Panel Decision for dispute CAC-ADREU-001664

Case number	**CAC-ADREU-001664**
Time of filing	**2006-06-13 11:39:51**
Domain names	**accord.eu, taarup.eu**

Case administrator

Name	**Eva Zahořová**

Complainant

Organization / Name	**Kverneland ASA, Berit Elin Hatteland Krog**

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

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FACTUAL BACKGROUND

Applicant (Kverneland Group Soest GmbH) filed the applications for the domain name accord.eu and taarup.eu and they were received by Respondent January 24 2006. The Documentary Evidence was received by Respondent on March 1 2006. Respondent rejected application. The ground on which the rejection was based on is that the Documentary Evidence did not prove the prior rights claimed by the Complainant. The rejection concerns the registration of domain names within the first sunrise phase. This rejection is subject to dispute.

A. COMPLAINANT

Complainant is of the opinion that the rejection of the application for domain names accord.eu and taarup.eu must be annulled as the prior rights claimed by the Complainant are fully existent and have been proved through the appropriate Documentary Evidence by the applicant. Complainant/applicant have been orally assured by the Respondent that the provided documentary evidence is complete and accurate.
Complainant argues that in other cases of domain registration the applicant provided the same kind of documentation and the registration process was completed successfully.
The documentation evidencing the ownership of the priority right is represented by the trade mark ownership and the Licence Declaration for a Registered Trade Mark. The Complainant to date provided the evidence - trademarks registration extracts for the words ACCORD (WIPO Intl. reg.no.548352) and TAARUP (Benelux reg.no.0060908) and the Licence Declaration for a Registered Trade Mark from September 19, 2006 (accord.eu and taarup.eu) and the Licence Declaration for a Registered Trade Mark from December 14, 2005 (accord.eu).As an example, complainant provided the court with the other domain names Licence Declaration for a Registered Trade Mark.

B. RESPONDENT

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that only holders of prior rights which are recognised or established by national or Community law shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts.

Article 14 (4) of the Regulation states that every applicant must submit documentary evidence that shows that it is the holder of the prior right claimed on the name in question..

The burden of proof is with the Applicant to show that it is the holder of a prior right

Pursuant to the Regulation and the Sunrise Rules, it is to the applicant to submit all documents which the validation agent needs to assess whether an applicant is the holder of a prior right corresponding to the domain name. In case an applicant fails to submit such documents, its application must be rejected. Pursuant to the texts just mentioned, the relevant question is not whether an applicant is the holder of a prior right, but whether an applicant proves to the validation agent that it is the holder of a prior right.

The Complainant however states that the Applicant is properly licensed to use said trademarks and argues that it submitted licence declaration forms pursuant to section 20 (1) of the Sunrise Rules.
A copy of all documentary evidence which the Applicant submitted is attached to the non-standard communication dated June 22, 2006. It will be clear that no licence declaration was submitted by the Applicant. The Respondent therefore correctly rejected the Applicant's application.
Finally, in an attempt to prove that it is aware of section 20 (1) of the Sunrise Rules, the Complainant submits a licence declaration form for another domain name it applied for. It appears that the Complainant argues that the fact that it has submitted licence declaration forms for other domain names implies that it must also have done so for the disputed domain names at hand.
The Respondent does not agree with the Complainant on this matter. As explained above, no licence declaration forms were submitted for the disputed domain names at hand. The Respondent quoted various court cases, in its opinion similar to this case to support its arguments.

DISCUSSION AND FINDINGS

The complaint of the Complainant as well as the Respondent's response was duly reviewed.

The purpose of the Regulation 874/2004 is, inter alia, to grant domain names during the Sunrise period on first come first served basis as properly claims Complainant provided that the applicant can demonstrate a right which is prior to his domain name application.

The last paragraph of Article 14 of Commission Regulation (EC) No 874/2004 provides that the Registry shall register the domain name, on first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with paragraphs 2-4 of the same article.
The paragraph 4 of Article 14 of the said Regulation provides 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.

In compliance with the Article 14 of Commission Regulation (EC) No 874/2004 the .eu Registration Policy and the Terms and Conditions, (.eu Sunrise Rules), that apply for all applications during the phased registration period in accordance with art. 3 (d) of the said Regulation, provides under Section 13(2), inter alia, that the documentary evidence must clearly evidence that the applicant is the reported owner or licensee or transferee of the registered trademark.

Pursuant to Article 12 (2) of the EC Regulation 874/2004 licensees of trademark owner may also apply for the corresponding domain name.

Section 20 (1) of the .eu Sunrise Rules, states that when an applicant has obtained a licence for a registered trade mark in respect of which it claims a prior right, it must enclose with the documentary evidence an acknowledgement and declaration form duly completed and signed by both the licensor of the relevant registered trade mark and the applicant.

Section 21 (2) of the Sunrise Rules states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence it has received.

In other words, where the prior right claimed is a trade mark, the burden of proof is on the applicant (Complainant) side, ownership evidence inclusive.

The Panel did not find any evidence in the provided documentation which can prove Complainants argument that the applicant provided the Respondent with the declared Documentary Evidence, namely the Licence Declaration for a Registered Trade Mark from December 14, 2005 (accord.eu). Also, the Panel did not find any evidence which can prove Complainants argument that the applicant provided the Respondent with the declared Documentary Evidence, namely the Licence Declaration for a Registered Trade Mark (taarup.eu) which in addition, had not been presented to the Panel.
The Licence Declarations for the Registered Trade Mark (taarup.eu and accord.eu) from September 19, 2006 presented to the Panel are not applicable to this dispute as an evidence, since these do not represent the genuine documents which might be the documents presented to the Respondent at the time of registration process.

The role of the Panel is solely to find whether or not the decision of the Respondent was in conflict with any of the European Union

Regulations and only with the Documentary Evidence provided to the Respondent to the date of its decision. The Panel cannot change the Respondent's decision based on the Documentary Evidence which was not a part of the applicant's application.

Summarizing the above stated, I did not find the contested decision to reject the application of the applicant made by the Respondent in conflict with any of the European Union Regulations.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) of the Rules, the Panel orders that

the Complaint is Denied

PANELISTS

Name	**Tomáš Borec**

DATE OF PANEL DECISION 2006-10-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant claimed that the applicant has legally perfect evidenced its priority right in its application because all the Documentary Evidence have been submitted to the Respondent as in many other cases, in which the Respondent registered the domain names. The Respondent unlawfully rejected the application for the domain names registration accord.eu and taarup.eu.

The Panel reviewed the arguments of Complainant as well as Respondent and found no breach of any of the European Union Regulations. The evidence provided to the Panel did not prove that the applicant provided the Respondent with the necessary Documentary Evidence as stated and requested at the Article 12(2) and 14 of Regulation 874/2004 as well as stated and requested at Section 20(1) of .eu Sunrise Rules.

The purpose of the Regulation 874/2004 is, inter alia, to grant domain names during the Sunrise period on first come first served basis as properly claims Complainant provided that the applicant can demonstrate a right which is prior to his domain name application. In this particular case Complainant did not demonstrated its prior right as required by the Regulation and .eu Sunrise Rules.

The Respondent correctly rejected the application in compliance with the Article 14 of Regulation No 874/2004 as well as Section 20(1) of .eu Sunrise Rules since the applicant did not provided sufficient evidence in the form of Licence Declarations for the Registered Trade Mark for both accord.eu and taarup.eu. The Panel denied the complaint.