Entscheidung der Schiedskommission for dispute CAC-ADREU-001950

Case number	**CAC-ADREU-001950**
Time of filing	**2006-06-26 10:35:36**
Domain names	**hytec.eu**

Case administrator

Name	**Eva Zahořová**

Complainant

Organization / Name	**Prof. Dr. Norbert Fliege**

Respondent

Organization / Name	**EURid**

ANDERE RECHTLICHE VERFAHREN

None

SACHLAGE

The Complainant is an individual, being Prof. Dr. Norbert Fliege.

From the Whois? Database, it appears that <hytec.eu> was applied for on 29/01/2006, at 23:58:39.401

The applicant is registered as such:

- Name: Fliege, Prof Dr Norbert
- Organization: Hytec Gerätebau GmbH

The Documentary Evidence provided at that time has been disclosed in the course of this ADR; it appears that it comprises:

- a cover letter on which the Complainant manually wrote his personal name beside the name of his company (the name of the company is automatically generated);

- the cover letter is signed by the Complainant “Inhaber des WZ hytec”;

- a letter from the complainant and signed by him. The meaning of this letter is unclear but at least one point is for sure; this letter, signed by the Complainant and originating from him (see header) contains at least 4 references to the Hytec Gerätebau GmbH;

- an official publication of the trademark Hytec (with the name of Complainant as the holder);

- a letter from the German trademark office to the complainant renewing the trademark till 2015;

- a document from a “notar” (public notary) concerning the creation of the Hytec Gerätebau GmbH, where the name of the Complainant appears as a founder.

Eurid refused the application because the Documentary evidence shows that the trademark is in the name of the complainant where the application was made in the name of the company (Hytec Gerätebau GmbH).

A. BESCHWERDEFÜHRER

The Complainant contends that the Registry’s decision to accept his application for the Domain Name conflicts with the Regulation and should be annulled.

Complainant contends that his prior right is unquestionable: ”as documentary evidence of his prior right the application submitted , inter alia, a copy of the renewal certificate of the competent German Trademark Office of 23/09/2005. According to the renewal certificate, the trademark terminates on 30/04/2015.

The Complainant underlines that during the phased registration period only parties which hold prior rights are entitled to register a domain name (article 10 EC Regulation 874/2004), and that prior rights are understood to include, inter alia, national trademarks.

The Complainant also contends that he satisfies all other criteria for registration, notably because he is resident in the Community and was the first to apply in the correct manner for the attribution of the domain name hytec.eu.

B. BESCHWERDEGEGNER

Respondent contentions are quite short, and can be quoted:

(Begin of quote)

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that only holders of prior rights which are recognized or established by national or Community law shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts.
Hytec Gerätebau Gmbh (hereafter "the Applicant") applied for the domain name HYTEC on 29 January December 2006. The processing agent received the documentary evidence on 8 February 2006, which is before the 10 March 2006 deadline.

The validation agent concluded from its examination of the Complainant's documentary evidence that the Complainant was not the holder of a prior right. The name of the Complainant differed from the name that was mentioned as the owner of the HYTEC trademark on the trademark certificate. Based on this conclusion, the Respondent rejected the Complainant's application. (…)

Section 8.3 of the Sunrise Rules clearly state that: "Unless otherwise expressly provided herein, it is not permissible to modify the wording of the Cover Letter".

The Complainant states that he has made an error when filing the request form and tried to correct that mistake by handwriting his name on the cover letter.

The Respondent would like to note that the domain name cannot be attributed to the Complainant as not he, but Hytec Gerätebau GmbH, applied for the domain name. Prof. Dr. Norbert Fliege is not listed as an applicant for the HYTEC domain name in the Respondent's systems.

(End of quote)

WÜRDIGUNG UND BEFUNDE

The question in this case is as such: “Did Eurid correctly assess the case when it decided to refuse the application because it was made in the name of a company where the Documentary Evidence showed that the trademark was registered in the name of a physical person?”

Eurid’s general duty in the verification process has been expressed in 00642 (CRUX):

“Reference is made, among others, to Recital 12 of the Regulation 874/2004, under which the aim of the registration process is to ensure that holders of prior rights have appropriate opportunities to register names on which they hold prior rights. It further follows from this recital that validation agents should assess rights claimed for a particular name properly. Reference is further made to Article 14 of the Regulation No 874/2004, under which the validation agent should examine the application.

