Panel Decision for dispute CAC-ADREU-001720

Case number	CAC-ADREU-001720
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Domain names	bl.eu

Case administrator

Name	Eva Zahořová

Complainant

Organization / Name	BARVY A LAKY HOSTIVAŘ, a.s.

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

None, at the best knowledge of the Panel.

FACTUAL BACKGROUND

On January 19, 2006, Complainant filed an application for the domain name <bl.eu> (hereinafter: "Domain Name"). The application was made under the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter: "Sunrise Rules").

Complainant invoked as a Prior Right, pursuant to Sections 13 and 19.2 of the Sunrise Rules, a Czech registered trademark "BL", applied for on September 12, 1961 and registered under No. 154853 on September 26, 1961 (hereinafter: "Complainant's Trademark")

Complainant transmitted all the required documents well before the deadline of February 28, 2006.

However, Complainant's application for the Domain Name was the third in a queue of applications.

The first application for the Domain Name was made on December 7, 2005 by Den Blaa Avis A/S, a Danish company (hereinafter: "Den Blaa").

Den Blaa invoked as a Prior Right the Danish registered trademark "bl", applied for on November 30, 2005 and registered on December 1, 2005 under No. 2005 04836 (hereinafter: "Den Blaa's Trademark").

Den Blaa transmitted all the required documents well before the deadline of January 16, 2006.

As a consequence, the Validation Agent validated Den Blaa's Prior Right and the Registry (i.e. Respondent) decided to accept Den Blaa's application for the Domain Name.

Complainant does not agree with the registration of the Domain Name and filed a Complaint under the .eu Alternative Dispute Resolution Rules (hereinafter: "ADR Rules").

Complainant requests the annulment of the decision taken by the Registry and the transfer of the Domain Name to him.

A. COMPLAINANT

As mentioned above, Complaint seeks the annulment of the decision taken by Respondent and requests the Domain Name be

transferred to him.

The Panel understands from the wording of the Complaint that the sole argument invoked by Complainant consists of the fact that the Prior Right on which Complainant's application for the Domain Name was based (i.e. Complainant's Trademark) is of an earlier date than the Prior Right on which Den Blaa based its application for the Domain Name (i.e. Den Blaa's Trademark).

B. RESPONDENT

In its Response to Complaint, Respondent requests to reject the Complaint.

Respondent refers in this respect to the provisions of Articles 10 and 14 the Regulation (EC) of the Commission No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter: "Regulation 874/2004")

Respondent contends that Den Blaa applied for the Domain Name on December 7, 2005 invoking the Den Blaa's Trademark as a Prior Right. The application was the first received by the Validation Agent for the Domain Name. On January 12, 2006, which was well before the January 16, 2006 deadline, all Documentary Evidence demonstrating Den Blaa's Prior Right was received by the Validation Agent.

According to Respondent, the Registry was informed by the Validation Agent that he found that the Prior Right existed. Consequently the Respondent accepted the application.

In this respect, Respondent contends that the Validation Agent must only determine whether the applicant is the holder of a registered trademark at the time of the application for the domain name. Consequently, the Regulation 874/2004 does not require a comparison of the seniority of the prior rights invoked by the other applicants who did not come first.

Respondent also contends that Article 14 of the Regulation 874/2004 provides that if the Registry receives more than one claim for the same domain during the Sunrise Period, applications shall be dealt with in strict chronological order.

In the present case, Respondent contends that the first application for the Domain Name was made by Den Blaa and that Den Blaa demonstrated its Prior Right on the Domain Name, by reference to the Den Blaa's Trademark.

Accordingly, Respondent concludes that the Registry rightfully decided to accept Den Blaa's application for the Domain Name, and that Complainant's request must be rejected.

DISCUSSION AND FINDINGS

Article 22.11. of the Regulation 874/2004 provides that in case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with, amongst others, the Regulation 874/2004.

The Panel finds that Den Blaa was the first applicant for the Domain Name in a queue of applications and that Complainant was the third applicant for the Domain Name.

Den Blaa and Complainant both applied during the Sunrise Period and invoked their respective national trademarks (i.e. respectively the Den Blaa's Trademark and the Complainant's Trademark) as a Prior Right. In both cases all Documentary Evidence proving their respective Prior Right was received in due course.

As Respondent points out correctly, Article 14 of the Regulation 874/2004 provides that "If the Registry receives more than one claim for the same domain during the phased registration period, applications shall be dealt with in strict chronological order."

Moreover, Article 14 of the Regulation 874/2004 and Section 2.1. of the Sunrise Rules, provide that the "First Come, First Served Principle" also applies during the Sunrise Period.

The sole fact that a later applicant for a domain name (in the present case: Complainant) can invoke a Prior Right of an earlier date than the Prior Right of the first applicant (in present case: Den Blaa), is in the light of the foregoing not relevant.

As a consequence, the Panel finds that Respondent's decision to accept Den Blaa's application for the Domain Name does not conflict with the Regulation 874/2004. Consequently, the Complaint is 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	Gunther Meyer

DATE OF PANEL DECISION 2006-08-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant seeks the annulment of the decision of the Registry (i.e. Respondent) to accept the first application in a queue of applications for the domain name <bl.eu> (hereinafter: "Domain Name") and requests the Domain Name be transferred to him.

Complainant, being the third applicant in line, contends that the Prior Right on which Complainant's application was based (i.e. a Czech registered trademark) is of an earlier date than the Prior Right on which the first applicant based its application (i.e. a Danish registered trademark).

Both applications were made during the Sunrise Period. In both cases Documentary Evidence proving the Prior Right was received in due time.

Respondent contends that as regards the first application for the Domain Name, the Validation Agent decided that the Prior Right had been demonstrated and that, accordingly, the Registry rightfully decided to accept the first application for the Domain Name.

The Panel finds that Article 14 of the Regulation 874/2004 provides that "If the Registry receives more than one claim for the same domain during the phased registration period, applications shall be dealt with in strict chronological order." Moreover, Article 14 of the Regulation 874/2004 and Section 2.1. of the Sunrise Rules, provide that the "First Come, First Served Principle" also applies during the Sunrise Period.

As a consequence, the Panel concludes that the sole fact that a later applicant for a domain name can invoke a Prior Right of an earlier date than the Prior Right of the first applicant, is in the light of the foregoing not relevant.

Given the above, and since the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the EC Regulations on the ". eu" Top Level Domain, the Panel finds that Respondent's decision to accept the first application for the Domain Name does not conflict with the Regulation 874/2004. Consequently, the Complaint is denied.