Panel Decision for dispute CAC-ADREU-001716

Case number	CAC-ADREU-001716
Time of filing	2006-06-26 11:09:27
Domain names	siba.eu

Case administrator

Name	Eva Zahořová

Complainant

Organization / Name	SIBA fuses GmbH & Co. KG

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 related to the disputed domain name.

FACTUAL BACKGROUND

Complainant, SIBA Fuses GmbH & Co. KG filed an application for the domain name siba.eu which was received by the respondent, EURid, on December 07, 2005. The related documentary evidence was received by respondent on December 21, 2005. With the documentary evidence, a trademark certificate was filed for the International trademark SIBA, 552780 owned by Sicherungen-Bau GmbH, 20-22, Borker Str., D-4670 Lünen, Germany for inter alia the Czech Republic, Austria and France.

Respondent rejected the application on April 25, 2006 for the reason that the documentary evidence did not prove the prior right claimed by the Complainant.

A. COMPLAINANT

The Complainant argues that his application complies with all EC regulations and the Sunrise Rules since “the Complainant and trademark owner was converted from a “GmbH” into a “KG””. The name “SIBA” shall be an abbreviation of “Sicherungen-Bau”. The reported address is identical with Complainant´s address with the exception of the postal code which was changed in Germany in the meantime. Complainant has stated in the application in a legally binding way that he is the owner of the trademark and the trademark holder.

Complainant furthermore argues inter alia with the decision SCHOELLER (253) after which the validation agent is not exempted from the requirement to act reasonably when carrying out his discretion. He had accordingly to contact the applicant to clarify the identity of the applicant and the right owner.

Accordingly, the decision of the Respondent shall be annulled and the domain name siba.eu to be transferred to Complainant.

B. RESPONDENT

Respondent argues to the contrary that Complainant did not submit sufficient documentary evidence substantiating that he is licensed by the trademark holder or that it is the same person as or the legal successor to the trademark holder. The applicant has the burden of proof that he files all documents which prove that it is the holder of a prior right. Respondent cites several cases, such as inter alia ISL (219), MCE (1232), EPAGES (1546), BPW (127), ESSENCE (1071), SYS (1318), EMI (1710) and finally IASON (1691) to support its view. The validation agent is not obliged to conduct own investigations, see case SUNOCO (1483) and VIVENDI (551). In the present case, neither the corresponding relation between the applicant and the right owner nor the validity of the mark which could have been expired was substantiated. Accordingly, the complaint must be denied.

DISCUSSION AND FINDINGS

The legal questions referred to by both parties in this case have been discussed already by numerous previous decisions relating to the sunrise period for .eu domain names. Several panels have followed a strict and more formal approach and have denied the complaints in case that the applicants have not complied in total with the Sunrise Rules at the time of the application and/or the time of filing of the documentary evidence. Other panels have found it sufficient if the complainant could prove at least in the ADR proceedings that he was - despite certain errors or incomplete statements in the application – entitled to get the domain name in question registered for them. The known arguments of these two different approaches to balance the right of the applicant to get a reasonable decision of the domain name authority taking into account the interest of the entitled company/person being the first in the queue on the one hand and the legitimate interest of the registry to apply formal rules to be able to quickly process hundreds of thousand domain name applications in the Sunrise period on the other hand were provided by the parties in their briefs.

The panel is of the opinion that – contrary to the assessment of the Respondent - the validation agents must exercise their discretion to conduct own investigations or contact the applicant at least in cases where only a visible formal issue is in question or a certain document was obviously not filed in error and/or the preformatted form was obviously misunderstood, but not necessarily if the information provided by the applicant – even and still in the ADR proceeding – is clearly inconsistent.

In the present case, the different name, i.e. SIBA and Sicherungen-Bau could have been such an issue where the validation agent could have easily asked the applicant for clarification, if all the other elements would have been in clear favour of an identity of the applicant and the right holder. However, the postal code of the address was different and it cannot be expected that the validation agent is aware of the general change of postal codes in Germany at that time. Furthermore, and this is the most significant further uncertainty, the company form of the Complainant/applicant was (and still is) different to the information in the trademark certificate since the trademark is owned by a GmbH and the Complainant/applicant is a KG. The complainant has not even in the ADR proceedings proved the identity of the Complainant/applicant and the right holder by filing related evidence, e.g. from the companies´registry. Since it is to the experience of the Panel often the case that in a group of companies one company holds the trademarks and another company is conducting the related business, often as a licensee, it is well possible that there are two Siba companies, one being the trademark owner and one the operating company.

Therefore, the Panel is even after having reviewed the complaint not completely convinced that the Complainant/applicant is the right holder of the filed trademark.

Accordingly the complaint must be denied without finally deciding which inconsistencies of the application/documentary evidence may be healed in the ADR proceedings, if at all, and in which constellations the validation agent/EURid must exercise his discretion to conduct own investigations or contact the applicant.

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	**Dietrich Beier**

DATE OF PANEL DECISION 2006-09-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant, SIBA Fuses GmbH & Co. KG filed an application for the domain name siba.eu in the Sunrise period. With the documentary evidence, a trademark certificate was filed for the International trademark SIBA, 552780 owned by Sicherungen-Bau GmbH. Respondent rejected the application for the reason that the documentary evidence did not prove the prior right claimed by the Complainant. Panel denies the complaint since even in the ADR proceeding the identity of the Complainant/applicant, a German company with the legal form of a KG, and the trademark owner, a German company with another name, Sicherungen-Bau and another legal form, a GmbH, was not proven.