Panel Decision for dispute CAC-ADREU-002160

Case number	CAC-ADREU-002160
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Domain names	keos.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	KEOS Software Vertrieb GmbH

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

The Panel is not aware of any other pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

An application to register the domain name “keos.eu” was filed on March 24, 2006, under the Sunrise Period I, in the name of Keos Vertriebs GmbH, and was supported by a Prior Right consisting in a German Trademark Registration for “KEOS” No. 301 635 862 standing in the name of Keos Software Service Vertrieb GmbH.

In view of the discrepancy between the name of the domain name applicant and that of the Prior Right holder, the EURID issued a rejection decision on May 25, 2006 on the ground that the Documentary Evidence supplied would not sufficiently substantiate the entitlement of the Applicant in the domain name.

A Complaint was filed against the EURID’s decision on July 3, 2006, and then amended on July 21, 2006, together with an extract from the German Trademark Office’s data base providing details of the German Trademark reg. No. 301 635 862, a copy of the Rejection Decision and an Extract from the German Companies Register providing details about a company named Keos Software Vertrieb GmbH.

A response thereto was filed by the Respondent on September 12, 2006 and was found admissible.

The Case was transferred to the Panel on September 18, 2006.

A. COMPLAINANT

The Complainant acknowledges that there is a discrepancy between the name of the Applicant for the domain name and the name of the Prior Right holder, but considers that said difference is minor.

It further explains that in fact, neither of the two names are accurate and that the exact corporate name of the company should read Keos Software Vertrieb GmbH.

It concludes that the marginal discrepancies in the identifications of the company should not prevent the domain name “keos.eu” from being granted, as long as at the date when the application was filed, the Applicant was truly the proprietor of a Prior Right identical to the domain name applied for.

The Complainant emphasizes that if the validation agent had communicated the deficiencies in the application within the prescribed deadline, the same would have been remedied.

Finally, the Complainant raises the fact that it also own a Community Trademark “Keos” No. 4 615 721 (but there again admits that it erroneously omitted to supply Documentary Evidence in respect of this Prior Right when filing an application to register the domain name “keos.eu) as well as a domain name “keos.de” which should also be regarded as a valid Prior Right.

The Complainant seeks the annulment of the Rejection Decision and the attribution in its favour of the disputed domain name.

B. RESPONDENT

The Respondent emphasizes that the examination procedure of the disputed domain application has been fully complied with and refers inter alia to art.10 of the EC Regulation No. 874/2004, art. 14 thereof and art.20.3 of the Sunrise Rules.

It emphasizes that it cannot be held responsible for the error in the identification of the Applicant, that the application contained no explanation or official documents to justify that notwithstanding the discrepancies in the names of the applicant company, the same was one and single legal person.

The Respondent also relies upon Sec. 21.1 of the Sunrise Rules to justify that the Validation Agent was under no obligation to revert to the Applicant to invite it to remedy the deficiencies of its application.

Finally, the Respondent demonstrates to what extent the Community Trademark “Keos” and the domain name “keo.de” invoked by the Complainant for the first time at the stage of the ADR proceedings are not only irrelevant but in any event unable to be regarded as valid Prior Rights in the framework of the Sunrise Period I.

DISCUSSION AND FINDINGS

The application for the domain name « keos.de » filed on March 24, 2006 has been rejected by the Respondent on May 25, 2006 on the ground that the documentary evidence supplied together with the application under Sunrise Period I would not sufficiently substantiate the applicant’s Prior Right.

In fact, the application was rejected because of a discrepancy between the name of the applicant company as mentioned in the domain name application and the trademark registration relied upon.

The application for the domain name has been filed in the name of Keos Vertriebs GmbH, whereas the earlier German Trademark Registration relied upon was standing in the name of Keos Software Service Vertrieb GmbH.

The Complainant explains that it has made an error, and even a double error.

Its accurate corporate name is Keos Software Vertrieb GmbH.

But it has erroneously filed the Prior Trademark Registration in the name of Keos Software Service Vertrieb GmbH and the subject domain name on behalf of Keos Vertriebs GmbH.

The Complainant now asserts that all three names indeed correspond to one single company, and that on June 27, 2006, it has corrected its mistake in the German Trademark Register in order to reflect its accurate Corporate Name against its German Trademark Registration.

But at no moment in its complaint does the Complainant explains to what extent the Respondent would have breached the Regulations applicable to the present case. It simply “regrets” not to have been informed by the Registry in remaining deadline about the deficiencies of its applications, to which it would have remedied.

