Panel Decision for dispute CAC-ADREU-001680

Case number	**CAC-ADREU-001680**
Time of filing	**2006-06-08 11:20:32**
Domain names	**commercials.eu, unlimited.eu**

Case administrator

Name	**Eva Zahořová**

Complainant

Organization / Name	**M. Oomens**

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

RoosIT, the registrar owned by Complainant, filed an application for the <commercials.eu> domain name on 23 January 2006 at 10:41:20.650 hrs.

On 8 February 2006, RoosIT produced the copy of an extract of the Benelux trademark register, showing the application on 20 January 2001 and the registration on 25 January 2006.

EURid rejected the application.

On behalf of S. van Voorst, RoosIT filed an application for the <unlimited.eu> domain name on 19 December 2005 at 12:36:15.125 hrs.

On 13 February 2006, Complainant produced the copy of an extract of the Benelux trademark register, showing the application on 19 December 2005 and the registration on 20 December 2005.

EURid rejected the application.

On 6 June 2006, Complainant filed a Complaint against both decisions.

For the <commercials.eu> domain name, the deadline to initiate ADR proceedings expired on 3 June 2006. For the <commercials.eu> domain name, the Complaint was, thus, not filed timely.

For the <unlimited.eu> domain name, the deadline to initiate ADR proceedings expired on 21 June 2006. For the <unlimited.eu> domain name, the Complaint was, thus, filed timely.

A. COMPLAINANT

In a lengthy complaint of numerous pages, Complainant developed arguments that can be summarized as follows: the <commercials.eu> and <unlimited.eu> domain names should not have been rejected for the following reasons:

- Under Benelux Trademark Law, a trademark exists when the application for the trademark is filed;
- In the past, EURid has accepted domain name applications on the basis of a Benelux trademark application;

- If EURid has changed its policy in order to only accept domain name registrations, Complainant should have been informed in order to act accordingly;
- Complainant has not received an answer from EURid to its question what date is relevant for the application of the domain name, the date of application of the trademark or the date of registration of the trademark.

B. RESPONDENT

Being of the opinion that the Complaint was filed after the applicable deadline for the <commercials.eu> domain name, Respondent only responded to the Complaint as it concerned the <unlimited.eu> domain name.

Respondent refers to Articles 10 (1); 12 (2) and 14 of Regulation 874/2004 of 28 April 2004 and to Sections 11.3; 13.1 and 21.2 of the Sunrise Rules to argue that the documentary evidence produced did not demonstrate that, at the date of the domain name application, the applicant held a valid prior right. Respondent also contests the interpretation of Benelux Trademark Law by Complainant. Respondent finally argues that the present case should not be decided on previous decisions.

DISCUSSION AND FINDINGS

Preliminary remark

Before developing its arguments related to the decisions of EURid to reject the applications for the <commercials.eu> and <unlimited.eu> domain names, Complainant, who actually acts on behalf of a Dutch registrar, i.e., RoosIT, raised general and almost philosophical points – without always explaining why de point was made and why attachments were produced – about (i) availability of information, (ii) conflicts of interests, and (iii) the importance of the knowledge of the Dutch (sic) national trademark legislation.

These points may be qualified as mere personal opinions, some of which being funny in their inaccurateness and showing the level of knowledge of Complainant of domain name and the trademark legislation.

Complainant further insists on an equal treatment of parties involved in the domain name registration and complaint handling process. However, in this procedure, Complainant laconically informed the Czech Arbitration Court that all future email concerning ADR procedures “will have a processing time of up to one month. This should be taken into account when communication (sic) with us. This is because we have to report (sic) and consult third parties”. It is quite obvious that such attitude conflicts with the principles that Complainant wishes to see respected by others …

At any rate, a complaint is not the place to hold a debate about the legislation governing the .eu domain name system, nor is it a place where a registrar – who may be expected to be more informed than the average applicant of a domain name – can question the compliance by EURid with its obligations towards registrars.

A panel that accepts to act in a case on a domain name complaint is not required nor entitled to question or comment on the applicable rules or to examine the compliance by EURid – or by registrars – with the contractual obligations accepted by both. A panel has to go in search of the applicable rules and the relevant facts, and apply the former to the latter. He may rely on previous decisions but these have no binding effect for other cases. This is what the Panel will limit itself to in the present case.

