Panel Decision for dispute CAC-ADREU-001686

Case number	**CAC-ADREU-001686**
Time of filing	**2006-06-07 12:35:28**
Domain names	**protool.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Matthias Freytag**

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

This Panel has no information about other legal proceedings pending or decided which relate to the disputed domain name

FACTUAL BACKGROUND

Mr. Matthias Freytag, the Complainant and employee of TTS Tooltechnic Systems AG & Co. KG requests the annulment of the negative decision taken by EUrid regarding the domain name protool.eu and requested the attribution of this domain name to the above referred company. He argues that EUrid's registration decision not to attribute the domain name protool.eu to TTS Tooltechnic Systems AG und Co.KG conflicts with the European Union regulations. EUrid, as Respondent, itemizes all the arguments it deems relevant so as to defend its decision.

A. COMPLAINANT

Matthias Freytag filed the application for the domain name protool.eu to eurid for the German company TTS Tooltechnic Systems AG & Co. KG. This application was dismissed. We will start the ADR proceeding to claim the right of TTS Tooltechnic Systems AG & Co .KG to the domain name protool.eu. Mr. Freytag is employee of TTS Tooltechnic Systems AG & Co .KG and has been authorised to apply for the protool.eu domain. He has been acting for and in the name of TTS Tooltechnic Systems AG & Co .KG as a representative. This is obvious in the circumstances of this case. TTS Tooltechnic Systems AG & Co .KG and Mr. Freytag were both named in the same application. Mr. Freytag as the applicant and TTS Tooltechnic Systems AG & Co. KG in the trademark certificate. In the sunrise period domain names will be only available for the holders of prior rights, i.e. the right of TTS Tooltechnic Systems AG & Co. KG to the trademark protool. Furthermore, in the application form there has only been space for one name to fill in. Therefore Mr. Freytag filled in his name as a representative of TTS Tooltechnic Systems AG & Co. KG. As mentioned above, TTS Tooltechnic Systems AG & Co. KG has the right of the trademark protool. This certificate was filed in to eurid. TTS Tooltechnic Systems AG & Co. KG has therefore the right to the domain name protool.eu. Because eurid did not attribute the domain name protool.eu to TTS Tooltechnic Systems AG & Co. KG, its registration decision conflicts with the European Union regulations. Mr. Matthias Freytag has also the authorisation to claim the rights of TTS Tooltechnic Systems AG und Co. KG, especially in the ADR proceeding in the name of TTS Tooltechnic Systems AG und Co. KG. Attached you will find the excerpt from the commercial register of TTS Tooltechnic Systems AG & Co. KG, the confirmation that Mr. Freytag is representative of TTS Tooltechnic Systems AG & Co. KG and the certificate of the trademark protool that belongs to TTS Tooltechnic Systems AG & Co. KG. The fees for this case # 01686 is paid.The payment confirmation is attached.

