonstrates a prior right to that name. The intent of the electronic application is to initiate the process from a technical stand point; however the deciding factor in granting a domain name is the review of the documentary evidence at the point of validation in order to establish the prior right claimed. The Complainant's details were in fact contained in the application, in the "Prior Right On" field where the Applicant/trademark holder was listed, and in the "Applicant" section, of the Sunrise Whois, where the address and contact information for the Applicant was listed. The Application should be reviewed as a whole (including both the original electronic application together with the Documentary Evidence) and allowed to pass through to successful registration. To narrowly confine the term "applicant" as contained in Regulation (EC) No. 874/2004 to data contained in one field of the Application should be considered to be inconsistent with the guiding principle of Phased registration, that is, "to safeguard prior rights recognised by Community or National law" (Preamble (12) of Regulation (EC) No. 874/2004). Finally, the complainant refers to case No 143 [VITANA, a.s. v. EURID], where the panel stated that: "The purpose of the Regulation 874/2004 is, inter alia, to grant domain names during the sunrise period on first come first served basis provided that the applicant can demonstrate a right which is prior to his domain name application."
In summary, the Complainant states that it fulfils the necessary criteria for being granted the .eu domain name "solo.eu". The

Complainant is a legitimate applicant for the domain name “solo.eu” and as such, the Panel should direct the validation agent to accept the Application and attribute it to the Complainant. As long as the rejection of the domain name has not been finalised, the Complainant shall still be deemed as the “next applicant in the queue, as stated in section A(11) (c) of the ADR Rules.

B. RESPONDENT

The Respondent’s position will not be considered for reasons which are to be found in the present decision under Nr. 1.

