# Panel Decision for dispute CAC-ADREU-002119

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| Case number | **CAC-ADREU-002119** |
| Time of filing | **2006-07-10 11:47:42** |
| Domain names | **phoenix-x-ray.eu** |

## Case administrator

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| Name | **Kateřina Fáberová** |

## Complainant

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| Organization / Name | **phoenix\|x-ray Systems + Services GmbH, Helmut Appelt** |

## Respondent

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| 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

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FACTUAL BACKGROUND

Phoenix X-Ray Systems & Services GmbH asks for the abolition of the refusal and allocation of the domain name www.phoenix-x-ray.eu. EURid responds that the complaint should be rejected on the main basis that the Complainant did not demonstrate that it was the holder or the licensee of a prior right on the name PHOENIX-X-RAY; that it was on it (on the complainant) the burden of proof to substantiate that it is the holder of a prior right; and that the documentary evidence did not indicate who is the holder of the prior right. Also the Respondent points out that there has been some more documentary evidence that was submitted in the context of the present ADR proceeding.

A. COMPLAINANT

Reasons: The reason of the refusal does not correspond to the fact. phoenix|x-ray Systems + Services GmbH is the owner of the brand "phoenix|x-ray" (number: 002155760) registered with the OHIM - Office for Harmonization in the internal market since 1st of August 2002.

B. RESPONDENT

1. GROUNDS ON WHICH THE RESPONDENT REJECTED THE APPLICATION BY PHOENIX X-RAY SYSTEMS & SERVICES GMBH FOR THE DOMAIN NAME PHOENIX-X-RAY 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 recognised 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 Article 14 of the Regulation 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.(…) If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this.(…) 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". Section 13.2. of the Sunrise Rules lists the acceptable documentary evidence for registered trademarks: " Unless otherwise provided for in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for a registered trade mark: (i) a copy of an official document issued by the competent trade mark office indicating that the trade mark is registered (certificate of registration, renewal certificate, official extract from the register, declaration by the trade mark office, publication of the fact of registration in an official journal, etc.); or (ii) an extract from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts. In the foregoing cases, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark. In case the Applicant