B. RESPONDENT

1. GROUNDS ON WHICH THE RESPONDENT HAS REJECTED THE APPLICATION FOR THE DOMAIN NAME PROTOOL.EU BY MR. MATTHIAS FREYTAG 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 for registration of 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 he or she is the holder of the prior right claimed on the name in question. Mr. Matthias Freytag (hereafter "the Complainant") applied for the domain name PROTOOL on December 7, 2005. The documentary evidence was received on January 11, 2005, which is before the January 16, 2006 deadline. The Respondent concluded from its examination of the documentary evidence that the Complainant did not appear to be the owner of the PROTOOL trademark as the name of the holder mentioned on the trademark certificate differed from the name of the Complainant. The Respondent therefore rejected the Complainant's application. 2. COMPLAINANT'S CONTENTIONS The Complainant argues that he, as its representative, has acted in the name of the owner of the PROTOOL trademark. This fact should have led the Respondent to accept the Complainant's application. Moreover, the Complainant seems to be arguing that he listed himself, rather than the actual owner of the PROTOOL trademark, as the applicant as the request form only contained one field for the name of the applicant. The Complainant also submits a document with his Complaint in which the owner of the trademark states that the Complainant is its representative. The Complainant requests that the Respondent's decision be annulled. 3. RESPONSE The Respondent would like to note that the domain name applicant (also the Complainant) was MATTHIAS FREYTAG whereas the owner of the prior right which was submitted was TTS TOOLTECHNIC SYSTEMS AG & CO. KG Thus it is clear that the Complainant was not the owner of the prior right. As will be explained below, it is if great importance that the validation agent is provided with information regarding the relationship between the applicant (who is not the owner of the prior right) and the actual owner of the prior right. The Complainant in the case at hand provided no information which would have allowed it to determine whether the Complainant was entitled to apply for the PROTOOL domain name on the basis of the PROTOOL trademark. 3.1 The need for additional rules and the transparency of the application procedure Although the Regulation provides for certain rules that must be applied by the validation agent in the application procedure, they do not provide in an exhaustive framework. Additional rules are needed. The Sunrise Rules contain many rules that further clarify the intention of the Regulation which are of great importance in the validation agent's assessment of a domain name application. With regard to the validity and the importance of these Sunrise Rules, article 5 (3) of Regulation N° 733/2002 states that "Before starting registration operations, the Registry shall adopt the initial registration policy for the .eu TLD in consultation with the Commission and other interested parties. The Registry shall implement in the registration policy the public policy rules adopted pursuant to paragraph 1". The Sunrise Rules are essential for the application procedure. Indeed, millions of applications have been submitted on a very short term and the validation can only be managed if strict rules are complied with. An automated process can only be managed when strict rules are applied. Before submitting an application it is important that the applicant acquaints itself with these rules. Moreover, so as to make the application procedure more transparent to the applicants, article 12 (1) 3 of the Regulation states that the additional framework rules, such as the Sunrise Rules, must be published on the Respondent's website. The Sunrise Rules can be easily accessed on the Respondent's website. Moreover, the cover letter which every applicant must sign clearly states that: The Rules, including the special terms that relate to the phased registration period, apply and have been read and approved without reservation by the Applicant. Therefore, any applicant is bound by the Sunrise Rules. The Sunrise Rules have been amply applied by several Panels in many .eu domain name arbitration cases, such as case n° 00210 (BINGO), 00127 (BPW), 00293 (POOL), 810 (AHOLD), 1407 (LEXOLUTION), etc. 3.2 The distinction between the natural person/department who submitted the application for a domain name and the company which is listed as the applicant A request for the application of a domain name made during the Sunrise Period must contain the information listed in section 3 (1) of the Sunrise Rules. The information provided is then processed in the whois database and printed on a cover letter. This cover letter is then sent to the applicant, who must forward it to the validation agent together with the documentary evidence which shows that the applicant is the holder of a prior right. The request form contains various fields. Two of these fields are important in the case at hand, the field "name" and the field "organisation". In order to facilitate communication with a company which is the registrant of a domain name, a contact person may be provided. The natural person/department that is mentioned in the "name" field will be considered as the contact person within the company. The actual applicant however, will not be the natural person/department who submitted the request form, but the company. To that regard, section 3 (1) i of the Sunrise Rules states that: where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant; Thus if one fills in the "organisation" field, one effectively states that: • the company listed as "organisation" is a separate entity • the domain name must be granted to the company listed as "organisation", if an examination of the documentary evidence shows that the company is entitled to that domain name An example of the application of this rule is enclosed as "exhibit protool.eu ". This extract shows that the contact person is Mr. Marc Van Wesemael (see the "name" field), whereas the registrant is EURid vzw (see the "organisation" field). The Sunrise Rules clearly distinguish the contact person from the actual applicant. The effect of this distinction is far stretching. Indeed, the domain name must be granted to the company who is the actual applicant. Therefore, it is of great importance that when a company is mentioned in the "organisation" field, documentary evidence is submitted which proves that this company is the holder of a prior right. It must be stressed that the Respondent's registration system, as is clearly indicated in the Sunrise Rules, make it possible for a physical person who is an employee to list both his name as the contact person and the name of the company he works for as the "organisation". The Complainant's application however did not mention his company as the "organisation". 3.3 The documentary evidence did not prove that the Complainant is the holder of the PROTOOL trademark Article 10 (1) of the Regulation states that only the holder of a prior right is eligible to be granted the corresponding domain name. It is therefore of great importance that the Respondent is provided with all information that allows it to assess if an applicant is the holder of a prior right. Pursuant to article 14 (4) of the Regulation, the documentary evidence must clearly show that the applicant is the holder of the prior right claimed on the name in question. The Complainant himself states that he is an employee of the owner of the trademark and thus not the

