Panel Decision for dispute CAC-ADREU-001881

Case number	**CAC-ADREU-001881**
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Domain names	**liber.eu**

Case administrator

Name	**Eva Zahořová**

Complainant

Organization / Name	**SAS LIBER, Agatha Guadagnolo**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

Liber (hereinafter "the Applicant") applied for the registration of the domain name “liber.eu” on December 7, 2005.

The validation agent received the documents evidencing the application on January 2, 2006, i.e. within the prescribed period.

SAS Liber (hereinafter "the Complainant") applied for the registration of the domain name “liber.eu” on February 16, 2006.

On May 6, 2006 EURID (hereinafter also the “Respondent” or the “Registry”) issued the decision based on which the Applicant’s application for the registration of the domain name “liber.eu” was accepted.

In this context, the Complainant submitted to the Czech Arbitration Court the complaint by e-mail on June 15, 2006 and in hardcopy on June 16, 2006 requesting the annulment of the decision taken by the Registry and attribution of the liber.eu domain to the Complainant. The formal date of commencement of the ADR Proceeding (hereinafter the “ADR Proceeding”) is June 27, 2006.

A. COMPLAINANT

The Complainant argued that the acceptation decision conflicts with the Commission Regulation (EC) No. 874/2004 of April 28, 2004 (hereinafter the “Regulation”) and with .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter the “Sunrise Rules“), namely because in its application the Applicant did not provide the Registry with the complete name for which the prior right was claimed. In the Complainant’s view, such application should have been considered incomplete and should have been rejected.

In this respect the Complainant referred especially to Section 3.1 (1) of the Sunrise Rules, which states that “an application is only considered complete when the applicant provides the Registry, via a Registrar with at least the following information”, inter alia “the complete name for which the prior right is claimed”.

The Complainant continued its argument by stating that the Applicant applied for the domain name “liber.eu” and claimed a

prior right to “LIBER AB”, and that according to the Sunrise rules, it is not possible to apply for the registration of “liber.eu” on the basis of a prior right to “Liber AB”. In the opinion of the Complainant it is only possible to file Sunrise applications for “liberab.eu” or “liber-ab.eu”.

The Complainant concluded that since the domain name must correspond to the complete name for which the prior right exists, the application filed by the Swedish company “Liber” is in breach of the Regulation and of the Sunrise Rules and must therefore be rejected by EURID.

Furthermore, the Complainant argued that, since it is a third party, who can rely only on the information shown by the Sunrise whois database, it would amount to denying third parties rights, and beyond be unfair and illogical to base an ADR decision on other information or document not made available to third parties, such as documentary evidence submitted by the Applicant. The Complainant continued that even if the documentary evidence provided by the Applicant shows the correct prior right (i.e. the prior right corresponding to the domain name), the Applicant’s failure to file the application with correct details shall lead to its rejection by the Registry for non-compliance with the formal requirements set by the law and for violation of third parties’ rights.

Based on the above, the Complainant concluded that the Sunrise application for the registration of “liber.eu” in the name of the Applicant was filed in contradiction with the .eu Regulations and with the Sunrise Rules and that the Respondent’s decision to accept the application is unlawful.

At the same time the Complainant requested the Panel to grant the domain name “liber.eu” to the Complainant.

B. RESPONDENT

In order to support its decision the Respondent argued by reference to Article 10 (1) of the Regulation, which states that: "Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts". The Respondent continued its argument by citing Article 10 (2) of the Regulation, which states that: "The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists", and Article 14 of the Regulation, which 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 (…)".

The Respondent further stated that the documentary evidence presented by the Applicant consisted of proof of the trademark "LIBER", registered with the Swedish Patent and Trademark Office, in the Applicant's name and under the number 212092.

The Respondent continued by citing Article 14 of the Regulation states that: "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 (…)". The Respondent further stated that the requirements of the said article 14 were fully met by the Applicant. Therefore, based on the findings of the limited formal investigation of the validation agent, the Respondent accepted the application, which approach he supported by the case n° 328 (LASTMINUTE).