DISCUSSION AND FINDINGS

1. On the default of the Respondent
S. B.3 (a) of the ADR Rules states that the Respondent shall submit a Response to the Court within thirty working days of the date of the delivery of the Complaint.
S B. 3 (f) of the ADR Rules states that “if a Respondent does not submit a Response or submits solely an administratively deficient Response, the Provider shall notify the Parties of Respondent’s default. The Provider shall send to the Panel for its information and to the Complainant the administratively deficient Response submitted by the Respondent”.
The first issue arising from this case is the weight that must be given to the delayed response of the Respondent. According to Art. 22.10 of Regulation 874/2004 "Failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty". Further, pursuant to Section B 10 (a) of the ADR Rules "in the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party". In the present case the Respondent was supposed to submit its response on July the 9th pursuant to Art. 22.8 of Regulation 874/2004 and S. B (3) a of the ADR Rules. Finally, the response was submitted a month later (!). Such a belated response is totally incompatible with the fundaments of the ADR procedure established by the CAC. One of the main advantages of these proceedings is the speedy rendering of a decision. The respondent has shown a serious disregard for the rules aforementioned. Unfortunately, it seems that the Respondent is repeatedly presenting delayed responses to similar proceedings [see for instance cases Nr. 294, 431, 706, 843, 865, 1194, and 1228].
The panel bears of course in mind that the Respondent is literally overloaded from the bulk of complaints filed against it. From a total number of approximately 150 decisions, EURid was in the respondent’s position in nearly 120 among them. Nevertheless, this situation cannot serve as a viable excuse for disregarding strict deadlines set by the Regulation and the ADR Rules. Besides this, it is the Respondent itself that acknowledges the importance of safeguarding formal requirements, when it emphasises that: "Strict rules are indeed essential to manage the validation of hundreds of thousands of domain name applications". Once the Respondent is expecting from applicants to comply with any strict rules during the registration procedure, it is at the same time obliged to show a similar respect to the strict time requirements posed by the Public Policy Rules and the ADR Rules of the CAC, and if not, to carry the consequences of its failure.
For the above reasons this Panel dismisses the response due to the gross delay the Respondent showed in filing it, and will proceed with the case without taking any notice of the arguments therein. At the same time, the Panel believes that the non-compliance shown by the Respondent towards the above rules may give rise to consider this failure as a ground to accept the complainant’s claim. However, this fictional acceptance may not lead this Panel automatically to accept the complaint. Art. 22.11 (b) Reg. 874/2004 and S. 11 (2) b ADR Rules hinder the Panel from a similar approach.
2. On the merits of the case
The Panel wishes to begin with the provisions related to the case at hand.
Article 14.1 Reg. 874/2004 states that “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”. Art. 14.4 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”. Art. 14.7 sets forth that “the relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name. If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this”. Finally, Art. 14.10 provides that “the Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right”.
Passing now to the Sunrise Rules, the Panel wishes to underline the following provisions: Art. 3 states the following: “1. An Application is only considered complete when the Applicant provides the Registry, via a Registrar, with at least the following information:
(i) the full name of the Applicant; (v) the Domain Name applied for;
and (vii) the complete name for which a Prior Right is claimed “. Art. 13.2 deals with the documentary evidence to be submitted for registered trademarks and states the following: “… The Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark”. According to Art. 20.3
“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 role of the Validation Agent is regulated in Art. 21. According to Art. 21.2 and 3
"[2] 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 by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules. [3]. The Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced".
The issue at stake is whether the reported mismatch between the name of the applicant and the owner of a prior right according to the documentary evidence constitutes a solid basis upon which the Registry was entitled to reject the application. The Panel has to point out the multitude of relevant case law available. There are two groups of decisions worth to be mentioned. The first group is related to purely technical problems involved in the registration process, which attributed to the following discrepancy [cases Nr. 181 and 838], or to a failure of the Validation Agent pursuant to Art. 21 (3) of the Sunrise Rules, "to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced." [cases Nr. 174, 253, 431, 774, 1525]. The second group of decisions deal with mistakes during the registration process which cannot be remedied afterwards [see cases Nr. 192, 294, 501, 706, 810, 865, 894, 954, 984, 1186, 1194, 1232, 1298, 1443, 1539, 1625, 1627]. The subject matter is of course to decide the group under which the present case must be classified.
At this point the Panel wishes to reiterate the factual background: The applicant's data are "IDENTITY AND COMMUNICATIONS NORDEA GROUP", whereas the holder of the prior right on registered trademark SOLO, who is also the complainant in the present case is "NORDEA BANK FINLAND ABP".
The only common point between the name of the applicant and that of the complainant is the word Nordea. The rest of the data are completely different. Even the addresses of the applicant [Netbanking FI-00020 Nordea FI] and the holder of the prior right/complainant [Aleksanterinkatu 36 B, Helsinki Nordea, Finland, FI-00020] are substantially different.
Before dealing with the present case, the Panel is of the opinion that a brief report concerning the existing case law is imperative.
a. Cases rejecting the complaint
Case 192: The applicant was the legal person @TOLL, while the trademark owners were Mr. Frank Budwillat and Mr. Rüdiger Bäcker. In respect of the discrepancy between the identity of the Domain Name Applicant and the trademark owners, the Panel found that Mr. Ruediger Thomas Baecker's statement that he applied for the domain name <atoll.eu> does not necessarily mean that he applied on his behalf. If the application was indeed submitted on behalf of the legal person @TOLL and no documentary evidence was provided substantiating Domain Name Applicant's prior right during the application and validation period, the Respondent cannot be found to have erred in its decision to reject the domain name application.
Case 501: EURid rejected the Complainant's applications to register the Domain Names< lode.eu.> and <procare.eu> because the names LODE and PROCARE were registered in the name of Lode Holding BV and not in the name of the Applicant (Complainant), Lode B.V. The applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant.
Case 810: The rejection was based on the fact that, according to the documentary evidence provided, the complainant did not appear to be the owner of the prior right consisting in the Czech trademark for the word Ahold, as the name mentioned in the trademark certificate (Koninklijke Ahold N.V.) differed from the name of the Complainant/Applicant (Ahold N.V.). Since the Public Policy Rules and Sunrise Rules do not foresee any obligation to cooperate with applicant/complainant, the Respondent's decision to reject the application may not be held as conflicting with PPR or EC Regulation 733/02.
Case 865: Complainant changed its corporate name from "Koninklijke PTT Nederland N.V." into "Koninklijke KPN N.V." in June 1998. It filed an application for "HI.EU" domain name in Sunrise Phase I based on Benelux "HI" trademark originally applied for and registered in the name of "Koninklijke PTT Nederland N.V.". As documentary evidence, it submitted a certificate of the aforementioned trademark registration, where the name of the trademark applicant was "Koninklijke PTT Nederland N.V.". The Panel held: In cases where domain names are applied for in the Sunrise period, their registration process is subject to specific rules prescribing also required documents for substantiating prior rights including the deadline within which they must be submitted. The ADR proceeding cannot substitute the validation and registration process governed by these rules and therefore, the Panel is of the opinion that the documents provided by the Complainant within the ADR proceeding cannot constitute a basis for annulment of the Respondent's decision which does not breach any of the EU Regulations in question.
Case 954: Section 21.3 of the Sunrise Rules reads that the Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced. The burden of proof therefore is on the applicant.
Case 984: EURid refused to register the disputed domain name, because the evidence in support of the application showed the registration of the trademark ISABELLA in the name of Jydsk Camping Industri A/S, whereas the application for the disputed name had been made in the name of Isabella Jysk Camping A/S. The Panel found no reason to question the technical correctness of EURid's decision, and further found that there was no technical or obvious mistake apparent from the face of the application itself which should have put EURid on notice as to the need to make further enquiries
Case 1186: The Trade Mark registration certificate was in the name of "Ruhrgas Aktiengesellschaft" whereas the name of the Applicant

