Panel Decision for dispute CAC-ADREU-002230

Case number	**CAC-ADREU-002230**
Time of filing	**2006-07-21 12:30:33**
Domain names	**knauf.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Knauf Information Services GmbH, Rudolf Schott**

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

Three applications were made for the domain name knauf.eu during the second phase of the sunrise period. The first was by Stefan Knauf, the second by goNetz and the third by the Complainant, Knauf Information Services GmbH.

The Respondent accepted the first application in light of the Validation Agent's report that it was substantiated by evidence that the Applicant was the holder of a right under national law in the domain name. The evidence showed that the Applicant had a right in the name "Knauf" as a family name protected by article 12 of the German BGB.

The email address given for the Applicant in the first application was knauf@gonetz.de. The second application by the organisation goNetz gave the name Stefan Knauf in its "name" field. The addresses given in the first and second applications were both in the same town, Castrop-Rauxel, although the streets were different.

A. COMPLAINANT

The Complainant alleges that the first application was made in bad faith to secure the domain name for the second applicant which, the Complainant asserts, had no rights in the domain name. The Complainant adduces evidence that it is a licensee of a registered trademark for "Knauf" in Germany. Accordingly, the Complainant asks that the domain name be transferred to it or alternatively revoked.

B. RESPONDENT

The Respondent contends that ADR proceedings based on alleged bad faith of the Applicant must be brought against the Applicant under article 22(1)(a) of Regulation 874/2004, and not against the Registry under Article 22(1)(b). The Regulation only requires the Registry to verify the compliance of the Applicant's documentary evidence. The Registry is not in a position to defend the Applicant's good faith and it would only be fair for a person accused of bad faith to defend himself. In support of its submission the Respondent refers to the Decisions in cases nos. 532 URLAUB, 382 TOS, 191 AUTOTRADER, 335 MEDIATION, 685 LOTTO, 1239 PESA, 1867 OXFORD and 1317 FEE.

DISCUSSION AND FINDINGS

In accordance with article 22(1)(b) of Regulation 874/2004, the Panel must determine whether the Respondent's decision to accept the first application conflicts with this Regulation or Regulation 733/2002. The only ground on which it is suggested that the Respondent's decision conflicts with either Regulation is that the application was made in bad faith.

In the Panel's view, the Respondent had no reason to suppose that the first application was made in bad faith. The Complainant's case that the first application was made in bad faith is based on combining information in the first and second applications. However, in accordance with the sixth paragraph of article 14 of Regulation 874/2004, the Validation Agent must examine the applications in the order in which they were received. In accordance with the seventh paragraph, the Validation Agent must examine whether the first application has been substantiated by duly submitted documentary evidence. If so, it must notify the Respondent under the eighth paragraph, and the Respondent must register the domain name pursuant to that application under the tenth paragraph. The Validation Agent is only to consider the next application under the ninth paragraph if it finds that the first application was not substantiated by duly submitted documentary evidence. In this case, the first application was supported by the documentary evidence and there was no reason to consider the second application.

Even if the Respondent had considered the first and second applications together, in the Panel's view, the Respondent would not have been justified in concluding that the first application was made in bad faith. The mere fact that the Applicant in the first application is also the representative of the Applicant in the second application does not mean that the first application was a ruse to secure the domain name for the second Applicant having no rights as alleged by the Complainant. It is possible that the first Applicant has a right to the name as a family name and that the second Applicant has a right to it as a business identifier. The first Applicant may have decided to make both applications in order to be sure of securing the domain name, particularly given the uncertainty which existed as to how the Regulations and the Sunrise Rules would be applied.

Furthermore, even if the circumstances had led or should have led the Respondent to suspect that the first application was made in bad faith, it would not follow that accepting that application was contrary to the Regulations. Article 3 of Regulation 874/2004 provides that an application must include an affirmation that it is made in good faith, and that a material inaccuracy in this affirmation is a breach of the terms of registration. However, article 3 does not specify that an application must be rejected if bad faith is suspected. On the contrary, the final paragraph of article 3 makes it clear that in a normal case, verification by the Registry of the validity of applications may take place only after registration; and article 20 provides that the Respondent must lay down a procedure under which it may revoke domain names for breach of the terms of registration under article 3, and that this must include notice to the Registrant and an opportunity for it to take appropriate measures.

While it appears from the last clause of article 3 that the Respondent may consider the validity of sunrise applications prior to registration, it must still respect the principle underlying the second paragraph of article 20, that the Applicant must be given a fair opportunity to address the allegation made against him, particularly where the allegation is that he is acting in bad faith.

In line with the decision of the three-member Panel in Case No. 0012 EUROSTAR, the Panel considers that the procedure contemplated by article 20 should not be circumvented by treating a possible breach by the Applicant of the terms of registration under article 3 as a decision of the Registry conflicting with the Regulation which may be challenged by a proceeding under article 22(1)(b). As was observed in the EUROSTAR case, the Applicant cannot be joined as a party in such a proceeding and its rights cannot be determined therein fairly and in accordance with fundamental principles of law.

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	**Jonathan Turner**

DATE OF PANEL DECISION 2006-10-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Three applications were made for the domain name during the sunrise period. The first applicant appeared to be the same as the person identified in the "name" field of the second application made by an organisation. The Respondent accepted the first application. The third applicant invoked the ADR procedure against the Respondent, alleging that the first application was made in bad faith to obtain the use of the domain name for the second applicant which had no rights.

The Panel rejected the Complaint. The Respondent had no reason to combine the information in the first two applications; even if it had,

the information would not have shown bad faith; even if bad faith was suspected, the registration did not conflict with the Regulation: a procedure as envisaged by article 20 should be followed and not circumvented by proceedings against the Registry: Case 0012 EUROSTAR applied.