Panel Decision for dispute CAC-ADREU-001931

Case number	**CAC-ADREU-001931**
Time of filing	**2006-06-24 11:00:15**
Domain names	**diehl.eu, diehlcontrols.eu**

Case administrator

Name	**Eva Zahořová**

Complainant

Organization / Name	**Diehl Informatik GmbH**

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 which relate to the disputed domain names.

FACTUAL BACKGROUND

Diehl Informatik GmbH (“the Complainant”) filed an application on 7 December 2005 to register the domain names diehl.eu and diehlcontrols.eu (“the Domain Names”) during the Sunrise period. The Complainant is the licensee of the German trademarks No. 921988 DIEHL and No. 30076257 DIEHL CONTROLS.

No license declarations were submitted in connection with the application for the Domain Names. After assessing the documentary evidence provided in connection with the application for the Domain Names, the validation agent concluded that the Complainant was neither the holder nor the licensee of prior rights for the Domain Names. The application was refused on grounds that the documentary evidence was not sufficient to prove the claimed prior right.

ADR proceedings were initiated by the Complainant to annul the disputed decision and to attribute the Domain Name to the Complainant.

The case is nearly identical with the ADR case No. 1195 (DIEHL-CONTROLS, AKO), which involves the same Complainant and essentially the same arguments against EURid’s decision to reject domain name applications.

A. COMPLAINANT

The Complainant contends that it is the licensee of the German trademarks DIEHL, licensed by Diehl Stiftung & Co. KG and DIEHL CONTROLS, licensed by Diehl AKO Stiftung & Co. KG. The Complainant further contends that the Licence Declarations attached to the Complaint in the present ADR case prove this factual circumstance.

B. RESPONDENT

The Respondent contends that the documentary evidence submitted to the validation agent in connection with the applications for the Domain Names did not contain any license declarations.

Respondent contends that, pursuant to Commission Regulation (EC) 874/2004 and the Sunrise Rules, it is the applicant’s responsibility to submit all documents, which the validation agent needs in order to assess whether an applicant is the holder of a prior right corresponding to the domain name. In case the applicant fails to submit such documents, the application must be rejected.

The Respondent further contends that pursuant to article 14(4) of the Commission Regulation (EC) 874/2004, the documentary evidence

must clearly show that the Applicant is the holder of the prior right claimed on the name in question. It should be clear that the documentary evidence submitted by the Complainant should stand on its own and prove that the Complainant is the holder of a prior right. As the documentary evidence provided in connection with the application for the Domain Names did not show that the Complainant is the proprietor or the licensee of the prior rights, the Complaint must be rejected.

DISCUSSION AND FINDINGS

It is set forth in Article 10(1) of the Commission Regulation (EC) 874/2004 that only the holder of a prior right is eligible to be granted the corresponding domain name. In case the applicant is the proprietor of the prior right in question, the documentary evidence must only consist of evidence of the prior right. A licensee of a prior right is also eligible to be granted a corresponding domain name, in which case Section 20 (1) of the .eu Registration Policy and the Terms and Conditions for Domain Name Applications made during the Phased Registration Period ("Sunrise Rules") requires the applicant to submit with the documentary evidence a declaration form in addition to the evidence of the prior right. In the present case, the license declarations, which evidence that the subject trademarks DIEHL and DIEHLCONTROLS were indeed licensed to the Complainant, were only submitted during the course of the ADR proceedings and were therefore not at the validation agent's disposal during the validation process.

Section 21 (2) of Sunrise Rules states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence it has received. Without a license declaration it was unclear from the submitted documentary evidence if the underlying German trademark registrations for DIEHL and DIEHLCONTROLS were licensed to the Complainant.

Section 21(3) of the Sunrise Rules 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. The existence of a license agreement between the Complainant and the proprietor of the underlying prior rights cannot be such a matter which one would, in the absence of appropriate documentary evidence, find reasonable to expect the validation agent to investigate.

As the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, the Panel does not find the rejection of the application unreasonable, as the said requirement was not met.

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	**Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2006-08-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's applications for the domain names diehl.eu and diehlcontrols.eu were refused on grounds that the submitted documentary evidence was not sufficient to prove the claimed prior rights. The Respondent, EURid, stated that since the Complainant was not the proprietor of the underlying prior rights nor did it produce documentary evidence to show that it is the licensee of the said rights, the validation agent was correct in refusing the application.

The relevant license declarations were only submitted during the course of the ADR proceedings and were thus not at the validation agent's disposal during the validation process. The Panel ruled that since the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, it is not unreasonable to reject the applications, as the said requirement was not met.