Panel Decision for dispute CAC-ADREU-002032

Case number	**CAC-ADREU-002032**
Time of filing	**2006-07-17 11:43:51**
Domain names	**pair.eu, pairnet.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**pair Networks, Inc., Domain Administrator**

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the Disputed Decisions or the Disputed Domain Names.

FACTUAL BACKGROUND

Domain Name: pair.eu; pairnet.eu

Disputed EURID's Decision: Decision 2006, 15th May (as far as the application concerning PAIRNET.EU Domain Name), Decision 2006, 25th May (as far as the application concerning PAIR.EU Domain Name)

1. On 2006, 4th February, pair Networks Inc. (hereinafter, also, "pair Networks") applied for registration of the domain names "PAIR.EU" and "PAIRNET.EU" (hereinafter, also, together the "Disputed domain names"). The application date and the date of receiving documents by EURID were shown, respectively, in Annex 1 and Annex 6 to Complaint.
2. Pair Networks was requested for supporting documents. In response to the request, it submitted a print out from the OHIM web site, setting for the particulars of Community Trade mark No. 1 525 294 for "PAIR", which was registered on 23 March 2001, as far as the domain name "PAIR.EU" is concerned (see Annex 3); and an other printout from the OHIM website, setting for the particulars of Community Trade mark No. 1 525 310 for "PAIRNET", which issued on 23 March 2001, as far as the domain name "PAIRNET.EU" is concerned (see Annex 8).
3. On 2006, 25th May, pair Networks received an e-mail from EURID (Annex 4) with the Decision (hereinafter, also, the "Decision") of rejecting the application for registration of domain name "PAIR.EU" because the documentary evidence did not sufficiently prove the prior right.
4. In a telephone conversation, EURID showed that the application for the domain name "PAIR.EU" was rejected because "the Trade mark Registration is owned by an entity in the United States and there was no documentary evidence of record that Complainant was licensed under the trade mark". In the same telephone call, pair Networks learnt that EURID has also rejected the application for registration of domain name "PAIRNET.EU" (even if it had non received any formal e-mail notification of the rejection): EURID showed – in the telephone call – that also this application was rejected for the same reason: "the Trade mark Registration is owned by an entity in the United States and there was no documentary evidence of record that Complainant was licensed under the trade mark".
5. On 2006, 24th June (acknowledged receipt on 2006, 17th July), pair Networks (hereinafter, also, the "Complainant") filed a Complaint before this Czech Arbitration Court (hereinafter, also, the "Court"). The Complaint was related to two domain names: "PAIR.EU" and "PAIRNET.EU". The Complainant intends to challenge both EURID's Decisions about the above mentioned Domain Names, in order to register them.
6. The Complainant attached to the Complaint copy of the following documents:
Annex 1 - Copy of whois information for "PAIR.EU", including details page;