is a licensee or transferee of a registered trade mark referred to in Section 13(1) above, Section 20 hereof shall apply.". Phoenix X-Ray Systems & Services GmbH (hereafter "the Complainant") applied for the domain name PHOENIX-X-RAY on 8 December 2005. The processing agent received the documentary evidence on 16 January 2006, which was before the 17 January 2006 deadline. The Complainant submitted documentary evidence consisting of two certificates of registration stating that the trademark the figurative trademarks "phoenixx-ray" and "phoenixx-ray" are registered as Community Trademarks. Those documents do not mention the name of the holder of those trademarks. The Complainant also submitted some trademarks registrations in the United States. Based on the documentary evidence, the validation agent found that the Complainant did not demonstrate that it was the holder or the licensee of a prior right on the name PHOENIX-X-RAY. Therefore, the Respondent rejected the Complainant's application. 2. COMPLAINANT'S CONTENTIONS The Complainant argues that it is the owner of the Community trademarks. Therefore, the Complainant requests the Panel to annul the Respondent's decision and to grant the domain name PHOENIX-X-RAY to the Complainant. 3. RESPONSE The Regulation and the Sunrise Rules clearly and certainly provide that the burden of proof was with the Complainant to demonstrate that it is the holder of a prior right. This means that the documentary evidence must clearly evidence that the applicant is the reported owner of the registered trade mark. If the applicant fails to do so, its application must be rejected. During the Sunrise Rules, the first applicant in the line does not have an unconditional right to the domain name, but only has an opportunity to submit documentary evidence within 40 days to try to clearly demonstrate that it is the holder of a prior right. In the present case, the Complainant failed to do so and its application was correctly rejected. 3.1 The burden of proof was with the Complainant to demonstrate that it is the holder or the licensee of a prior right Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration. Pursuant to article 14 of the Regulation, the applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on this documentary evidence, the validation agent shall examine whether the applicant has prior rights on the name. It is therefore of crucial importance that the Respondent is provided with all the documentary evidence necessary for it to assess if the applicant is indeed the holder of a prior right. The burden of proof was thus on the Complainant to substantiate that it is the holder or the licensee of a prior right (see for example cases 127 (BPW), 219 (ISL), 294 (COLT), 551 (VIVENDI), 984 (ISABELLA), 843 (STARFISH), 1931 (DIEHL, DIEHLCONTROLS)). As the panel clearly summed up in case ADR 1886 (GBG), "According to the Procedure laid out in the Regulation the relevant question is thus not whether the Complainant is the holder of a prior right, but whether the Complainant demonstrated to the validation agent that it is the holder of a prior right. If an applicant fails to submit all documents which show that it is the owner of a prior right the application must be rejected". 3.2 The documentary evidence did not demonstrate that the Complainant was the holder of a prior right As already mentioned, pursuant to article 14 of the Regulation, the applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. In terms of registered trademarks, this means that the documentary evidence must clearly evidence that the applicant is the reported owner of the registered trademark (Section 13.2. of the Sunrise Rules). The Complainant submitted documentary evidence consisting of two certificates of registration stating that the trademark the figurative trademarks "phoenixx-ray" and "phoenixx-ray" are registered as Community Trademarks. However, nowhere on those certificates, was the Complainant reported as the owner of the registered trademark. The Complainant also submitted some trademarks registrations in the United States, but those trademarks could not serve as prior rights pursuant to article 10 of the Regulation. Therefore, the documentary evidence submitted by the Complainant did not clearly indicate the name of the Complainant as being the holder of the prior right claimed. Consequently, the Respondent correctly rejected the Complainant's application, pursuant to the Regulation and the Sunrise Rules, because the Complainant failed to meet its burden of proof. The Respondent further refers the Panel to ADR 294 (COLT), 551 (VIVENDI), 810 (AHOLD), 1625 (TELEDRIVE), 1627 (PLANETINTERNET), 1242 (APONET), 1232 (MCE), 1699 (FRISIA) and 1299 (4CE), where the Panels decided that the applicant did not sufficiently demonstrate that it was the holder of a prior right and consequently the Registry correctly rejected the application. 3.3 The Respondent and the validation agent were under no obligation to investigate into the circumstance of the application Section 21.2. of the Sunrise Rules states that "[t]he Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules". Section 21.3. of the Sunrise Rules states that "The Validation Agent is not obliged, but it 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 Respondent wishes to stress that Section 21.3. of the Sunrise Rules does not impose any obligation for the Validation agent to conduct its own investigation: it is a mere possibility that the Respondent can use "in its sole discretion". No obligation for the Validation agent may therefore be derived from Section 21 (3), since of this provision does not state that the validation agent is obliged to conduct its own investigations, but merely that the validation agent is permitted in its sole discretion, to conduct its own investigations (see for example case 1483 (SUNOCO), ISL (219), 551 (VIVENDI) and 843 (STARFISH) ). In ADR 127 (BPW), the Panel decided that: "Section 21.3 of .eu Sunrise Rules reads that the Validation Agent is not obliged, but it 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. Since the burden of proof was on the applicant (Complainant) who clearly failed to proof the ownership rights according to Section 21.3. of .eu Sunrise Rules it was on sole discretion of the Validation Agent to conduct its own investigation and it cannot be deemed as the breach of the Section 21.3 of .eu Sunrise Rules if he decided not to conduct any investigation. Summarizing the above stated, I did not find the contested decision to reject the application of the Complainant made by the Respondent in conflict with any of the European Union Regulations". In ADR 1323 (7X4MED), the Panel decided that "Therefore, it