owner himself. An employee and his employer are two different persons. They are not the same thing. This fact is undisputed in the case at hand. During the Sunrise Period only holders of a prior right may apply for a domain name. An applicant for a domain name must not necessarily be the actual owner of the corresponding trademark, he may well be licensed to use that trademark. Section 20 (1) of the Sunrise Rules states to that regard that if 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 (as licensee). However, the Complainant did not submit any licence declaration with his documentary evidence. The Respondent had no information before it that the Complainant was indeed entitled to use the PROTOOL trademark and therefore rejected his application. In case n° 294 (COLT), the Panel stated that: In this respect, the attention must be drawn on section 21.2 of the Sunrise Rules that expressly state that the Validation Agent will examine 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. It means that an applicant should not expect the Respondent or Validation agent to engage in speculation and/or embark upon its own enquiry in relation to the exact connection between two entities. Pursuant to article 14 (4) of the Regulation, the documentary evidence must clearly show that the applicant is the holder of the prior right claimed on the name in question. The Panels in cases n° 00119 (NAGEL, "Article 14, Section 1 of the Regulation 874/2004 requires that all claims for Prior Rights must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists") and 954 (GMP) clearly stated that article 14 of the Regulation puts the burden with the applicant to prove that it holds a prior right. If an applicant fails to submit all documents which prove that it is the holder of a prior right, the application must be rejected. Article 14 (4) further states that the applicant shall submit the evidence in such a way that it shall be received within forty days from the submission of the application for the domain name. No documentary evidence was received within this 40 day term. That the burden of proof is with the applicant is also clear from section 21 (3) of the Sunrise Rules, which states that the validation agent is not obliged, but 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. In case n° 219 (ISL), the Panel agreed that an application must be rejected if an applicant has failed to submit the required documentary evidence: "Having failed to submit such relevant documentary evidence in due time the Panel - based on the presentation of the case under this ADR proceeding - finds that the rejection made by the Respondent of the Complainants application regarding the domain name “ISL.eu” was correct. The above said the Panel concludes that the burden of proof of an existing prior right lies upon the applicant (Complainant) for a domain name under the sunrise periods and neither the validation agent nor the Registry/Respondent has any obligations to undertake further investigations of the (possible) existence of the prior right claimed in a situation as described under this ADR proceeding where there in the Panels opinion can be no doubt about what documentary evidence is sufficient." The Respondent must have a licence declaration before it when an applicant is not the actual owner of the trademark. Such a condition is of great importance. Indeed, a domain name is granted to the applicant, in this case the employee of the owner of the trademark. When an applicant uses another's trademark it is imperative for the Respondent to know if the actual owner of the trademark agreed to this.. Indeed, the domain name will be lost to the actual owner of the trademark and registered in the name of the applicant. Hence the condition to submit a licence declaration. One must not expect the Respondent to speculate on the exact relationship between two persons, the Respondent must know the relationship between these persons from the documentary evidence which was submitted in time. To that regard, the Panel in case n° 192 (ATOLL) agreed with section 2.3 of the WHOIS policy: ""“Those requesting to register a .eu Domain Name are required to provide certain information through an accredited .eu Registrar. In respect of the name of the Registrant there are two fields: The first is 'Name' and the second is 'Company'. Both fields may be completed or just the 'Name' field. If only the first field is completed, it is assumed that the registration is in the name of a private individual (natural person). If the 'Company' field is completed, it is assumed that the company is the Registrant. This ensures that the Domain Name of the company cannot be "held hostage" by an employee who suddenly leaves or who is dismissed, and who tries to transfer or delete the Domain Name or to link it to another website via the managing agent." Complainant unfortunately does not specify in the Complaint on whose behalf the application was made nor does Complainant specify whether, if the application was made on behalf of the legal person, evidence was supplied to the effect that the Domain Name Applicant had prior rights. In this latter case, in the absence of conclusive evidence and pursuant to Section 21(3) of the Sunrise Rules, Respondent cannot be held to have erred in its decision to reject the domain name application on the basis of the Validation Agent’s findings, as the onus is on the Domain Name Applicant to produce the relevant documentary evidence to substantiate that the Domain Name Applicant held the prior right claimed." 3.4 New documents submitted by the Complainant The Complainant submitted a document in which the owner of the trademark states that the Complainant is its representative. The Respondent would like to note that these documents were not enclosed with the documentary evidence. These documents were provided to the Respondent for the first time in the framework of the present ADR proceedings. Section 21 (2) of the Sunrise Rules however states that the validation agent will examine 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. In case n° 294 (COLT), the Panel was confronted with a similar situation. In the COLT case, the complainant claimed to be the licensee of the COLT trademark. Pursuant to section 20 (1) one must file a licence declaration signed by both the licensor and the licensee in order to prove that one is licensed to use a trademark. The licence declaration in the COLT case however was signed by a licensor whose name was similar, both consisted of the word MITSUBITSHI, but nevertheless different from the name mentioned on the COLT trademark. The Respondent decided to reject the complainant's application for the COLT domain name. The Complainant was notified of this rejection and subsequently filed a complaint, with which it enclosed articles of incorporation allegedly showing that the name of the holder of the COLT trademark had changed. The Panel however stated that: In the present case,