Annex 2 - Copy of EURid's request for supporting documents for "PAIR.EU";
Annex 3 - Copy of printout from OHIM website for Community Trade mark No. 1 525 294 for "PAIR";
Annex 4 - Copy of 25 May 2006 email from EURid rejecting application for "PAIR.EU";
Annex 5 - Copy of executed "Licence Declaration for a Registered Trademark" for Community Trade mark No. 1 525 294 for "PAIR";
Annex 6 - Copy of whois information for "PAIRNET.EU", including details page;
Annex 7 - Copy of EURid's request for supporting documents for "PAIRNET.EU";
Annex 8 - Copy of printout from OHIM website for Community Trade mark No. 1 525 310 for "PAIRNET";
Annex 9 - Copy of executed "Licence Declaration for a Registered Trademark" for Community Trade mark No. 1 525 310 for "PAIRNET".
7. The Court acknowledged Complaint's receipt on 2006, 17th July. The Court notified EURID on the Complaint and its time of filing.
8. The Court asked EURID for some information for verification of the Complaint's administrative compliance. On 2006, 25th July, EURID answered to the request with a Non-standard Communication, confirming, in particular, that: as far as the Disputed Domain names are concerned, "the Registrar who forwarded the application to EURID is Tucows.com CO." and the Respondent is EURID. EURID also attached the Documentary Evidence related to the Disputed Domain names.
9. On 2006, 26th July, the Court pointed out that the Registrar had been partly incorrectly identified by the Complainant. Since it was a minor deficiency, the Court indicated that it could be corrected by submitting a Non-standard communication by the Complainant.
10. On 2006, 14th August, the Court checked the Complaint and made some additional comments, observing that there were some unsubstantial and insignificant deficiencies in the Complaint. As the main ADR's objective was(were) the Decision(s) as far as merit is concerned and as the above mentioned considerations didn't constitute an objection to the Decision(s), the Court decided to forward the Complaint to the Respondent in any case.
11. EURID has been notified on the formal date of the commencement of the ADR Proceeding (2006, 14th August) and it has been invited to submit a Response within 30 working days from the delivering of the notification. It has been also advised of the consequences in case the Response would not have been sent within the deadline or if it would not have complied with all administrative requirements mentioned in the ADR Rules and the ADR Supplemental Rules.
12. On 2006, 29th September, EURID filed the Response to the Complaint asking for its rejection. On 2006, 2nd October , the Court acknowledged the receipt of the Response and checked the Response.
13. The Court appointed this Panel (Marco Vincenti), who accepted to serve as a Panel under .eu Dispute Resolution Rules and Supplemental Rules of the Court.
14. On 2006, 3rd October, the Court notified to the parties that this Panel had been appointed and that he had submitted the Statement of Acceptance and Declaration of Independence and Impartiality.
15. The Panel was required to forward his decision within 2006, 30th October.
16. On 2006, 30th October the Panel pointed out that:
(1) pair Networks Inc. (Complainant) had submitted two applications for registration of two different Domain Names: "PAIR.EU" and "PAIRNET.EU"; (2) EURID (Respondent) had rejected the application for "PAIR.EU" (Decision 2006, 25th May – Annex 4 to the Complaint); (3) pair Networks Inc. had started an ADR Procedure in order to obtain the registration of both the Domain names; (4) the Complainant didn't indicate in the Complaint the Decision challenged: it said only that, as far as PAIR.EU application was concerned, there was a Decision (Annex 4 to the Complaint); as far as PAIRNET.EU application was concerned, it knew in a telephone conversation with EURID's personnel that it was rejected, but it had no record of receiving any e-mail notification of such rejection; in any case, it emerged by the Complaint that the Complainant intended to challenge both Decisions about both Domain Names.
17. Pursuant to art. 7 ADR Rules, the Panel asked the Respondent for submitting the Decision of rejection of the application for "PAIRNET.EU", within 2006, 1st November (h. 12:00), and allowed the Complainant to make its considerations until 2006, 3rd November (h. 12:00). As consequence, the Panel asked the Court to postpone the Deadline for the Decision, originally arranged for 2006, 30th October, and suggested a new Deadline for the Decision: 2006, 7th November. The Court accepted and confirmed the new Deadline.
18. The Respondent answered to Panel's request, specifying that "after application have been assessed and Validation agent has communicated its findings to the Registry, the Registry's system generates automatically an e-mail which is sent to the Applicant and its Registrar, informing them about the Decision taken by the Registry". It also pointed out that, as general meaning of the automatic e-mail, Applicant and its Registrar are invited to contact Registry Help Desk to get more detailed information. The Respondent stated that the Registry had taken the Decision to reject the application for PAIRNET.EU on 2006, 15th May and had sent the e-mail to the Applicant and its Registrar on the same date.
19. The Complainant didn't submitted any further consideration on this particular matter within the Deadline arranged by the Panel.

A. COMPLAINANT

In support of its position, Complainant contests as follows.
In particular, Complainant contests the reason which the Decision(s) to reject its application(s) for the registration of the Disputed Domain Names is(are) based on.
The Complainant says that "the Complainant's applications for the Disputed Domain Names were not granted because a "Licence Declaration for a Registered Trademark" was not of record in the Complainant's application".
The Complainant states that at the time of the applications for the registration of "PAIR.EU" and the "PAIRNET.EU" Domain Name, it was

licensed by the owner, on the ground of the Community Trade mark No. 1 525 294 for PAIR (Annex 5) and Community Trade mark No. 1 525 310 for PAIRNET (Annex 9).
The Complaint considered this omission (the fact that it didn't submit all pertinent documentary evidence on time) only an administrative oversight: consequently, it attached the required declarations to the Complaint.
Complainant asks for annulment of the Decision(s), in order to register "PAIR.EU" and the "PAIRNET.EU" Domain Names.