cannot be reasonably anticipated that the validation agent (although it has the permission to do so pursuant to Section 21 (3) of the Sunrise Rules) would investigate into the circumstances of each and every domain name application where the documentary evidence submitted by the applicant does not comply with the requirements set forth by Sunrise Rules". In ADR 501 (LODE, PROCARE), the Panel decided that "In this case, the documentary evidence in support of the applications for the Domain Names was incomplete in respect of the requirements set out in Section 20.1 of the Sunrise Rules. The Panel accepts that the applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant". In ADR 1695 (VANDIJK), the Panel also explained the practical reasons behind the strictly legal reasons: "Other applicants for .eu domain names have invested the effort (and the costs) to diligently comply with the requirements of the Sunrise Rules, while the Complainant has not. If the validation agent would have been obliged (and not merely entitled) to investigate further in cases like the present one, this would have increased the already substantial verification costs (both in time and in money) for the phased registration period, which would have benefited a few (like the Complainant) to the disadvantage of most other applicants who have submitted their applications and documentary evidence in full compliance with the Sunrise Rules". Therefore, the Registry/validation agent cannot be expected and/or forced to speculate whether the Complainant is a holder of the prior right claimed, and therefore correctly rejected the Complainant's application. (see case 1443 (URBIS)). In the ADR 1318 (SYS), the Panel decided that the applicant failed to meet its burden of proof because it did not submit a renewal certificate for its trademark. The validation agent was left with reasonable and legitimate doubts as to whether the trademark was still valid or not after examination of the documentary evidence. Therefore, the Registry correctly rejected the application: "Without a renewal certificate it was unclear from the submitted documentary evidence whether the underlying Italian trademark registration No. 718.595 SYS was still valid or if it had only been valid until 26 October 2005. 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". The same issue was decided in the same way in ADR 219 (ISL) and 1627 (PLANETINTERNET). 3.4 Information submitted for the first time during the present ADR proceedings may not be taken into consideration Pursuant to the Regulation article 14 of the Regulation, the Respondent may only accept, as documentary evidence, documents that are received by the validation agent within 40 days from the submission of the application for the domain name. In the present case, the 40 days period ended on 17 January 2006. The Complainant filed its complaint on 29 June 2006 and submitted new documents attached to this complaint. Those documents may not serve as a basis to asses whether the Complainant is the holder of a prior right, since those documents were submitted more than five months after the end of 40 days period set forth by the Regulation. Furthermore, 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. Therefore, 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 (see notably cases Nr. 294 (COLT), Nr. 954 (GMP), Nr. 01549 (EPAGES) and Nr. 1674 (EBAGS)). This verification 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 (see cases Nr. 551 (VIVENDI) and Nr. 810 (AHOLD)). In other words, as decided in case Nr. 1194 (INSURESUPERMARKET), "[t]he ADR procedure is not intended to correct domain name applicants’ mistakes". The new documents attached to the present complaint were not received by the validation agent during the 40 days period, which means that the Respondent could not use this information in taking its decision. Therefore, this new information may not be taken into consideration to evaluate whether the Respondent's decision conflicts with the Regulation, which is the only purpose of the present ADR proceedings. 3.5 Conclusion The Regulation and the Sunrise Rules give holders of prior rights the opportunity to demonstrate their prior rights during the phased registration, which is an exception to the basic principle of first-come first-served. In order to benefit from this opportunity to demonstrate its prior rights, the applicant must comply with the strict procedure laid out by the Regulation for dealing with the thousands of applications received during the phased registration and making sure that these applications are substantiated. The Complainant in the present case did not seize this opportunity, because its application did not correctly fulfil the substantial requirements. Any right given to the Complainant to correct its defective application at this stage of the procedure would clearly be in breach of the Regulation and the Sunrise Rules, as expressed among others by the Panels in ADR 706 (AUTOWELT) and 1710 (PARLOPHONE, EMI, EMIMUSIC, EMIRECORDS, ANGEL, THERAFT). As the Panel in case ADR 219 (ISL) stated: "One 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". In case ADR 1627 ("PLANETINTERNET"), the Panel agreed with the Panel in ISL and further explained that "the Regulations and the Sunrise Rules were clearly drafted to ensure a fair distribution of .eu domain names during the phased period and if an applicant fails to fulfil its primary obligations, then, even where such failure is due to an oversight or genuine mistake, the application must be rejected by the validation agent". Since the Respondent correctly decided to reject the Complainant's application, pursuant to the Regulation, Respondent's decision may not be annulled and to the domain name PHOENIX-X-RAY may not be granted to the Complainant by this Panel. For these reasons, the complaint must be rejected.

DISCUSSION AND FINDINGS

1. REGARDING THE RESPONDENT’S REJECTION OF THE APPLICATION BY PHOENIX X-RAY SYSTEMS & SERVICES GMBH FOR THE DOMAIN NAME PHOENIX-X-RAY

“Only holders of prior rights which are recognised 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”. This is what Article 10 (1) of Commision Regulation (EC) No 874/2004 of 28 April 2004 (hereinafter, “the Regulation”) states regarding the subjects who can apply to register domain names for the relevant period.

