Panel Decision for dispute CAC-ADREU-002124

Case number	**CAC-ADREU-002124**
Time of filing	**2006-07-13 14:58:10**
Domain names	**exposium.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**GROUPE EXPOSIUM HOLDING, Raphaël Moreno**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

1. The request for registration

On March 29, 2006 - 11:08:34 - , the Complainant filed a Request for the Registration of the domain name “exposium.eu” within part two of the “so called” Sunrise Period.
On April 13, 2006 the Respondent received documentary evidence showing that:
(i) The mark EXPOSIUM was applied for in France on March 20, 1991 in the name of the French company HAVAS BUSINESS INFORMATION; such an application was successfully registered (registration number 1651074).
(ii) The above trademark was renewed on March 15, 2001 in the name of the same HAVAS BUSINESS INFORMATION.
(iii) On November 28, 2005, the French company GROUPE EXPOSIUM HOLDING acquired all the assets of the French company SEAPEX HOLDING
With the decision of June 21, 2006 the Respondent rejected the Request for Registration on the grounds that the documentary evidence presented by the Complainant did not substantiate the prior right claimed in the Request for Registration.

2. The ADR proceeding

On July 12, 2006, the Complainant filed the Complaint; the Complainant enclosed, with the Complaint many evidence and, in particular,:
a) Certificate from the “Tribunal de Commerce” related to the GROUPE EXPOSIUM HOLDING.
b) Certificate proving that the Applicant is the owner of the domain name “exposium.fr”.
c) Certificate proving that the Applicant is the owner of the domain name “exposium.com”.
d) Minutes of a meeting of the company HAVAS BUSINESS INFORMATION proving that HAVAS BUSINESS INFORMATION changed its name into VIVENDI UNIVERSAL INFORMATION.
e) Documentation proving a business transfer between VIVENDI UNIVERSAL INFORMATION and the company SEAPEX HOLDING.
f) Documentation proving that SEAPEX HOLDING was dissolved and that its whole property was transferred to the Complainant.

g) Certificate proving the renewal of French Trademark n. 1651074 (EXPOSIUM) in the name of the company HAVAS BUSINESS INFORMATION
h) Registration Certificate related to French Trademark n. 3030588 (EXPOSIUM and device) registered in the name of the company HAVAS EXPOSIUM
i) EURid applications report for the domain name EXPOSIUM.EU

On July 13, 2006 the Czech Arbitration Court (hereinafter referred to as CAC) communicated that the fixed fees, provided for in Paragraph A/6 a of the ADR Rules, were duly paid.
On July 26, 2006, CAC, in accordance with Paragraph A2 (k) of the ADR Rules, notified the Complainant that there were deficiencies in the Complaint.
On July 27, 2006 the Complainant corrected said deficiencies
On August 1, 2006 the CAC indicated that the Complaint was completed and issued the Notification of Complaint and Commencement of ADR proceeding, declaring that the formal date of the commencement of the ADR proceeding was August 1, 2006;
On September 18, 2006, the Respondent sent a Response

A. COMPLAINANT

The Complainant argues that its Application for the domain name “exposium.eu” is correct according to Commission Regulations no. 733/2002 and no. 874/2004. This in consideration of the fact that Complainant was the first to apply for the registration of the domain name “exposium.eu” during phase two of the Sunrise Period. In addition, the Complainant argues that the ownership on a valid “prior right” is duly demonstrated since Complainant submitted documentary evidence showing the existence of a French trademark EXPOSIUM that was registered in the name of HAVA BUSINESS INFORMATION but is now owned by the Complainant in consideration of various transfers of ownership related to said mark. In consideration of the above, the Complainant requests the cancellation of the Registry’s decision and the assignment of the contested domain name to itself.

B. RESPONDENT

With regard to Complainant’s arguments, the Respondent argues that, according to Article 10 of the EC Regulation 874/2004, the holder of a prior right recognized or established by national or community laws is entitled to apply for the corresponding domain name during the phased registration procedure. Furthermore, the Respondent states that, according to article 14 of EC Regulation 874/2004, it shall register the domain name if it finds that the Applicant demonstrated a valid prior right. The Respondent stresses that the Complainant submitted documentary evidence consisting of a certificate stating that the French trademark “EXPOSIUM” is registered in the name of a company (HAVA BUSINESS INFORMATION) which is clearly different from the Complainant. In addition the Respondent underlines that the request was rejected due to the fact that Complainant did not submit, within the forty (40) calendar days following receipt of the Application by the Registrar, documentary evidence substantiating that the Complainant was licensed by the owner of the trademark or that it was the same person as (or the legal successor of) the trademark’s owner. In consideration of the above, the Respondent requested the rejection of the Complaint.