was shown as “E.ON Ruhrgas AG”. The Panelist held that, "in the circumstances, and bearing in mind the duty of the validation agent to try to ensure that the applicant, as shown on the application, demonstrates the appropriate ownership of the prior right, I am of the view that the validation agent in this case was not presented with documentary evidence which on a prima facie review demonstrated the right of the applicant to ownership of the Prior Right. As to whether they should have carried out further investigations, I am conscious that this is specifically called out in the Rules as not being an obligation and to be done in their sole discretion.
Case 1194: Applicant: Moneysupermarket.com Limited, Complainant/prior right holder: Moneysupermarket.com Financial Group Limited. The Panel held: The domain name has been filed in the name of a company which is legally different from the holder of the prior right; the Panel finds that the Decision of Rejection does not conflict with any of the applicable rules and regulations and that the validation agent, in view of the documentary evidence brought to him, complied with the rules and is not responsible for any error. The ADR procedure is not intended to correct domain name applicants’ mistakes.

Case 1232: The trademark “mce” [for which a domain name registration was applied] was registered not under the name of the Complainant [Management Centre Europe] but under the name “American Management Association”. As the Complainant did not provide the Registry with Documentary Evidence within the 40 days deadline of Section 8 (5), Subsection 4 Sunrise Rules, such Documentary Evidence was regarded incomplete and not sufficient to prove the claimed prior right of the Complainant. As sufficient documentation was not submitted to the Registry within the 40 days period of Section 8 (5), Subsection 4 Sunrise Rules, and as the timely submitted evidence did not substantiate the prior right of the Complainant, the Panel held that the Registry was entitled to reject the application.

Case 1443: The Complainant who filed its application under its name KRAAIJVANGER URBIS supported its application with the Proof of Ownership (trademark certificate) of the “URBIS” trademark within the Benelux issued by the Benelux Trademarkbureau in favor of the holder ASTOC INTERNATIONAL B.V. The Panel held: If the filed application is accompanied with the documentary evidence that does not clearly indicate the name of the applicant as being the holder of the prior right claimed and the applicant does not submit official documents substantiating that it is the same person as the person indicated in the documentary evidence as being the holder of the prior right, the respective application has to be rejected.

Case 1539: The Complainant [Setra Group AB] filled in the “Applicant Name” field as “Manager Domain”. The Panel considered that the inaccuracy in the Applicant Name was material but that it could have been corrected in the documentary evidence. However, it had not been corrected in the documentary evidence with the consequence that rejection was justified under both article 3 and article 14 of Regulation 874/2004 .

Case 1625: In this case the documentary evidence submitted by the Complainant showed that the “IAV GmbH Ingenieurgesellschaft Auto und Verkehr”, and not the “iav GmbH” is the holder of the trade mark “TELEDRIVE”. Therefore, the documentary evidence in support of the application for the domain name “teledrive.eu” was incomplete. It must be prima facie verifiable from the presented documentary evidence that the applicant for a domain name is also the holder of the trade mark right to the name

b. Cases accepting the complaint
Case 174: The name on the application was that of the company French Connexion while that on the trade mark registration certificate was that of the founder, owner and managing director of the company French Connexion. The Panel held: The registry did not advance any proof that the validation agent or itself had made reasonable efforts to, in terms of section 21 (3) of the Sunrise Rules, “ conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced.” While the same section 21 (3) grants the Validation Agent “sole discretion” to carry out such investigations, the Panelist is of the opinion that it is a fundamental principle of justice that, when granted such discretion, the Validation Agent is not exempted from the requirement to act reasonably. In the circumstances of the case, the Validation Agent could have easily cleared up any small doubts by seeking and obtaining further proof of identity despite different name appearing on the trade mark certificate. It would be unreasonable for the Validation Agent not to have expended the minimum of effort to clear this doubt.
Case 253: The name on the application contained one word less than the name on the trade mark registration certificate while the address on the trade mark certificate was within the same town but not in the same street as that given on the application. The Panel [actually the same Panelist as in case 174] annulled the Registry’s decision, using the same argumentation as in the previous case.
Case 431: The Panel ruled that the Respondent had to reject the Complainant’s application, since the names appearing in the Cover Letter and in the trademark certificate the documentary evidence consisted of were different, and could lead the Respondent to assume that two different legal entities were involved. However, the Complainant gave evidence before the Court that it was entitled to register the Domain Name. Thus, as the rejection of the Complainant’s application conflicts with the right of an applicant to register a domain name when it has demonstrated a prior right, EURid’s decision is annulled and the name is transferred to the Complainant.
Case 774: Alter having reviewed the documents provided by the Parties, the Panel has been able to find out that, due to the Complainant’s questionable provision of evidences, the Respondent considered that the Complainant held no trademark that could support its application. Nonetheless, after having made the corresponding verifications, the Panel has been able to find out that the

