Panel Decision for dispute CAC-ADREU-002297

Case number	CAC-ADREU-002297
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Domain names	fenrisulven.eu

Case administrator

Name	Kateřina Fáberová

Complainant

Organization / Name	FenrisUlven ApS, FenrisUlven ApS

Respondent

Organization / Name	EURid

FACTUAL BACKGROUND

This Complaint arises out of the claim by the Applicant for the domain name fenrisulven.eu based on prior rights asserted in a company name and in a trade name.

An applicant must properly satisfy the documentary and evidentiary requirements under the Sunrise Rules in order to claim a prior right in a company name or trade name. All claims for prior rights under Article 10(1) and (2) of Regulation 874/2004 must be verifiable by documentary evidence demonstrating the right under the law by virtue of which it exists. Under Article 10(1) of Regulation 874/2004 prior rights include unregistered trade marks, trade names, business identifiers and company names.

Article 10(2) of Regulation 874/2004 provides that registration on the basis of a prior right must be in respect of the complete name for which the prior right exists, as set out in the relevant documentary evidence.

Article 14 of Regulation 874/2004 provides 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.”

Section 16 of the Sunrise Rules provides the requirements for documentary evidence when the prior right claimed is based on a company name. Section 16(4) provides that the following is required; “(i) an extract from the relevant companies or commercial register; (ii) a certificate of incorporation or copy of a published notice of the incorporation or change of name of the company in the official journal or government gazette; or (iii) a signed declaration from an official companies or commercial register, a competent public authority or a notary public.” It is also provided that “Such Documentary Evidence must clearly indicate that the name for which the prior right is claimed is the official company name, or one of the official company names of the Applicant”.

Where an application is based on a prior right in a trade name Section 16(5) of the Sunrise Rules provides that the documentary evidence submitted must consist of the following; a) an extract from that official register, mentioning the date on which the trade names were registered;
(b) proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to,

proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state; and (c) where registration is not obligatory the requirements of Section 12(3) of the Sunrise Rules must also be satisfied and this involves providing an affidavit signed by a competent authority, legal practitioner or professional representative accompanied by documentation supporting the affidavit.

The Complainant is a limited liability company operating as a holding company and duly incorporated in Denmark within the European Community and is the registered owner of the company name “Fenrisulven Holdings ApS”.

A. COMPLAINANT

The Complainant applied for the domain name “fenrisulven.eu” on the basis of its’ prior right to the registered company name “FenrisUlven Holding ApS” or in the trade name “FenrisUlven ApS”. As evidence of a prior right in the name “FenrisUlven” the Complainant provided the Registrar with a summary of the company details from the Danish Commerce and Companies Agency. This Agency is the official place of registration for Danish businesses.

B. RESPONDENT

The Registrar rejected the Complainant’s application on the grounds that the summary from the Danish Commerce and Companies Agency was not sufficient to satisfy the requirements for documentary evidence pursuant to Regulation 874/2006 and the Sunrise Rules.

DISCUSSION AND FINDINGS

This application is based on prior rights that the Applicant has in the company name “FenrisUlven Holding ApS”. It is also based on prior rights asserted by the Applicant in the trade name “FenrisUlven ApS”. The Panel must consider the Application in the light of the requirements of Article 10 of Regulation 874/2004 and Section 16(4) and 16(5) of the Sunrise Rules.

In order to obtain registration of a .eu domain name based on prior rights in a company name the Sunrise Rules require that the documentary evidence clearly indicates the official name of the company. Article 10(2) of the Regulation provides that registration on the basis of prior rights must be in respect of the complete name for which the prior right exists. Article 19.4 of the Sunrise Rules does state, however, that for prior rights based on company names, trade names and business identifiers, the type of company involved i.e. ApS or GmbH can be excluded from the complete name for which the prior rights exist. As the official name of the company in this case is “FenrisUlven Holding ApS” the Applicant could therefore have successfully applied for a domain name of either fenrisulvenholdingaps.eu or fenrisulvenholdings.eu. The documentary evidence provided does not comply with these requirements. It does not demonstrate a prior right to the name “Fenrisulven” alone but only to the full corporate name of “FenrisUlven Holding Aps”.

This conclusion is consistent with previous decisions. In Case 01973 the Panel found that an application made for the domain name icg.eu based on a company name for ICG Infora Consulting Group GmbH was not permissible. It noted that the company name relied on as a prior right must be identical to the domain name sought. A similar approach was followed in Case 01929 NATIONAL – BANK where the company’s prior right in the trade mark N NATIONAL – BANK was not sufficient to support the application for the domain name national-bank.eu as the domain name was not identical to the prior right. Overall this approach is consistent with the policy underlying the Sunrise Rules, namely, that priority should be accorded to domain names which are identical to a company name or to a registered trade mark. Variations of registered company names or marks might be treated as trade names but in this case the requirements of Regulation 874/2004 and Section 16 of the Sunrise Rules must be met.

In addition and by way of completeness the Panel notes that the Applicant also failed to comply with the provisions of Section 16(4)(ii) and (iii) of the Sunrise Rules. The Applicant did not provide a certificate of incorporation for the company name from an official journal or government gazette. The Applicant also failed to provide a signed declaration as evidence of the Company’s good standing from either the official companies register or some other competent public authority or notary public.

The application for fenrisulven.eu based on prior rights in the trade name “FenrisUlven ApS”, also does not meet the evidentiary requirements under Regulation 874/2004, or the Sunrise Rules. Section 16(5) of the Sunrise Rules requires that the documentary evidence clearly indicates that the name for which the prior right is claimed is the trade name of the Applicant. Article 10(2) of Regulation 874/2004 states that the domain name on which prior rights are based must be the complete name as demonstrated in the documentation provided with the application. The Applicant has simply not complied with these requirements.

The Applicant might have been entitled to claim prior rights on this basis in the domain name fenrisulven.eu if it had provided the supporting documentary evidence required under Section 16(5) of the Sunrise Rules. This evidence would have included proof of public use as provided for in the Rules. It would also have required an affidavit signed by a competent authority, legal practitioner or professional representative accompanied by documentation supporting the affidavit. No such documentary evidence has been submitted and therefore the Applicant’s claim on the basis of a trade name cannot be sustained.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint be denied.

PANELISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2006-10-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In order to obtain registration under the Sunrise Rules of a .eu domain name based on prior rights in a company name or in a trade name the domain name applied for must be identical to that prior right. The Respondent must properly satisfy the documentary and evidentiary requirements under the Sunrise Rules in order to claim a prior right in a company name or trade name. Failure to do so means that the Respondent should not succeed in an application for a domain name under the Sunrise Rules based on prior rights. The Applicant in this case has failed to comply with the necessary requirements.