Likewise we must take art. 14 of the Regulation into account. It 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.(…) If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this. (…) 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".

Regarding the acceptable documentary evidence for registered trademarks one must refer to Section 13.2 of the Sunrise Rules: “Unless otherwise provided for in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for a registered trade mark: (i) a copy of an official document issued by the competent trade mark office indicating that the trade mark is registered (certificate of registration, renewal certificate, official extract from the register, declaration by the trade mark office, publication of the fact of registration in an official journal, etc.); or (ii) an extract from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts. In the foregoing cases, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark. In case the Applicant is a licensee or transferee of a registered trade mark referred to in Section 13(1) above, Section 20 hereof shall apply”.

The application for the domain name “PHOENIX-X-RAY” was made by Phoenix X-Ray Systems & Services GmbH (hereinafter, “the Complainant”) on December 8, 2005. The validation agent received the documentary evidence on January 16, 2006, which was before the 17 January 2006 deadline.

The documentary evidence submitted by the Complainant consisted of two certificates of registration stating that the figurative trademarks “phoenix x-ray” and “phoen ix x-ray” are registered as community trademarks.

Nonetheless, the name of the holder of those trademarks is not mentioned in those documents, and that is a very relevant point with a view to the acceptance of the application by the Validation Agent.

In fact, after analysing all the documentary evidence, the Validation Agent found that the Complainant did not demonstrate that it was the holder of the prior right on the name PHOENIX-X-RAY, and that is why EURid (hereinafter, “the Respondent”) rejected the Complainant’s application.

In this Panel’s opinion, the Respondent’s was not a mistaken decision. This Panel wants to remark the importance of providing all the relevant documentary evidence. It is only on it that the Validation Agent and the Registry will base their decision whether to accept or reject the application. Therefore, it is essential to submit all the documentary evidence needed in order to prove it. To this regard, cases nº 294 (COLT), nº 1071 (ESSENCE), nº 1232 (MCE), etc., reaffirm how important it is to meet this provision.

The validation agent and the Registry cannot presuppose anything when documentary lapses exist. Also, it is important to observe that the same solidity in the application of the relevant rules must be applied in every case without any distinctions.

## 2. REGARDING THE COMPLAINANT’S CONTENTIONS AND THE RESPONDENT’S RESPONSE

### 2.1. THE BURDEN OF PROOF

The Sunrise Rules leave it clear that the applicant must submit all the documents that are needed for the Validation Agent so as to assess whether the applicant is the holder of the prior right corresponding to the domain name. We therefore must refer to Art. 10 (1) and Art. 14 (4) of the Regulation.

It would be unfair to argue that the Validation Agent could “suppose”, “presuppose”, etc., that the Applicant was indeed the holder of a prior right corresponding to the domain name. As stated in similar cases, that would establish a non-desirable precedent both for the applicants as for the Registration bodies. In fact, regulation does not provide any case where an exception can be made in the egalitarian application of the relevant provisions.

It was the Complainant that was ought to demonstrate that it was the holder of a prior right by means of the documentary evidence. It is true that during the Sunrise Rules, the first applicant in the line does not have an unconditional right to the domain name, but only has an opportunity to submit documentary evidence within 40 days to try to clearly demonstrate that it is the holder of a prior right.

In the case herein, there is no doubt that the Complainant failed to do so.

And in this Panel's opinion, that is reason enough so as to reject the application: that the Complainant failed to meet its burden of proof.

2.2. REGARDING THE ALLEGED OBLIGATION OF THE RESPONDENT AND THE VALIDATION AGENT TO INVESTIGATE INTO THE CIRCUMSTANCES OF THE APPLICATION

Let us refresh the content of Section 21.2 of the Sunrise Rules: it states that "the Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules".

Likewise Section 21.3 of the Sunrise Rules states that "the Validation Agent is not obliged, but it 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".

One can easily understand at this rate that it does not deal with the imposition of an obligation for the Validation Agent to conduct its own investigation: it deals with a possibility that the Respondent can use "in its sole discretion".

