Panel Decision for dispute CAC-ADREU-002224

Case number	CAC-ADREU-002224
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Domain names	poweron.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	ELECTRONUM AEBE, Κος ΝΙΚΟΛΑΟΣ ΠΟΛΥΧΡΟΝΙΔΗΣ

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

None

FACTUAL BACKGROUND

The Complainant is a Greek company. Its Complaint in these proceedings is very brief. All that is known about the Complainant is that it owns a Greek trade mark. Exactly what that trade mark comprises is dealt with below.

The Complainant applied for registration of the domain name Poweron.eu ("the Domain Name") under the phased registration ("Sunrise") period on 13th February 2006 pursuant to article 10(1) of Commission Regulation EC number 874/2004 ("the 2004 Regulation"). It submitted in support of its application a certificate of registration for the Greek trade mark number 154140. This certificate is written in Greek script. There is a box in the bottom left hand corner which is to be contained, it is to be assumed, the mark to which the registration related. This contains, in upper case, the word POWERON. Beneath it, in a similarly sized font, are words which are written as ΠΟΡΕΡΟΝ. It now seems common ground between the parties that this second word, corresponds in Greek characters to ποβερον which would translate into POWERON.

Article 10(2) of the Regulation states that the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior rights exists, as written in the documentation which proves that such a right exists.

Section 19 (6) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules") states that "For names in other than standard Latin script, the Application must contain a transliteration into standard Latin script of the name for which the Prior Right is claimed. The transliteration must be done according to generally accepted transliteration standards….."

The validation agent concluded from its examination of the documentary evidence that the Complainant had not demonstrated that it was the holder of a prior right in the name POWERON alone. Accordingly it rejected the application for the Domain Name.

A. COMPLAINANT

The Complainant contends that the trademark certificate number 101.491 (renewed under number 154.140) sufficiently established that it has a prior right in the name POWERON. It says that the certificate protects the name POWERON when written in Latin script, and also the same name when written in Greek script. It says that the name which is protected is not POWERON ΠΟΡΕΡΟΝ but simply POWERON when written in either Greek or Latin scripts. It asserts that ποβερον which would translate into POWERON and that only one word is protected, albeit separately in Greek and Latin form. Accordingly, it says that the Respondent's decision to reject its application was wrong and should be annulled.

B. RESPONDENT

The Respondent draws attention to article 10(2) of the Regulation which provides that a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based. It says that POWERON ΠΟΡΕΡΟΝ has to be transliterated according to generally accepted transliteration standards pursuant to section 19(6) of the Sunrise Rules. On this basis, it says that the trade mark submitted should be transliterated into POWERON POWERON. Applying the Regulation, it says that the trade mark could serve as a prior right for the application of the domain name POWERONPOWERON OR POWERON-POWERON but not for the Domain Name in issue.

On this basis it contends that it was correct to reject the Complainant's application.

The Respondent draws attention to a number of ADR decisions it says supports its cases including 470 (02), 1053 (SANTOS) 1438 (ELLISON), 713 (HUETTINGER) and 1427 (BONOLLO).

Lastly, the Respondent contents that in these circumstances the Panel is not empowered to transfer the Domain Name to the Complainant.

DISCUSSION AND FINDINGS

The matter in issue in these proceedings is whether the Respondent was justified in rejecting the trade mark submitted by the Complainant for POWERON ΠΟΡΕΡΟΝ as evidence of a prior right for the word POWERON. The cases cited by the Respondent in support of its application are not directly on the point raised by this case in that they deal mainly with the treatment of marks with a stylised element which are submitted as evidence of prior rights in domain names. The present case has raised the question of how to deal with a trademark certificate, the meaning of which is unclear in terms of the exact nature of the trademark rights granted by the certificate.

The trade mark certificate is described above. It is in Greek. It would not seem that any translation of the certificate was supplied to the Respondent and none has been provided now. A translation of any explanatory wording on the certificate or, at least, the provision at the time of the Sunrise application of an explanation as to the proper way of construing the certficate might have enabled the Respondent to conclude that the mark protected was, as the Complainant asserts, POWERON, whether written in Latin or Greek characters. The Panel finds it possible that the Complainant's contentions are correct, but this is no more than surmise. There was, and is, insufficient evidence available to enable the conclusion to be reached that the Complainant's contentions are correct. Accordingly, a decision which concluded that the complete right protected by the mark was POWERON ΠΟΡΕΡΟΝ which, when transliterated amounts to POWERON POWERON would not appear to be incorrect. For that reason, it is inappropriate to take any steps in relation to the Respondent's decision to reject the trademark certificate as a prior right for the Domain Name applied for.

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	**Antony Gold**

DATE OF PANEL DECISION 2006-10-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Respondent was justified in rejecting a Greek trademark certificate which was seemingly for the words POWERON ΠΟΡΕΡΟΝ on the basis that the transliteration of the words appeared to be to POWERON POWERON and not to the domain name applied for which was POWERON. Although it was possible that the Complainant's argument that the certificate should be read as granting rights in the mark POWERON when written in either Greek or Latin script, there was insufficient evidence available to enable the Panelist to determine that this was the correct construction to apply to the trademark certificate.