B. RESPONDENT

In support of its position, Respondent contests as follows.
Respondent points out that pair Networks applied for the Domain Names "PAIR" and "PAIRNET" on 2006, 4th February. The deadline for sending documentary evidence was 2006, 16th March. Pair Networks sent documentary evidence [Community trademarks PAIR and PAIRNET, both registered in the name of Pair Networks Inc., with address in the United States (2403 Sidney Street, Suite 510, 15203 Pittsburgh, USA)] on 2006, 15th February.
As consequence, the Validation Agent rejected "both applications because the Complainant is not eligible to apply for the domain names, pursuant to article 4 (2) (b) of the Regulation 733/2002".
Respondent deems that "pair Networks Inc. is not eligible to apply for .eu domain names pursuant to the Regulation n. 733/2002".
As far as prior right (Community Trade Mark), Respondent observes that the documentary evidence submitted shows that (1) "owner of those trademarks, pair Networks Inc., has its registered office in the United States (2403 Sidney Street, Suite 510, 15203 Pittsburgh, USA) and not in the United Kingdom"; (2) "type of company (namely Inc.) does not exist in the United Kingdom"; (3) "pair Networks, Inc. does not appear to have its central administration or principal place of business within the Community", as can be clearly established by a quick look at pair Networks, Inc.'s website at http://www.pair.com/contact/.".
The Respondent makes reference to Case n. 370 (KANE) and to Case n. 1674 (EBAGS), as precedents in the above mentioned meaning.

DISCUSSION AND FINDINGS

A. Before entering into the merit of the Case, the Panel wishes to make the following preliminary considerations.
(1) The Complainant made its application on 2006, 4th February: it should have had to produce all documentary evidence within 40 days from the date of the submission of the application: 2006, 16th March (see, art. 14, par. 4 Reg. 874/2004). Submission after the above mentioned deadline cannot be considered valid (reference made to Annexes 5 and 9 to the Complaint), and, as far as this point is concerned, the Complainant has failed. This deadline has a particular importance and its default cannot be considered a simply administrative oversight. This Panel thinks that this deadline has a particular function: the Applicant has to submit to the Register and the Validation Agent all documentary evidence, reference made to applicable Rules, in order to allow them to take into consideration all the pertinent elements. Furthermore, ADR Proceeding is not the place to take into consideration new documents, because in the case at issue (challenging of EURID's Decision, rejecting applications for Registration of Domain Names) the Panel has to decide whether the Decision conflicts with EC Regulations.
(2) The Complainant challenged the Decision about PAIR.EU (dated 2006, 25th May) and – implicitly – also the Decision about PAIRNET.EU: this can be easily understood just by reading the Complaint.
(3) The case at issue concerns two Domain Names ("PAIR.EU" and "PAIRNET.EU"). As stated by the Complaint, formally, EURID rejected only one application – as far as PAIR.EU is concerned - (Decision 2006, 25th May). On this point, it has to observe that the Complainant also knew the status of PAIRNET.EU Application (rejection) at the time it filed its Complaint (this is confirmed by the Complaint itself): the Complainant knew the status of the application about PAIRNET.EU in a telephone call. In other words, even if – on the ground of Complainant thesis - there is not a formal notification of the decision rejecting the application for the Domain Name "PAIRNET.EU" (see the Complaint: "Complainant, however, has no record of receiving any e-mail notification of the rejection."), it can be clearly said that – in any case - it was aware of it (especially, taking into consideration what follows).
(4) As far as the case at issue is concerned, this Panel will consider important the Complainant's default sub (1) and (2). As far as the matter about the Decision about "PAIRNET" Application, the Panel deems to consider it solved, in the meaning that - as required – the Respondent confirmed that a Decision has been taken and that the pertinent e-mail has been sent to the Applicant (Complainant) and to its Registrar. The Complainant didn't submitted any further considerations about it.
(5) Reference made to the documentation at his disposal, and Parties declarations, the Panel considers that:
(1) pair Networks submitted two different applications for registration of "PAIR.EU" and "PAIRNET.EU" Domain name;
(2) EURID rejected both applications because it didn't received sufficient documentary evidence to prove the right claimed with two different Decisions;
(3) Pair Networks was informed about both Decisions, and it was encouraged to contact the Registry Help Desk to get more specific information about the Decisions;
(4) Pair Networks contacted EURID by telephone;
(5) Pair Networks, substantially, begun this ADR Proceeding challenging the Decision of rejection of the application for "PAIR.EU" and also the Decision of the rejection of the application for "PAIRNET.EU", asking for the registration of both Domain names to the Complainant.