The Respondent further argued that the documentary evidence submitted by the Applicant should be taken into consideration by the Panel. Article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation. In order to determine this issue the Panel must necessarily look at the documentary evidence. The Respondent then went on to support his view by referring to cases n° 294 (COLT), n° 551 (VIVENDI), n° 810 (AHOLD), n° 954 (GMP), n° 1549 (EPAGES) and n° 1674 (EBAGS).

The Respondent then argued that the Complainant is not entitled to request the Panel to grant the domain name “liber.eu” to the Complainant in this ADR proceeding, since, even if the Panel decides that the decision conflicts with the Regulation, the Registry must still decide whether the Complainant satisfies all registration criteria, even though it is the next applicant in

queue.

Based on the above the Respondent argues that the Complainant's complaint must be rejected.

DISCUSSION AND FINDINGS

Article 10 (2) of the Regulation states that: "The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists."

Article 14 of the Regulation inter alia 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 set out in the second, third and fourth paragraphs".

Under Section 21 (3) of the Sunrise Rules "[t]he validation agent is not obliged, but 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."

As it results from the application form filed by the Applicant, the Applicant applied for the domain name "liber.eu" based on the existence of the prior right, claimed for the name "Liber AB". Nevertheless, as it results from the examination of the documentary evidence provided by the Applicant together with the application form to the validation agent/Registry, i.e. the extract of the trademark register of the Swedish Patent and Trademark Office (hereinafter the "Extract"), a trademark "LIBER" is registered under the number 212092 in favor of the holder LIBER AKTIEBOLAG. In this context it is necessary to point out that the word "AKTIEBOLAG" is a Swedish term for a type of a company that has stock, i.e. a suffix to the company name which shows the type of the company. When the said description is used in company name, it is abbreviated "AB".

The Panel is of the opinion that in the light of Article 21.3 of the Sunrise Rules the validation agent is permitted in its sole discretion to conduct a limited formal investigation of the application and the prior right claimed, through the documentary evidence received from the part of the Applicant together with its application.

Having reviewed the said documentary evidence, the Panel does not have any doubts that the Applicant and the holder of the trademark "LIBER" are the same entities. Furthermore, notwithstanding the contents of the application form in which the Applicant based its application for the domain name "liber.eu" on the existence of the prior right to "Liber AB" instead of "LIBER", it has to be stated that these differences are irrelevant since there is sufficient documentary evidence provided by the Applicant confirming the existence and ownership of the trademark "LIBER" based on which the prior right was claimed.

Thus, taking into account the above facts the Panel comes to the conclusion that the validation agent/Registry was entitled to conduct in its sole discretion a limited formal investigation of the application and the prior right claimed by the Applicant, through the review of the documentary evidence received from the part of the Applicant and correctly accepted the application for the registration of the domain name "liber.eu" based on the existence of the prior right, i.e. the trademark "LIBER" registered by the Swedish Patent and Trademark Office in favor of the Applicant.

The Registry correctly registered the domain name "liber.eu" in favor of 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 rejected

PANELISTS

Name	**Pavel Safar**

DATE OF PANEL DECISION 2006-09-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contested the decision of the Registry to accept the Applicant's application for the registration of the domain name "liber.eu" on the ground that the application filed by the Applicant was in breach of the Regulation and of the Sunrise Rules, because it did not provide the Registry with the complete name for which the prior right was claimed.

According to Article 14 paragraph 4 of the Regulation 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.

Under Section 21 (3) of the Sunrise Rules "[t]he validation agent is not obliged, but 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."

On the basis of the validation agent's limited formal investigation of the application and the prior right claimed the Panel came to the conclusion that the Applicant is the holder of the trademark "LIBER". The fact that the application form in which the Applicant stated that its application for the domain name "liber.eu" is based on the existence of the prior right to "Liber AB" instead of "LIBER" is irrelevant since there was sufficient documentary evidence provided by the Applicant confirming the existence and ownership of the trademark "LIBER" based on which the prior right was claimed.

Thus the Panel came to the conclusion that the validation agent/Registry correctly accepted the application for the registration of the domain name "liber.eu" based on the existence of the prior right, i.e. the trademark "LIBER" and that the Complainant's complaint should be rejected.