Complainant does indeed hold a valid trademark registration to support its application. The Panel considers that a strict formalist approach in this case would not be a reasonable solution and would not follow the principles guiding the registration rules of .EU domain names
Case 1525: The Complainant's trade mark for "ESPO" was in the name "Güler Buyuksarac-Esgikan h.o.d.n. European Social Projects Office". In the domain application, the name and organisation were given as "Buyuksarac" and "ESPO" respectively. The addresses were identical. The Panel considered that, taking all of the relevant matters together, it should have been reasonably apparent to the Respondent that "ESPO" in the domain name application was an acronym of the trade mark owner's trading name "European Social Projects Office" and that the domain name applicant and the holder of the prior right were one and the same.
The extent of control expected from the Validation Agent has been recently scrutinized by the CAC. In a short discussion note dated from the 1st of September, the CAC underlined the following:
1. The ratio of Section 21(3) of the Sunrise Rules is to allow the Validation Agent to correct certain immaterial or obvious errors. ADR 328 - lastminute exemplifies this. In that case, the applicant made an error in the "prior right on name" field only. The Validation Agent could easily correct such a mistake simply by examining the Documentary Evidence. The Documentary Evidence indeed shows the name of the Prior Right. The "prior right on name" field as such is not crucial to the validity of an application, in contrast to for example the "name of the Applicant" field.
2. According to EURid, the price for validating a single application is in few tens of EUR. For that price, no deep examination of sources and documents other than the documentary evidence submitted is possible. But, it should be possible to verify/confirm obvious errors between the application and the documentary evidence. Examples of such obvious errors may be a difference between the street address of the applicant given on his application and that shown in the (TM) certificate (ADR 253 - Schoeller), or a difference in legal form of the applicant mentioned in the application and in the documentary evidence (ADR 903 - SBK).
Having considered all the above, the Panel comes to the following conclusions:
i. The mismatch reported in the case at hand is neither based on technical grounds, nor an immaterial one. Since the complainant did not provide the Validation Agent with the necessary modification/rectification details of the application within the 40 days deadline, the Agent could not have been able to discover by himself the mistake which took place during the registration process. The cases presented under (a) give clear evidence to support this view.
ii. The Panel cannot share the view taken by cases 431, 774 and 1525. The CAC is not a second instance court for false applications. Its powers are clearly stipulated under Art. 22.11 (b).
iii. The Panel is also unwilling to adopt the interpretation given to section 21 (3) of the Sunrise Rules by cases 174 and 253, at least with regard to the present factual background. Unlike the situation in case 253, we deal here with a complete mismatch between the applicant's and the complainant's name, save one word. Adding the difference regarding the addresses listed, it becomes obvious that the discrepancy was of a much bigger extent compared to the cases aforementioned.

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	**Apostolos Anthimos**

DATE OF PANEL DECISION 2006-09-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant seeks for the annulment of the Respondent's decision to reject its application for the domain name under dispute. The ground of rejection was the mismatch between the applicant's [Identity and Communications Nordea Group] with the complainant's name ["NORDEA BANK FINLAND ABP, Helsinki, FI"]. The complainant argued that this mistake was immaterial, while the Respondent supported the opposite view.
Due to a delay in filing the response, the Panel did not consider the argumentation put forward by the Respondent.
The present case concerns a question which has been repeatedly considered by other Panels in previous cases. The prevailing opinion concludes that the applicant has the burden to prove that the registration requirements have been met. Neither EURid nor the Validation Agent is obliged to proceed to profound examination regarding the application. Consequently, minor defects, such as misspellings, are subjected to remedy. However, in the present case, the differences were evident: The only common ground was the indication Nordea. In addition to the above, even the given address of the applicant was totally different to the address given by the complainant. No rectification or amendment of the mismatch was delivered by the complainant to the Registry and/or the Validation Agent during the term of 40 days, stipulated by the Sunrise Rules.

Therefore, the rejection of the application was in accordance with the Rules and Regulations dealing with .eu domain name registrations, which leads to the dismissal of the complaint.