Panel Decision for dispute CAC-ADREU-001726

Case number	**CAC-ADREU-001726**
Time of filing	**2006-06-14 11:25:43**
Domain names	**crm.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**CRM.COM Software Ltd, Mr Andros Papageorgiou**

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 involving the disputed domain name.

FACTUAL BACKGROUND

1. On 7th December 2005, the first day on which it was possible to apply to register .EU Domain Names, the CRM.COM Software Ltd (hereafter "the Complainant") made an application in respect of domain name <crm.eu> (hereafter "the Domain Name").

2. On 28th December 2005, the C.R.M. Zoetermeer Beheer B.V. (hereafter "the Applicant") applied for the Domain Name.

3. The Complainant sent the documentary evidence to the processing agent on 2nd January 2006 (which was before the 16 January 2006 deadline). The documentary evidence submitted by the Complainant consisted of a certificate of incorporation of the same entity and a document showing the WHOIS information for the domain name CRM.COM

4. The Applicant sent the documentary evidence to the processing agent on 13 January 2006 (which was before the 6th February deadline). The documentary evidence submitted by the Applicant consisted of a proof of registration of the trademark "CRM" in the Benelux. This trademark has been registered on 20th December 2005, in the name of the Applicant and under the number 0784325.

5. EURid refused the Complainant's application; the validation agent concluded that the Complainant did not demonstrate that it is holder of a prior right on the name "CRM".

6. The Complainant filed a Complaint on 6th May 2006 and this proceeding was commenced on 17th July 2006. A response was filed by the Respondent on 5th September 2006.

7. On 6th September 2006 Pierfrancesco Fasano was appointed as panelist in this matter (hereafter "the Panel") having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence.

A. COMPLAINANT

The Complainant contends that:

1. the Complainant's company name is CRM.COM Software Ltd (in UK and in Cyprus);

2. it is holder of an unregistered trademark ("especially in Cyprus") for the word "CRM";

3. as per Section 16 of the EU. Sunrise Rules, it has claimed a prior right to CRM.EU on the basis of its company name and the unregistered trademark.

For this reasons the Complainant seeks the transfer of CRM.EU to its company.

B. RESPONDENT

The Respondent (which is the Registry, EURid) contends as follows:

1. Article 12 (2), paragraphs 3 and 4 of the Regulation states that: " During the first part of phased registration, only registered national and Community trademarks, geographical indications, and the names and acronyms referred to in Article 10 (3) (...). During the second part of phased registration, the names that can be registered in the first part as well as names based on all other prior rights can be applied for as domain names by holders of prior rights on those names.".

3. Article 14 of the Regulation states 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. (…). The Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure(…)".

4. The Complainant filed an application for the Domain Name on 7th December 2005, which was the very first day of the first part of the phased registration.

5. The Complainant did not submit documentary evidence showing that it was the holder of a registered trademark or a geographical indication, or that it was a public body, but had only submitted documentary evidence of a company name.

6. The Applicant applied for the Domain Name on 28th December 2005. The processing agent received the documentary evidence on 13th January 2006. The documentary evidence submitted by the Applicant consisted of a proof of the registration of the trademark "CRM" in the Benelux (the trademark had been registered on 20 December 2005, in the name of the Applicant and under the number 0784325).

For these reasons the Respondent contends that the Complainant's complaint must be rejected.

DISCUSSION AND FINDINGS

The Complainant has brought proceedings against EURid under Section 16 .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration
Period (hereafter “Sunrise Rules”).

Section 16 of the Sunrise Rules “A company name is an official name of a company, i.e. the name under which the company is incorporated or under which the company is registered. In member states where no company-name protection exists, the name of the company may still be protected as a trade name (as referred to in Section 16(2)) or a business identifier (as referred to in Section 16(3)). If an Applicant claims a Prior Right to a name on the basis of a company name protected under the law of one of the member states mentioned in Annex 1 as being a member state protecting company names, it is sufficient to prove the existence of such Prior Right in accordance with Section 16(4) below”.

The Panel notes that the Complainant does not consider the Section 11 of the Sunrise Rules and the Article 12 Commission Regulation (EC) no. 874/2004 of 28 April 2004 (hereafter “the Public Policy Rules”) and it has sought to register the Domain Name during the first phased of the registration period without the necessary prior rights.

The said rules/articles state that only registered trademarks, geographical indications and the public body names may be applied for as domain names during the first phased of the registration period.

Section 11 of the Sunrise Rules “1. During the first phase of the phased Registration Period, only Domain Names that correspond to (i) registered Community or national trade marks or (ii) geographical indications or designations of origin may be applied for by the holder and/or licensee (where applicable) of the Prior Right concerned, without prejudice to the names that may be applied for by Public Bodies, as referred to in Article 10(3) of the Public Policy Rules. 2. During the second phase of the Phased Registration Period, Domain Names that correspond to (i) the types of Prior Rights listed in Section 11(1), above or (ii) other types of Prior Rights may be applied for by the holder of the Prior Right concerned (…)”

Article 12 of the Public Policy Rules "(…) During the first part of phased registration, only registered national and Community trademarks, geographical indications, and the names and acronyms referred to in Article 10(3), may be applied for as domain names by holders or licensees of prior rights and by the public bodies mentioned in Article 10(1). During the second part of phased registration, the names that can be registered in the first part as well as names based on all other prior rights can be applied for as domain names by holders of prior rights on those names"

The Complainant applied for the Domain Name, during the first phased of the registration period, without being the holder of a registered trademark and a geographical indication. In fact, the documentary evidence consisted only of a certificate of incorporation of the Complainant and a document showing the WHOIS information for the domain name CRM.COM.

So the Registry had no choice but to reject the Complainant's application.

For the sake of completeness, if the Complainant had applied for the Domain Name during the second phased of the registration period, the Registry still would not have accepted the application because the Complainant had to submit, according to Article 12 of the Sunrise Rules, documentary evidence containing:
(i) an affidavit signed by a competent authority, legal practitioner or professional representative declaring that the type of Prior Right claimed by the Applicant is protected under the laws of the relevant member state, including
a. references to the relevant legal provisions, scholarly works and court decisions and
b. the conditions required for such protection; and
(ii) proof that the complete name for which a Prior Right is claimed meets all of the conditions set forth in such laws, including the relevant scholarly works and court decisions, and that such name is protected by the relevant Prior Right claimed.

Instead the Complainant submitted inappropriate documentation consisting of only a certificate of incorporation of the Complainant and a document showing the WHOIS information for the domain name CRM.COM.

Accordingly, the Panel upholds EURid's decision to reject the Complainant's application for the Domain Name.

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	**Pierfrancesco Fasano**

DATE OF PANEL DECISION 2006-09-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel notes that the Complainant did not consider the Section 11 of the Sunrise Rules and the Article 12 Commission Regulation (EC) no. 874/2004 of 28 April 2004 and it has sought to register the Domain Name during the first phased of the registration period without the necessary prior rights or better without being the holder of a registered trademark and a geographical indication.

So the Registry had no choice but to reject the Complainant's application.

If the Complainant had applied for the Domain Name during the second phased of the registration period, the Registry still would not have accepted the application because the Complainant had to submit inappropriate documentation consisting of only a certificate of incorporation of the Complainant.