Panel Decision for dispute CAC-ADREU-001625

Case number	**CAC-ADREU-001625**
Time of filing	**2006-05-31 13:13:53**
Domain names	**teledrive.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**IAV GmbH Ingenieurgesellschaft Auto und Verkehr, Gerd Buß**

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 which are pending, or have been decided, and which relate to the disputed Domain Name.

FACTUAL BACKGROUND

The Complainant is the “IAV GmbH Ingenieurgesellschaft Auto und Verkehr” (hereinafter, the “Complainant”) and the holder of the German and EU trade mark “TELEDRIVE”.

The request for the registration of the domain name “teledrive.eu” was filed via the Registrar ASCIO Technologies Inc on 07 December 2005 by “iav GmbH.

With decision of 29 March 2006 the Registery denied the request for registration on the ground that no proof of the Applicant being the holder of the German trade mark “TELEDRIVE” or the EU-trade mark respectively has been submitted.

Against this decision, the Applicant filed a complaint with the Arbitration Court which was received online on 30 May 2006. With the communication of the Acknowledgment of Receipt the Complainant was notified of the exact time of filing is “2006-05-31, 13:13:53” receiving the fees for the ADR Proceedings.

A. COMPLAINANT

The Complainant contends that the application for the registration of the domain name “teledrive.eu” was made in compliance with the Sunrise Rules.

The Complainant contents that all documents concerning the trade mark “TELEDRIVE” indicating the Complainant as holder of the trade mark have been submitted to ASCIO for transmission to the Registery. Especially documents proving the registration of the German trade mark “TELEDRIVE” with the German Patent Office have been provided.

By a non-standard communication from 13 June 2006 the Complainant furthermore contents that the Complaint was sent to the Arbitration Court also via facsimile on 04 May 2006. The Complaint submits the transmission protocol as proofing document without an affirmation in lieu of oath of the person sending the facsimile.

B. RESPONDENT

With response of 07 June 2006 the Registry as Respondent requests the complaint to be rejected. The Registry contents that 30 March 2006 was the date of the commencement of the Sunrise Appeal Period with respect to the Complainant. The Appeal Period expired on 8

May 2006 and the complaint received on 30 May 2006 was therefore filed too late on 31 June 2006 after receiving the fees for the ADR Proceedings.

DISCUSSION AND FINDINGS

In consideration of the factual background and the Parties contentions, the following conclusions must be reached:

1.
According to Section 26 paragraph 1 of the Sunrise Rules a complainant may initiate ADR Proceedings against a decision of the Registry within 40 calendar days following that decision ("Sunrise Appeal Period"). Section 26 of the Sunrise Rules must, therefore, be understood in the following way: the Complainant may initiate ADR Proceedings only within 40 days following the contended decision with the consequence that he loses his remedy in case the complaint is filed too late. The contented decision becomes final after 40 days and may not be subject to any further appeal (see ADR case no. 00903, Siemens-Betriebskrankenkasse Koerperschaft des oeffentlichen Rechts).

The request for registration submitted by the Complainant was rejected with decision of the Respondent on 29 March 2006. Consequently, the Sunrise Appeal Period ended on 8 May 2006. Although, according to the Complainant, the Complaint was submitted on 4 May 2006, the Case Administrator assigned the date of 31 May 2006 as the Time of Filing and the date of 13 June 2005 as the date of the Commencement of the ADR Proceedings.

The transmission protocols of the facsimile containing the complaint dated 04 May 2006, which the Complainant presented to the Panel, do not serve as sufficient proof for the receipt by the Court earlier than 31 May 2006. The protocols merely provide evidence that documents might have been send off on 04 May 2006. They are no proof of an actual receipt by the Court in due time.

Furthermore an application for ADR Proceedings is deemed to be filed only once the fee has been paid, because until the Court has not received the fee, it is not obliged to take any action on the complaint (A 6 (a) ADR-Rules). However, as is clear in this case the Complainant did not pay the fee until 31 May 2006, a day after the complaint was filed online. It cannot therefore be considered that a complaint was send on the 04 May 2006.

The panel notes lastly that no application for restitutio in integrum was made by the Complainant.

2.
Furthermore, it is clear that the basis for the rejection of the Complainant's application for the "teledrive.eu" domain name is the fact that the Complainant did not appear to be the holder of the trade mark "TELEDRIVE". In the presented case, the applicant for the registration of the domain name "teledrive.eu" was the "iav GmbH". In contrast to this, the holder of the trade mark "TELEDRIVE" was presented to be the "IAV GmbH Ingenieurgesellschaft Auto und Verkehr".

Generally, domain name applications under the phased procedure, as it is the case here, are ruled by the Sunrise Rules. Section 3 (1) of the Sunrise Rules provides for the requirements an application must at least fulfil to be considered as complete: According to this, the full name of the Applicant must be given. It is, consequently, in accordance with the Sunrise Rules to consider an application as incomplete where the name of the applicant is not completely given. The reason for this is simply the avoiding of any domain name registration deprived of legitimation on the applicant's side. This is also confirmed by Section 20 of the Sunrise Rules which obliges the Registry to make sure, that the applicant is also the holder of the (trade mark) rights. For this reason, the Registry conducts the validation of rights of the applicant on the basis of a prima facie review of the first set of evidence provided (section 21, Sunrise Rules). As a result, when faced with differences between the applicant's name and the right holder's name, the Registry is correct in not accepting the domain name application (see ADR decision no.00865; Koninklijke KPN N.V.).

Moreover, when examining an application for a domain name, the Registry's obligation is to examine whether the applicant holds a prior right to the domain name (Article 14 of the Regulation). The right must be verifiable by the presented documentary evidence. This shall demonstrate that the right exists and that the applicant is the holder of this right claimed on the domain name. In the presented 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.

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	**Lambert Grosskopf**

DATE OF PANEL DECISION 2006-08-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1.
A Complainant may initiate ADR Proceedings only within 40 days following the contended decision, which otherwise becomes final and may not be subject to any further appeal.

2.
Transmission protocols of a facsimile do not serve as sufficient proof for the receipt of a complaint. They are no prima-facie-proof of an actual receipt of a complaint by the Court in due time.

3.
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.