Panel Decision for dispute CAC-ADREU-001993

Case number	**CAC-ADREU-001993**
Time of filing	**2006-06-29 15:40:59**
Domain names	**iig.eu, iigbank.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**GlobalURLS, david nepo**

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

FACTUAL BACKGROUND

Factual background is unclear when reading the Complaint. It is necessary to refer to the Whois? database and to the Documentary Evidence provided at the time of the application to understand the followings:

1) The iigbank.eu domain name

The Complainant filed a first application for “iigbank.eu” on 13/12/2005 22:58:03.135, that is to say within the Sunrise 1 period. Since the Documentary Evidence was not provided this application expired.

The Complainant filed a second application for “iigbank.eu” on 25/01/2006 16:26:36.422, that is to say within the Sunrise 1 period. The Documentary Evidence has been received timely.

The Documentary Evidence related to this application has been disclosed in the course of this ADR; it appears that it comprises solely a copy of the .com Whois? database for the “iigbank.com” domain name.

2) The iig.eu domain name

The Complainant filed a first application for “iig.eu” on 13/12/2005 22:58:04.591, that is to say within the Sunrise 1 period. Since the Documentary Evidence was not provided this application expired.

The Complainant filed a second application for “iig.eu” on 25/01/2006 16:26:38.866, that is to say within the Sunrise 1 period. The Documentary Evidence has been received timely.

The Documentary Evidence related to this application has been disclosed in the course of this ADR; it appears that it comprises solely a copy of the .com Whois? database for the “iig.com” domain name.

3) In the course of this ADR

Additional information is provided by the Complainant in the course of the ADR. The Complainant has indeed copy-pasted in the Complaint what seems to be a trademark registration (see here after for details).

A. COMPLAINANT

Complainant first stress that it was the sole applicant for both domain names during the Sunrise period.

It then underlines that: “The "IIG" name has been used by GlobalURLS in business with the public globally as our trade name since April of 2004. The company operates business on the websites IIG.com and IIGbank.com; and has for numerous years. The “IIG” name has been connected with our company offering services in the Banking and Insurance industry since April of 2004; and the original URL rights go back to April of 1998. The “IIG” name is internationally known Business Mark of GlobalURLS and is documented below”.

The documentation referred to, is as such:

- TRADE MARK INFORMATION AS TO : "IIG" offering services globally since April of 2004, Word Mark IIG. (…)

- TRADE MARK INFORMATION AS TO: IIG DRAGON LOGO, Word Mark IIG (…)

- INFORMATION AS TO OPERATING WEBSITE: "IIG.com" since April of 1998 servicing the public since April of 2004 (…)

- INFORMATION AS TO OPERATING WEBSITE: "IIGbank.com" publicly operating since May 2004 (…)

B. RESPONDENT

Respondent recalls that pursuant to article 12 (2), paragraph 3 of the Regulation, only registered trademarks, geographical indications, and the public body names may be applied for as domain names during the first part of phased registration, and that the Complainant applied for the domain names on 25 January 2006, which is during the first part of the phased registration.

Respondent then stress that the Complainant submitted documentary evidence consisting of a document showing the WHOIS information for the domain names "IIGBANK.COM" and "IIG.COM", and that this information is far from enough to persuasively argue the ownership of a trademark.

The Respondent also contends that, even considering that the Complainant had established that it is the holder of the two business identifiers (based on the two “.com” domain names), such prior rights may not be relied upon during the first part of the phased registration, but only during the second part of the phased registration starting 7 February 2006 (see article 12 (2), paragraphs 3 and 4 of the Regulation).

As for the new information provided in the course of the ADR procedure, the Respondent contends that it may not be taken into consideration. A decision taken by the Respondent may only be annulled when it conflicts with the Regulation, and the verification of this is the only task for the Panel in these proceedings, which may not in any case serve as a “second chance” or an additional round providing applicants an option to remedy their imperfect original application that was rejected during the Sunrise Period. Respondent refers to cases 551 (VIVENDI), 810 (AHOLD) and 1194 (INSURESUPERMARKET). It this last case, the Panel ruled that: "(…) only the documentary evidence which the Respondent was able to examine at the time of validation of the application should be considered by the Panel to assess the validity of the Respondent's decision”.

DISCUSSION AND FINDINGS

In the course of the procedure, the Complainant tries to substantiate its ownership of trademarks and provides more information to the Panel on this issue: the complainant copy-pasted what seems to be an abstract of a trademark application.

Which is the validity of a copy-paste of a document that is not provided in full to the Panel?

Although it would have been a quite interesting debate because of the very weak warranty that such a copy-paste may give to the Panel, the Panel will not assess this issue since it is of no use in this case.

Indeed, even if this new information were reliable and trustworthy, it wouldn’t be valuable since the Panel would inevitably conclude that the Complainant tries to substantiate today a prior right on which it didn’t provide any information at all (!) at the time of the application and its verification.

As a matter of fact, the Documentary Evidence related to both domain names comprises solely a copy of the Whois? database for the related .com domain name, and contains no information at all related to a trademark.

It is Complainant's duty to substantiate its prior right.

Sunrise Appeal has been created to guarantee both parties a fair trial on the way Respondent assessed the prior right claimed in the application as substantiated by the Documentary Evidence. Its purpose is in no way to permit applicant to substantiate a prior right on which no information at all was given at the stage the application's verification.

For the foregoing reasons, the Panel will disregard information provided in the Complaint in relation with alleged trademarks, and shall assess Respondent's decision on the sole basis of the Documentary Evidence provided in the course of the application and its verification.

It is unquestionable that a copy of the .com Whois? database is not, as such, enough to substantiate a valid trademark.

It is also unquestionable that both applications have been made on 25 January 2006, which is during the first part of the phased registration.

Pursuant to article 12 (2), paragraph 3 of the Regulation, only registered trademarks, geographical indications, and the public body names may be applied for as domain names during the first part of phased registration.

The Panel fully support Respondent's view that, even considering that the Complainant had, based on the .com whois? database, established that it is the holder of the two business identifiers, such prior rights may not be relied upon during the first part of the phased registration, but only during the second part of the phased registration starting 7 February 2006 (see article 12 (2), paragraphs 3 and 4 of the Regulation).

For the same reason, it is of no use to assess whether or not the IIG name has been used by the Complainant in business with the public globally as a trade name since April of 2004. Whatever the answer to this question is, the same problem will occur: a business name is not a prior right for which an applicant may claim a domain name during the first part of phased registration.

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	**Didier Deneuter**

DATE OF PANEL DECISION 2006-10-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

It is unquestionable that the Complainant provided, at the time of registration and verification, nothing else than a copy of the .com Whois? database.

It is also unquestionable that both applications have been made on 25 January 2006, which is during the first part of the phased registration.

It is important to underline that pursuant to article 12 (2), paragraph 3 of the Regulation, only registered trademarks, geographical indications, and the public body names may be applied for as domain names during the first part of phased registration.

A copy of the .com Whois? database is not, as such, enough to substantiate a valid trademark.

The Panel fully support Respondent's view that, even considering that the Complainant had, based on the .com whois? database or any other information provided in the course of this ADR, established that it is the holder of the two business identifiers, such prior rights may not be relied upon during the first part of the phased registration, but only during the second part of the phased registration starting 7 February 2006 (see article 12 (2), paragraphs 3 and 4 of the Regulation).