Timing

For the <commercials.eu> domain name, the deadline to initiate ADR proceedings expired on 3 June 2006. For the <unlimited.eu> domain name, the deadline to initiate ADR proceedings expired on 21 June 2006.

As the Complaint was filed on 6 June 2006, the Panel finds that the Complaint was filed after the expiration of the applicable period for the <commercials.eu> domain name and that the Complaint was filed timely for the <unlimited.eu> domain name.

Identity of Complainant

Complainant filed the complaint for the <commercials.eu> domain name whereas the applicant for that domain name was RoosIT.

Complainant filed the complaint for the <unlimited.eu> domain name whereas the applicant for that domain name was S. van Voorst.

By virtue of Article B1(a) of the ADR Rules (de “Rules”) any person or entity may initiate an ADR proceeding by submitting a complaint. This is confirmed by Article 21 of Regulation 874/2004 of 28 April 2004 that is the basis of the Rules. A Complainant is, thus, not

required to be the holder of a right that is invoked. However, this interpretation of the Regulation works as long as it is clear that a Complaint is approved by the holder of said right.

If, as in the present case, the transfer of a domain name is asked, Article 22 (11) of the Regulation provides that the domain name can be transferred to the complainant if the complainant resides in the Community and applies for the domain name.

In this case, the Complainant is not the holder of the right (the Benelux Trademark), nor one of the next applicants of the domain name.

However, as the Panel has noted that the request of the Complainant is that the rejection of EURid be annulled with the implicit, though not explicit, goal that the <unlimited.eu> domain name be transferred to the original applicant, i.e., S. van Voorst, represented by RoosIT, which is, in turn, represented by Complainant, and as Respondent has not raised any observation in that regard, the Panel is of the opinion that Complainant has filed the Complaint as owner and director of RoosIT, which, in turn, acts on behalf of the original applicant, S. van Voorst, and that Complainant must be considered to act directly on behalf of S. van Voorst. Therefore, the condition of Article 22 (11) of the Regulation is complied with. A similar decision was taken in case No 596 regarding the <restaurants.eu> domain name.

Analysis

The Panel reminds the following basic principles:

- Only holders of prior rights shall be eligible to apply to register a .eu domain name during the Sunrise period (Article 10 (1) of the Regulation);
- Prior rights include registered national trademarks (Articles 10 (1) and 12 (2) of the Regulation);
- All claims for prior rights must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists (Article 14 of the Regulation);
- The prior right claimed cannot be later than the date on which the domain name application is received by EURid: on that date, the right must be valid, which means that it must be in full force and effect (Section 11.3 of the Sunrise Rules);
- A trade mark application is not considered a prior right (Section 13.1 (ii) of the Sunrise Rules).

Despite what has been argued at several occasions by Complainant, in this matter, the relevant 'Dutch or national' legislation is the Benelux Trademark law which is equally applicable in the Netherlands, Belgium and Luxembourg and which gave rise to a coherent case law all over the Benelux.

According to this Benelux Trademark Law, an exclusive right to a trademark is only acquired by a trademark registration (Article 3).

It is not because article 12 of the Benelux Trademark Law provides for the possibility for an applicant to recover reasonable damages between the time of the publication of the application and the time of the registration, that this article transforms a trademark application into a trademark registration.

At the time of the application for the <unlimited.eu> domain name, the Benelux Trademark referred to by the applicant as a prior right, incontestably did not exist yet.

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

DATE OF PANEL DECISION 2006-08-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

A complaint filed for two domain names, whereas the relevant period for one of the domain names has expired, is only admissible insofar as it relates to the domain name for which the filing was timely.

As, in the Sunrise period, a prior right claimed must be in full force and effect no later than the date on which a domain name is applied for (Section 11.3 of the Sunrise Rules) and as a trade mark application is not considered a prior right (Section 13.1 (ii) of the Sunrise Rules), EURid lawfully rejected a domain name application filed in the Sunrise period before a trade mark registration was obtained.