the Complainant did not prove the timely substantiation of the Prior Right and a copy of the articles of incorporation, enclosed with the Complaint, was submitted too late to be considered. The Panel in effect stated that the Complainant in that case failed to substantiate that it was properly licensed as it only submitted evidence thereof during the ADR proceedings, whereas it should have filed this evidence with all its documentary evidence. In case n° 219 (ISL), the Panel also stated that an extract from a trademark register showing that the term of protection of the trademark had not yet expired which was filed to the Respondent for the first time in the ADR proceedings, could not be taken into account. In case n° 1549 (EPAGES), the Panel also stated that: "only the documents which the Respondent was able to examine at the time of validation of Complainant's application should be considered by the Panel. In the present case, trademark n° 303 32 267 was not submitted with or referred to in the Documentary Evidence that the Complainant submitted to the Respondent. The Respondent could therefore not take into account this trademark when deciding on the Complainant's domain name application." In case n° 706 (AUTOWELT), the Panel also agreed that: "Finally, it should be made clear that this procedure is not an appeal against Respondent's decisions whereby the application may be presented afresh to the Panel. The Panel's function is merely to check that, given the Documentary Evidence, as received on December 16, 2005, in support of the initial application, the Respondent made the appropriate decisions. Should the Panel consider new evidence now, it would treat unfairly any other applicant that may have filed for the Domain Names immediately after the Applicant." This view was also supported by the Panel in case n° 501 (LODE). The Respondent requests the Panel in the case at hand to disregard the new documents as they were submitted for the first time to the Respondent in the framework of the present ADR proceedings. Article 22 (1) b of the Regulation states that a decision taken by the Registry may only be annulled when it conflicts with this Regulation. Thus, only the documents which the Respondent was able to examine at the time of validation of an application should be considered by the Panel, as the Respondent's alleged conflicting decision is with these documents. The Respondent cannot have made a decision which would conflict with the Regulation if it was not provided with all the information. It must again be noted that an applicant bears the burden of proof thereto. For the reasons mentioned above, the Complaint must be rejected. As the Panel in case n° 219 (ISL) stated: "One could argue that sympathy is overruled by the applicable Regulations serving among other purposes the (cost-effective) functionality of the phased registration and the principles hereof" Finally, and merely for the sake of completeness, the Respondent would like to note that the domain name cannot be attributed to TTS Tooltechnic Systems AG & Co. KG, as the Complainant seems to be arguing, as TTS Tooltechnic Systems AG & Co. KG did not even apply for the domain name. To be attributed a domain name an electronic request must be filed to the Respondent.

