Panel Decision for dispute CAC-ADREU-002145

Case number	**CAC-ADREU-002145**
Time of filing	**2006-07-10 12:48:03**
Domain names	**cvc.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Aprilway Limited, Mr Richard Perris**

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

No

FACTUAL BACKGROUND

On January 17, 2006, Aprilway Limited (hereinafter: the Complainant) filed an application for the domain name <cvc.eu> (hereinafter: "Domain Name"). The application was made under .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter: "Sunrise Rules").
Complainant based its application on a Spanish registered trademark (CVC filed on February 2, 1996 under No. 2014717 for services on class 36). The Complainant transmitted the Documentary Evidence before the deadline of February 26, 2006. Complainant's application for the Domain Name was the second in line of the applications for the Domain Name. The Documentary Evidence provided by the Complainant consisted on a copy of the trademark's application and it did not contain a copy of the trademark's registration.
On May 25, 2006, the Complainant received a notification from the Registry informing that the application for the Domain Name was rejected, due to the fact that the Documentary Evidence did not constitute sufficient ground to guarantee the Prior Right claimed.
Complainant does not agree with the Registry's decision and filed a Complaint under .eu Alternative Dispute Resolution Rules (hereinafter: "ADR Rules"). Complainant requests the annulment of the rejection's decision taken by the Registry and the attribution of the Domain Name to the Complainant.

A. COMPLAINANT

Complainant contends that it had intended to submit the relevant trademark's certificate with its application's file as Documentary Evidence for the domain name's application. Due to the fact that the person submitting the application for the Complainant was "not conversant in Spanish", it was advised incorrectly that the trademark's application was a trademark certificate. Consequently, it submitted only the trademark's application as Documentary Evidence without the trademark's certificate.
The Complainant is of the opinion that the Documentary Evidence submitted has provided the Registry with sufficient information as to the legal basis for the application, such that the Registry was on notice of this error and was in a position to make further enquiries of the Complainant to correct it.

B. RESPONDENT

The Respondent states that the burden of proof is on the applicant to demonstrate that it is the holder or the licensee of a prior right. The Respondent based its argument on article 14 of the Regulation which 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 Respondent contends that the Documentary Evidence did not demonstrate that it is the holder or the licensee of a prior right and it based its argument on article 13 (1) (ii) of the Sunrise Rules which states that "A trademark application is not considered a prior right".
Furthermore, the Respondent is of the opinion that "the Validation Agent was under no obligation to investigate about the eventuality that

that the Complainant could be the owner of another registered trademark since the Complainant did substantiate it in the Documentary Evidence".
Moreover, Respondent request's not to consider the new Documentary Evidence submitted in the Frame work of the present ADR that is to say a trademark certificate on the name of CVC, holding that the Complainant is the owner of CVC trademark.

DISCUSSION AND FINDINGS

Article 14 of the Regulation No 874/2004 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".
Article 13 (1) (ii) of the Sunrise rules states that: "a trade mark application is not considered a Prior Right".
The Panel agrees with the Respondent that a trademark application can not be considered a prior right. Nevertheless, the Panel finds that the Complainant did not base its domain name's application on a trademark application. Eurid's database shows on the application details section that the prior right claimed by the Complainant is a Registered National Trademark. Therefore, Complainant's application for the domain name does not conflict with article 13 (1) (ii) of the Sunrise Rules.
The Panel finds that the crucial question in this case is to determinate whether the Documentary Evidence submitted in support of the domain name application was sufficient to demonstrate the Complainant's prior right.
Article 21.2 of the Sunrise rules 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".

Article 21.3 of the Sunrise rules states that The Validation Agent is not obliged, but it is permitted at its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced.
The Panel is of the opinion that the interpretation and the application of the Sunrise Rules must be in harmony with European Regulations. If the application of said rules conflicts with the Regulations, the sunrise rules should not be taken into account.
In fact, one of the essential purposes of the European Regulation n° 874/2004 is to safeguard prior rights recognized by community or national laws. A prima facie review of the document does not guarantee such safeguard of the prior rights.