But Sec. 21.1 of the Sunrise Rules clearly states that “The validation agent and the Registry shall not be obliged to notify the Applicant where the above requirement are not complied with”. It is now a widely accepted principle that it is the sole responsibility of the Applicant to ensure that the Documentary Evidence supplied in support of a domain application is sufficient to substantiate the Prior Right relied upon [Case No. 294 Colt; Case No. 1242, Aponet; Case No. 1625 Teledrive].

It has to be reminded that the ADR procedure is intended to have a decision from the Registrar overturned when it is established that the rules applicable to the registration of domain names under “.eu” have been violated.

The Complainant clearly admits that the discrepancy in its Corporate Name is due to its sole mistake.

ADR proceedings are not intended to correct Applicant's mistakes [Case No. 1194 Insuresupermarket].

In the present case, the Respondent has rightfully applied the applicable rules set out under art.10 of the EC Regulation No. 874/2004, art. 14 thereof and art.20.3 of the Sunrise Rules.

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.

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.

Article 20.3. of the Sunrise Rules states that in case the documentary evidence provided does not clearly indicate the name of the applicant as being the holder or the licensee of the prior right claimed, the applicant must submit documents substantiating that it is the same person as or the legal successor to the person or company indicated in the documentary evidence.

Upon examination of the documentary evidence supplied in support of the domain application, the Respondent could only observe that the name of the applicant was different from the name of the Prior Right holder and that no explanation or official document substantiating that the Prior Right holder and the domain name applicant were the same legal person [Case No. 810 Ahold; Case No. 1627 Planetinternet] had been supplied

The Panel is well aware that art. 21.3 of the Sunrise Rules allows the validation agent to correct certain immaterial or obvious errors by leaving to its discretion the possibility to conduct investigations into the circumstances of the application, the Prior Right claimed or the Documentary Evidence produced.

But in the present case, had the validation agent conducted its own investigations, he would have observed that there was a Keos Software Vertrieb GmbH recorded in the German Companies Register, and that the trademark KEOS was registered in the German Trademark Office in the name of Keos Software Service Vertrieb GmbH, while the domain name application submitted to him was standing in the name of Keos Vertriebs GmbH.

Facing three different names :

Keos Software Vertrieb GmbH
Keos Software Service Vertrieb GmbH
Keos Vertriebs GmbH

would have just added more confusion and would not have enabled the validation agent to understand the possible relationship between those company names anyway.

At the time when the application for the domain name was examined, the Documentary Evidence supplied revealed a significant discrepancy between the name of the applicant and that of the Prior Right holder which, in the absence of any prima facie or obvious explanation, justified the decision of rejection issued by the Respondent.

The Complainant now justifies that it has amended its trademark registration so that it reflects its accurate corporate name, but the correction was only recorded in the German Trademark Register on June 2006 ; it also raises for the first time the fact that it also owns a Community Trademark for the name KEOS as well as a domain name "keos.de" ; those statements must be regarded as irrelevant as anyway, they were not actual or had not been drawn to the validation agent at the time when the domain name application was examined.

Consequently, the Panel is of the opinion that the Respondent has not breached any applicable rules or regulations and that the error in the identification of the applicant in the domain name application is due to the sole Complainant's responsibility.

Accordingly, the Panel concludes that he is satisfied that the decision of the Registry does not conflict with the Regulation.

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	**William LOBELSON**

DATE OF PANEL DECISION 2006-09-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The application for the domain name « keos.de » filed on March 24, 2006 has been rejected by the Respondent on May 25, 2006 because of a discrepancy between the name of the applicant company as mentioned in the domain name application and the trademark registration relied upon.

The Complainant explains that it erroneously identified the applicant company not only in the domain name application, but also in the trademark registration which it relies upon.

As this error is the sole Complainant's responsibility and since the Decision of Rejection does not conflict with any of the applicable rules and regulations, the Panel denies the Complaint and emphasizes that ADR proceedings are not intended to correct applicant's mistakes or offer them a second chance to regularize domain name applications.

The Panel also points out that even if the validation agent had conducted its own investigations pursuant to Art. 21.3 of the Sunrise Rules, he would not have been able to understand by himself the possible relationship between the three different company names respectively appearing in the domain name application, the trademark registration (the Prior Right) and the German Companies Register.

The Complaint is denied.