DISCUSSION AND FINDINGS

1. APPLICATION FOR THE DOMAIN NAME PROTOOL.EU MADE BY MR. MATHIAS FREYTAG

It is suitable to bring up Art. 10 (1) of Commission Regulation (EC) no 874/2004 of 28 April 2004 (hereinafter, the "Regulation") regarding the eligibility of just the holders of prior rights which are recognised or established by national or Community law to apply for registration of domain names during a period of phased registration before general registration of .eu domain starts. And Art. 14 (4) of the Regulation stating that every applicant must submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question.

Mr. Freytag, indeed, applied for the domain name PROTOOL on December 7, 2005 and delivered the documentary evidence before the established deadline. It is important the fact that in the application the Complainant did not appear to be the owner of the PROTOOL trademark, given that the name of the holder mentioned on the trademark certificate differed from the name of the Complainant.

To this regard this Panel believes that, although the Complainant argues that he acted in the name of the owner of the PROTOOL trademark which is TTS TOOLTECHNIC SYSTEMS AG & CO. KG, as its representative, -even though said documentation was not delivered on time, but once the ADR Proceeding was started- it is clear that he was not the owner of the prior right. But this Panel must remark that the Complainant neither provided any information allowing to determine whether the complainant was entitled to apply for the PROTOOL domain name on the basis of the PROTOOL trademark. It's quite important to provide this information to the Validation Agent, and the Complainant did not do so in the relevant moment.

The Sunrise Rules are not optional when applying for a domain name. These rules must be obligatorily complied with. Applicants must acquaint themselves with these rules before submitting an application. And it seems that in the case herein the applicant did not do so in depth. The importance to meet the Sunrise Rules is clearly stated in art. 5 (3) of Regulation 733/2002, as mentioned by the Respondent. The non-compliance of these rules can derive in the application's rejection.

2. REGARDING THE NATURAL PERSON WHO SUBMITTED THE APPLICATION FOR A DOMAIN NAME AND THE COMPANY WHICH IS LISTED AS THE APPLICANT

In the Respondent's response to the statements and allegations made in the Complaint EURid is itemizing all the requirements and steps that must be followed when requesting for an application of a domain name during the Sunrise Period, as established in section 3 (1) of the Sunrise Rules. More specifically the Respondent explains how the request form must be filled out. As the Respondent clarifies, the

natural person/department that is mentioned in the “name” field is considered as the contact person within the company.

It is important to highlight the fact that the actual Applicant was not really the natural person/ department who submitted the request form, but the Company. Section 3 (1) of the Sunrise Rules clearly specifies that “where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant”.

To this regard the Respondent’s position is right when saying that then if one fills in the “organisation” field, one is really stating that the company listed as “organisation” is a separate entity and the domain name must be granted to the company listed as “organisation”, as long as the examination of the documentary evidence shows that the company is entitled to that domain name. The Complainant’s application did certainly not mention his company as the “organisation”. And this constitutes a serious mistake, even though we are dealing with formal aspects. In any case, this Panel insists that we should not play the formal aspects down, since they are a decisive factor when attributing domain names, and again, it’s so ratified by the relevant rules.

3. DOCUMENTARY EVIDENCE

In fact, in the case herein, there is no doubt that the Applicant was ought to provide all the information and documents proving that he was then the holder of a prior right. It is for this reason that Article 10 (1) of the Regulation states that only the holder of a prior right is eligible to be granted the corresponding domain name. Article 14 (4) of the regulation also leaves it clear that the documentary evidence must unmistakably show that the applicant is the holder of the prior right claimed on the name in question.

In this case, the Complainant –as he himself affirms- is an employee of the owner of the trademark AND NOT THE OWNER OF THE TRADEMARK. This fact is essential. Section 20 (1) of the Sunrise Rules states that if 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 (as licensee). To this regard, it seems that the Complainant did not submit any license declaration with his documentary evidence and consequently the Respondent had no information before it that the complaint was indeed entitled to use the PROTOOL trademark. That factor was also decisive so as the Respondent to reject his application. In this Panel’s opinion, the Respondent’s was not a mistaken decision.