Therefore Art. 21.3 cannot be constructed as an obligation. Nonetheless, that does not mean either that the Validation Agent should not be involved in the applications. But it is important to emphasize that he is not obliged but rather he has possibility of conducting its own investigations.

One must not forget what is mentioned above regarding the burden of proof. In the case herein it is the Complainant who clearly failed to prove the ownership rights.

Due to the above, this Panel does not find the contested decision to reject the application of the Complainant made by the Respondent in conflict with any of the Regulations.

2.3 REGARDING THE INFORMATION SUBMITTED DURING THE PRESENT ADR

Art. 14 of the Regulation clearly states the following: "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".

In the case herein there is no doubt that the deadline for submitting the documentary evidence, the documents, was January 17, 2006.

It was on June 29, 2006 that the Complainant filed its Complaint and submitted new documents attached to this complaint. But if one adheres to the relevant rules one can easily understand that those documents may not serve as a basis to assess whether the Complainant is the holder of a prior right, since they were submitted more than five months after the end of forty days period set forth by the Regulation.

Moreover, Art. 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation. Only the documentary evidence which the Respondent was able to examine at the time of the validation of the application should be considered by the Panel to assess the validity of the Respondent's decision. According to this, the new documents attached to the present complaint cannot be taken into consideration.

This Panel considers that the Respondent has worked in every moment according to the relevant rules, and therefore its decision does not conflict with the Regulation. The Panel finds no reason so as to affirm that the Respondent or the Validation Agent have acted in

breach of the Regulation and the Sunrise Rules.

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

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| Name | **Berta Ramos Palenzuela** |

DATE OF PANEL DECISION 2006-10-18

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. REGARDING THE RESPONDENT'S REJECTION OF THE APPLICATION BY PHOENIX X-RAY SYSTEMS & SERVICES GMBH FOR THE DOMAIN NAME PHOENIX-X-RAY

The Panel takes Arts. 10 (1) and 14 of the Commision Regulation (EC) No 874/2004 of 28 April 2004 into account, and also Section 13.2 of the Sunrise Rules. It affirms that the documentary evidence submitted by the Complainant consisted of two certificates of registration stating that the figurative trademarks "phoenix x-ray" and "phoen ix x-ray" are registered as community trademarks. The name of the holder of those trademarks is not mentioned in those documents, and therefore cannot presuppose anything given that documentary lapses exist.

2. REGARDING THE COMPLAINANT'S CONTENTIONS AND THE RESPONDENT'S RESPONSE

2.1. THE BURDEN OF PROOF

The Panel mentions Art. 10 (1) and Art. 14 (4) of the Regulation and states that it was the Complainant that was ought to demonstrate that it was the holder of a prior right by means of the documentary evidence. In the case herein, there is no doubt that the Complainant failed to do so. In the Panel's opinion, that is reason enough so as to reject the application: that the Complainant failed to meet its burden of proof.

2.2. REGARDING THE ALLEGED OBLIGATION OF THE RESPONDENT AND THE VALIDATION AGENT TO INVESTIGATE INTO THE CIRCUMSTANCES OF THE APPLICATION

On the basis of Section 21.2 and 21.3 one can easily understand that it does not deal with the imposition of an obligation for the Validation Agent to conduct its own investigation, but with a possibility that the Respondent can use "in its sole discretion". Due to the above, this Panel does not find the contested decision to reject the application of the Complainant made by the Respondent in conflict with any of the Regulations.

2.3 REGARDING THE INFORMATION SUBMITTED DURING THE PRESENT ADR

Art. 14 of the Regulation clearly states the following: "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".

In the case herein there is no doubt that the deadline for submitting the documentary evidence, the documents, was January 17, 2006.

It was on June 29, 2006 that the Complainant filed its Complaint and submitted new documents attached to this complaint. But if one adheres to the relevant rules one can easily understand that those documents may not serve as a basis to assess whether the Complainant is the holder of a prior right, since they were submitted more than five months after the end of forty days period set forth by the Regulation.

The Panel considers that the Respondent has worked in every moment according to the relevant rules, and therefore its decision does

not conflict with the Regulation. The Panel finds no reason so as to affirm that the Respondent or the Validation Agent have acted in breach of the Regulation and the Sunrise Rules.

And therefore, the Pnel order that the Complaint is Denied.