DISCUSSION AND FINDINGS

Article 10 of the EC Regulation 874/2004 states that the holder of a prior right recognized or established by national or community laws is entitled to apply for the corresponding domain name during the phased registration procedure.
Article 14 of the above Regulation inter alia 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. (…) 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".
Under Section 21.3 of the Sunrise Rules “validation agent is not obliged, but 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.”
As it results from the Application form, the Applicant filed the request for the registration of the domain name “exposium.eu” without demonstrating a valid prior right. This in consideration of the fact that, under paragraph 4, article 14 of EC Regulation

874/2004, the Applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question.
In the case at hand, the Applicant only submitted documentary evidence consisting of (i) a certificate stating that a French trademark “EXPOSIUM” was registered in the name of a different company (HAVAS BUSINESS INFORMATION) as well as of (ii) documentation proving that the company SEAPEX HOLDING was dissolved and that its whole property was transferred to the Complainant.
The Respondent, as well as the Validation Agent, cannot be criticized for not taking the above documentary evidence into account. Actually, according to the above, considering the documents submitted by the Applicant, the Respondent and the Validation Agent were not in the position of accepting the Applicant (Complainant) request, in consideration of the incomplete documentation submitted.
In the absence of any evidence regarding the relationship between the trademark’s owner (HAVAS BUSINESS INFORMATION) and SEAPEX HOLDING, submitted only in the framework of the ADR proceedings, they could only understand that the “prior right” claimed by the Applicant was still owned by the company HAVAS BUSINESS INFORMATION.
With all this said, it is clear that in the case at hand it must be discussed if, in deciding an ADR Proceedings against EURid, the Panel should take into consideration additional documents submitted by Complainant after the expiration of the 40-day period for the submission of documentary evidence (e.g., documents submitted during the ADR Proceeding).
According to Article 14 of the Regulation, it is the Applicant's responsibility to submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Article 14 of the Regulation also specifies that the Applicant has a period of 40 days from the submission of the application to submit this documentary evidence.
Furthermore, Section 8.5 of the Sunrise Rules states that:
"Documentary Evidence must be received by the Processing Agent within forty (40) calendar days following receipt of the Application by the Registry, failing which the Application will be considered to have expired."
It must be considered that the role of an ADR Panel under Regulation 874/2004, Article 22.1 (b) is only to determine whether a decision taken by the Registry conflicts with the Regulations.
Therefore, it is the Panel understanding that, in order to verify if a decision of the Registry is correct, only the evidence that were made available to the same Registry could be considered and, as a consequence, documents submitted only during the ADR Proceeding cannot be considered relevant.
The Panel accepts as correct the reasoning by the Respondent that the documentary evidence submitted with the Application for the domain name “exposium.eu” is insufficient to establish a valid prior right for said domain name.
The reasons for this have already been entered into sufficient detail in Case Law as identified by the Respondent and, in particular:
Case no. 810 (AHOLD), in which the Panel decided that: "it is important to make sure that the applicant is the same holder of the prior rights, to avoid any domain name registration deprived of legitimation on the applicant’s side. As a result, when faced before a difference between the applicant name and the prior right holder name, correctly detected by the Validation Agent, the Registry may not accept the corresponding domain name application".
Case no. 1627 (PLANETINTERNET) where it was stated that: " The validation agent conducted a prima facie review of the submitted document and reached the conclusion that as the names did not match, and there was no other documentary evidence to explain such a discrepancy, that the applicant (i.e. the Complainant) had not established its prior right".
Case Nr. 501 (LODE, PROCARE), in which the Panel declared 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".
Furthermore, the Panel believes that the Complainant could not expect that the new evidence submitted may be considered as being valid elements for establishing prior right.
Actually, as already explained, the new evidence brought in the framework of this ADR by the Complainant has to be disregarded since these documents were not enclosed with the documentary evidence, but provided for the first time in the framework of the present ADR proceedings.
In the Panel understanding, since the Complainant was provided only with forty days to demonstrate its prior right, once said period is over, the Respondent must assess the prior right and decide to register or not the requested domain name, on the basis of the evidence received.
It is true that such a decision of the Respondent can be subject to an ADR
pursuant to article 22.1 (b) of the Regulation, but, according with the rules of said ADR, a decision taken by the Respondent

may be annulled only if it conflicts with the Regulation.
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 No. 551 (VIVENDI) and No. 810 (AHOLD).
In other words, as decided in case No. 1194 (INSURESUPERMARKET), "the ADR procedure is not intended to correct domain name applicants’ mistakes".
Consequently, the new evidence submitted in the framework of this proceeding should be disregarded by the Panel when assessing whether the Respondent's decision complied with the Regulation.
According to the above, the Panel is of the opinion that the Application for the domain name “exposium.eu”, filed during the second phase of the Sunrise Period, in consideration of the clearly incomplete documentary evidence, is not correct.

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	**Guido Maffei**

DATE OF PANEL DECISION 2006-09-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contested the rejection made by Respondent with respect to the Applicant Request for the domain name “exposium.eu” filed during the Sunrise Period.
Rejection was based upon the fact that Applicant failed to produce sufficient documentary evidence regarding its ownership on the French mark EXPOSIUM. This in consideration of the fact that the documentary evidence submitted only showed that the trademark owner was a company with a different name with respect to the Applicant’s one.
Since the burden of proof is on the Applicant (Complainant) side, he would have had to submit, with the Request of the domain name registration, together with the other documentary evidence filed, the proof of the fact that the owner of the mark was the same Applicant (Complainant) in consideration of various transfers of ownership related to said mark.
Said evidence was submitted only in the framework of the ADR proceedings and, therefore, too late to be considered.
The evidence in order to substantiate a Prior Right must be submitted within the period of 40 days from the submission of the Application, otherwise the Application must be rejected.