Under Sunrise Rules, Article 21.3, the validation agent may, at his own discretion, conduct investigation into the circumstances of the respective application.

The Panel appreciates the high number of application received and processed by the Respondent, and the Panel also understands the tendency of the Respondent to apply those automated processes as mentioned in the Respondent’s response to the Complaint. The respective legal provisions cited above put the Respondent under clear legal obligation to examine the application (Art. 14 of the Regulation 874/2004) and to assess the respective right of the applicant (recital 12 of the Regulation 874/2004.

In the opinion of the Panel, these obligations to “examine” and to “assess” are clearly in conflict with the absolute idea of an uncompromised automated process.”

(End of quote)

Which was the information available to Eurid at that time?

The Documentary Evidence provided during the verification process has been detailed here above:

- a Cover Letter on which the Complainant manually wrote his personal name beside the name of his company (the name of the company is automatically generated). Of course, Eurid insists on the fact that it is not permissible to modify the wording of the Cover Letter, but despite the question of formal breach, this handwritten detail clearly shows a connection between the physical person and the company;

- the Cover Letter with the company in the automated header, is signed by the Complainant “Inhaber des WZ hytec”;

- a letter from the complainant and signed by him. The meaning of this letter is unclear but at least one point is for sure; this letter, signed by the Complainant and originating from him (see header) contains at least 4 references to the Hytec Gerätebau GmbH ;

- an official publication of the trademark Hytec (with the name of Complainant as the holder);

- a letter from the German trademark office to the complainant renewing the trademark till 2015;

- a document from a “notar” (public notary) concerning the creation of the Hytec Gerätebau GmbH, where the name of the Complainant appears as a founder.

In the Panel view, all these elements clearly show that there is a connection between Prof. Dr. Norbert Fliege (the

Complainant) and Hytec Gerätebau GmbH.

This connection was quite clear, even through a quick and superficial analysis of the Documentary Evidence.

Also, at that time, the question of a possible confusion between the “name” field and the “organization” field was well known since long. The Panel refer notably to cases 01977 (SMARTGAMES) and 00642 (CRUX).

In CRUX, the Panel ruled that: “Before the verdict of the Panel is handed down, the Panel would like to express its understanding for the opinion as express by the panel in case No 219 that one really could argue that sympathy is overruled by the applicable regulations serving among other purposes the (cost-effective) functionality of the phased registration and the principles hereof, however the Panel is convinced that justice may not be overruled either by sympathy or by cost-effective functionality, notwithstanding the fact that justice may not depend on the question how one fills in a registration form, which in itself is quite confusing”.

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As a conclusion, in the Panel view:

- the fact that the connection between Prof. Dr. Norbert Fliege and Hytec Gerätebau GmbH was clear, even through a very quick and superficial analysis of the Documentary Evidence,

- together with the fact that the possible confusion between the “name” field and the “organization” field was well known,

- should have brought Eurid to make an additional enquiry, or, at least, to request more information from the Applicant,

- and this additional information would have revealed that the Complainant is the holder of a valid prior right.

Therefore, it is the Panel opinion that Respondent did not correctly assess the situation beforehand, and that its decision must be annulled.

ENTSCHEIDUNG

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the EURID's decision be annulled

the domain name HYTEC be transferred to the Complainant

PANELISTS

Name	**Joost Verbeek**

DATUM DER ENTSCHEIDUNG DER SCHIEDSKOMMISSION 2006-09-25

Summary

EINE ENGLISCHSPRACHIGE KURZFASSUNG DIESER ENTSCHEIDUNG IST ALS ANLAGE 1 BEIGEFÜGT

The question in this case is as such: “Did Eurid correctly assess the case when it decided to refuse the application because it was made in the name of a company where the Documentary Evidence showed that the trademark was registered in the name of a physical person?”

Even a quick and superficial analysis of the Documentary Evidence immediately revels a connection between Prof. Dr.

Norbert Fliege (the Complainant) and Hytec Gerätebau GmbH.

Also, at that time, the question of a possible confusion between the “name” field and the “organization” field was well known since long. The Panel refer notably to cases 01977 (SMARTGAMES) and 00642 (CRUX).

Those two fact should have brought Eurid to make an additional enquiry, or, at least, to request more information from the Applicant.

This additional information would have revealed that the Complainant is the holder of a valid prior right.