(6) Pair Networks didn't submitted any further considerations, within the term arranged by the Panel.
As consequence, the Panel considers that this ADR proceeding concerns two EURID's Decisions.
B. In addition to the above procedural remarks, the Panel expresses as follows.
Pursuant to art. 14 Reg. (CE) 874/2004, "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 documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected.". Section 8, par. 5 ADR Rules states in the same meaning.
Pair Networks submitted further documentary evidence (licence declarations – Annexes 5 and 9 to the Complaint) only when submitting the Complaint. It failed the Deadline fixed by the above mentioned art. 14 Reg. (CE) 874/2004 and it was correct that the applications had been rejected.
Even if it did not take into account the above mentioned considerations, pair Networks would not be eligible, pursuant to art. 4, par. 2 Reg. (CE) 733/2002, that states: "The Register shall (…) register domain names in the .eu TLD through any accredited .eu Registrar requested by any: (i) undertaking having its registered office, central administration or principal place of business within the community, or (ii) organization established within the Community without prejudice to the application of national law, or (iii) natural person resident within the Community.".
In the case at issue, the trademarks submitted as documentary evidence, clearly shows that the owner of those trademarks is pair Networks Inc., with registered office in the United States (2403 Sidney Street, Suite 510, 15203 Pittsburgh, USA).
Pursuant to art. 7 ADR Rules, this Panels visited pair Networks Inc.'s web site (http://www.pair.com) and, in particular, "Contact us" page (http://www.pair.com/contact/): it couldn't be found any link between the American Company and the UK Company.
No useful results were given by a research using Google, with key "Pair Networks Inc. UK". No useful documentary evidence has been submitted by the Complainant.
Furthermore, it has not been demonstrated that pair Networks has its central administration or principal place of business within the Community.
In this meaning (especially as far as the term within the documentary evidence about trademark licence has to be submitted is concerned), it can be taken into consideration case n. 370 (KANE) and n. 1674 (EBAGS).
Even considering validly submitted Annexes 5 and 9, they are not sufficient to prove that licensee is a EU national or EU-based company (see, case n. 01012 – 50PLUS). The Complainant didn't submitted any further useful documentary evidence in this meaning.
Therefore, the Panel thinks that EURID's Decisions to reject pair Networks' applications for registration of "PAIR.EU" and "PAIRNET.EU" Domain Names are valid under EC Regulations. The Complainant has failed the term fixed to submit documentary evidence to the Validation Agent; no sufficient / valid documentary evidence has been submitted to prove it is eligible to apply for .eu domain names.

DECISION

For all the foregoing reason, in accordance with Reg. (CE) n. 733/2002, Reg. (CE) n. 874/2004, Sunrise Rules, ADR Rules, Supplemental Rules, the Panel concludes that the Decisions do not conflict with Reg. (CE) n. 733/2002, Reg. (CE) n. 874/2004: as consequence, the Panel rejects the Complaint.

PANELISTS

Name	**Marco Vincenti**

DATE OF PANEL DECISION 2006-11-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, an UK firm, submitted two applications for registration of two Domain Names, on the ground of Community Trade Marks, owned by an American firm. The Validation Agent rejected both applications because the documentary evidence didn't prove the eligibility to apply for the domain names, pursuant to art. 4, par. 2 Reg. (CE) 733/2002. The Applicant filed a Complaint, submitting other documentary evidence (in particular, Licence Declarations). Essential documentary evidence has been submitted later than the term fixed by EC Regulations. The Complainant based its arguments on the fact that it was licensed by the owner of Community Trade Marks at the time of the applications for registration. The Panel find out that the Complaint didn't submit any documentary evidence to prove that it was eligible to register a .eu domain names, because it was not demonstrated that the Company has its registered office, central administration or principal place of business within the Community.