4. NEW DOCUMENTS SUBMITTED BY THE COMPLAINANT

Not in vain we must mention Section 21 (2) of the Sunrise Rules stating that the validation agent will examine 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.

There is a clear evidence that the Complainant has submitted a document in which the owner of the trademark states that the Complainant is its representative. But both parties admit that these documents were not enclosed with documentary evidence but instead were provided to the Respondent for the first time in the framework of the present ADR Proceeding. The Complainant indeed should have had substantiated the prior right at the proper moment, and not out of time; and even less, once the ADR Proceeding is started. Should the Panel consider this new evidence at this point, it would treat unfairly any other applicant that may have filed for the Domain Names immediately after the Applicant.

In fact, Article 22 (1) b of the Regulation states that a decision taken by the Registry may only be annulled when it conflicts with this Regulation.

In the case herein, this Panel can affirm that in no way the Registry’s decision conflicts with this Regulation. Rather, its decision was taken with a scrupulous observance of the relevant rules.

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	**Berta Ramos Palenzuela**

DATE OF PANEL DECISION 2006-09-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. APPLICATION FOR THE DOMAIN NAME PROTOOL.EU MADE BY MR. MATHIAS FREYTAG

Taking into account Art. 10 (1) of Commission Regulation (EC) no 874/2004 of 28 April 2004 (hereinafter, the "Regulation") and Art. 14 (4) of the Regulation, it is important the fact that in the application the Complainant did not appear to be the owner of the PROTOOL trademark.

The Complainant neither provided any information allowing to determine whether the complainant was entitled to apply for the PROTOOL domain name on the basis of the PROTOOL trademark. It's quite important to provide this information to the Validation Agent, and the Complainant did not do so in the relevant moment.

The importance to meet the Sunrise Rules is clearly stated in art. 5 (3) of Regulation 733/2002, as mentioned by the Respondent. In the case herein, the Complainant did not meet the same.

2. REGARDING THE NATURAL PERSON WHO SUBMITTED THE APPLICATION FOR A DOMAIN NAME AND THE COMPANY WHICH IS LISTED AS THE APPLICANT

The actual Applicant was not really the natural person/ department who submitted the request form, but the Company. Section 3 (1) of the Sunrise Rules clearly specifies that "where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant".

To this regard the Respondent's position is right when saying that then if one fills in the "organisation" field, one is really stating that the company listed as "organisation" is a separate entity and the domain name must be granted to the company listed as "organisation", as long as the examination of the documentary evidence shows that the company is entitled to that domain name. The Complainant's application did certainly not mention his company as the "organisation". And this constitutes a serious mistake, even though we are dealing with formal aspects. In any case, this Panel insists that we should not play the formal aspects down, since they are a decisive factor when attributing domain names, and again, it's so ratified by the relevant rules.

3. DOCUMENTARY EVIDENCE

As Article 10 (1) and 14 (4) of the regulation leaving it clear that the documentary evidence must unmistakably show that the applicant is the holder of the prior right claimed on the name in question, in the case herein the applicant did not enclose all the documentary evidence, neither provided any information to EUrid on the right time evidencing that the complainant was entitled to use the Protool trademark. In this Panelist's opinion, the Respondent's was not a mistaken decision.

4. NEW DOCUMENTS SUBMITTED BY THE COMPLAINANT

Section 21 (2) of the Sunrise Rules state that the validation agent will examine 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.

The documents in which the owner of the trademark states that the Complainant is its representative were not enclosed with documentary evidence but instead were provided to the Respondent for the first time in the framework of the present ADR Proceeding. The Complainant indeed should have had substantiated the prior right at the proper moment, and not out of time. Should the Panel consider this new evidence at this point, it would treat unfairly any other applicant that may have filed for the Domain Names immediately after the Applicant.

In fact, Article 22 (1) b of the Regulation states that a decision taken by the Registry may only be annulled when it conflicts with this Regulation.