In the case n°00396 <capri.eu>, the Panel stated that the Registry has to "review more deeply the application and easily remove all relevant discrepancies in the .eu domain application". The Panel concluded that "The Registry is not only allowed but even obliged to obey all respective relevant regulations and obligations from these regulations to provide fair and complete validation process".
After review of the case file the Panel notes the Following:
The Documentary Evidence submitted by the Complainant includes a trademark application filed on February 26, 1996 under the n° 2014717. As the trademark's application is dated 1996 this is to say 10 years ago. The duration of a trademark's right in Spain is for 10 years, it was therefore reasonable to conclude that said application was accepted.
In fact, in order to examine a trademark's application, the Spanish Patent Office conducts an examination on absolute and relative grounds. The duration of said examination can not exceed 2 years.
A quick search on the Spanish Patent Office's website (http://www.oepm.es/) would have demonstrated that the Complainant's trademark application was accepted and the trademark CVC was registered under the same filing number (2014717). Said research does not demonstrate if the trademark was renewed but in the time of the application, the trademark was duly valid. However, it appears from the case file that the Complainant has duly renewed its trademark.
The Panel is of the opinion that when faced with such situation, the Validation Agent, in term of section 21 (3) of the Sunrise Rules has the discretion to conduct its own investigations into the circumstances of the application, the prior right claimed and the Documentary Evidence.
In the case n° 00174 <domaine.eu>, the Panel has considered that while the section 21 (3) of the Sunrise Rules grants the Validation Agent "sole discretion" to carry out such investigations, it is fundamental of justice that, when granted such discretion, the Validation Agent is not exempted from the requirement to act reasonably".
In the circumstances of this case, the Validation Agent could have easily cleared up the situation of the Complainant's prior right by a quick research on the Internet.
In the circumstances of this case, the Panel considers that the Registry was to accept the Complainant's application.
As a result, the Panel finds that the decision of the Registry did not comply with the European Regulations as it refused to allocate the domain name <cvc.eu> to the Complainant which owns Spanish trademark registration "CVC" recognized by European law. Besides, said decision conflicts with the essential purposes of the European Regulation n° 874/2004 which is the safeguard of prior rights recognized by community or national laws.

Given the above, and since the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation 874/2004 and/or with the Regulation 733/2002. The Panel concludes that the rejection by Respondent of the application for the Domain Name by Complainant conflicts with the aforementioned Regulations.

DECISION

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 and the domain name <cvc.eu> be transferred to the Complainant.

PANELISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2006-10-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

On January 17, 2006, the Complainant filed an application for the domain name <cvc.eu>.
The Documentary Evidence provided by the Complainant consisted on a copy of the trademark application and it did not contain a copy of the trademark's registration.
The Respondent considered that the Documentary Evidence did not demonstrate that the Complainant is the holder or the licensee of a prior right. The respondent based its argument on article 13 (1) (ii) of the Sunrise Rules.
The Complainant considers that the Documentary Evidence submitted provided the Registry with sufficient information as to the legal basis for the application, such that the Registry was on notice of this error and was in a position to make further enquiries of the Complainant to correct it.
The Panel is of the opinion that the interpretation and the application of the Sunrise Rules must be in harmony with European Regulations. If the application of said rules conflicts with the Regulations, the sunrise rules should not be taken into account.
The Documentary Evidence submitted by the Complainant includes a trademark application filed on February 26, 1996 under the n° 2014717. As the trademark's application is dated 1996 this is to say 10 years ago. The duration of a trademark's right in Spain is for 10 years, it was therefore reasonable to conclude that said application was accepted.
A quick search on the Spanish Patent Office's website (http://www.oepm.es/) would have demonstrated that the Complainant's trademark application was accepted and that the trademark CVC was registered under the same filing number (2014717). Said research does however not demonstrate if the trademark was renewed but at the time of the application, the trademark was not due for renewal. However, it appears from the case file that the Complainant has duly renewed its trademark.
The Panel is of the opinion that when faced with such situation, the Validation Agent, in term of section 21 (3) of the Sunrise Rules has the discretion to conduct its own investigations into the circumstances of the application, the prior right claimed and the Documentary Evidence.
As a result, the Panel finds that the decision of the Registry did not comply with the European Regulations as it refused to allocate the domain name <cvc.eu> to the Complainant which owns a Spanish trademark registration "CVC" recognized by European law. Besides, said decision conflicts with the essential purposes of the European Regulation n° 874/2004 which is the safeguard of prior rights recognized by community or national laws.