Panel Decision for dispute CAC-ADREU-002312

Case number	**CAC-ADREU-002312**
Time of filing	**2006-07-13 12:11:22**
Domain names	**plan-net.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**PLAN NET concept Spezialagentur für interaktive Kommunikation GmbH, Tobias Gaertner**

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 unaware of any other legal proceedings which are pending or decided and which relate to the disputed domain name

FACTUAL BACKGROUND

On 7 Dec 2005 (at 11:14) the Complainant filed an application for the domain name www.plan-net.eu. That application (the 'First Application') was filed in the name of PlanNet concept Spezialagentur GmbH u.Co. (and not Plan Net concept GmbH, as the Complaint states).

On the same day, 7 Dec 2005, but some two hours later (at 13:11) a company called Plan-Net Services plc filed an application for the same domain. (the 'Plc Application').

In response to notification of an error in the First Application, the Complainant filed a second application on 30 December 2005 (the 'Second Application'), this time in the name of Plan.Net concept Spezialangentur fuer interaktive Kommunikation GmbH, which is the same name as that on the Complainant's supporting trade mark registration certificate for both applications. The new applicant name was the Complainant's attempt to correct the relevant error in the name of the applicant for the First Application.

The Registry rejected the First application on the basis of a mismatch between the name of the applicant and the name showing on the trade mark registration documents filed by the Complainant. The Complainant was notified of the Registry's rejection of its application on 11 May 2006.

On 29 May 2006, the Plc Application was accepted by the Registry.

A. COMPLAINANT

The Complainant considers that the Registry erred in not treating the Second Application as a correction of the error in the First Application and "instead erroneously treated the corrected version as a new application...with a worse time rank".

The Complainant states that the Registry ought to have been aware of the Complianant's intention to submit corrected documents and not to file a new application. They state "Not only was the refilling done in response to the initial objection, but it was based on the same Community trademark, by evidently the identical entity, as evidenced by an almost identical (albeit corrected) company name with an identical address. It should thus have been absolutely clear that the refilling was intended as a correction to the initial application, not as a new application."

The Complainant's entire argument therefore rests on the mistake on the part of the Registry in not connecting the First and Second

Applications and treating the Second as an amendment of the First. Specifically, the Complainant has not asked the Panel to address the correctness or otherwise of the Registry's rejection of the First Application per se.

B. RESPONDENT

The Respondent has raised a number of arguments, as follows:-

1. It states that it was correct in rejecting the First Application as a result of the mismatch between the name of the applicant and the name shown on the supporting Documentary Evidence.

2. The Plc Application was accurate and based on a valid Prior Right properly supported by Documentary Evidence.

3. As the Registry had already validated the Plc Application, it had no obligation to consider the Second Application.

4. The Complainant has acknowledged that the First Application was deficient and it has not questioned the Registry's rejection of that application.

5. The Comlainant has not disputed the acceptance of the Plc Application or the grounds upon which that application was based.

6. The Respondent contends that the Complainant has no right to question the rejection of the First Application as the present ADR proceedings were commenced more than 40 days from when the Complainant was informed about the rejection of the First Application. Moreover, (i) the present ADR proceedings should not be used as a means of correcting the deficiencies in the First Application, and (ii) the documentary evidence submitted in the Second Application was outside the deadline for submission of docuentary evidence for the First Application and therefore cannot be used in support of the First Application.

The Respondent's Response contains much in the way of detail but I consider that the above represent the main arguments.

DISCUSSION AND FINDINGS

This dispute seems to me one borne out of genuine mistake; or, rather, two mistakes.

The first mistake was that the Complainant did not include its full, accurate company name on the First Application. Importantly, the name on the First Application did not match the name shown on the Complianant's supporting trade mark registration. The second mistake seems to be that rather than try to notify the Registry or have the First Application amended, the Complainant decided to file a further application as a means of trying to remedy this error.

The Complainant's main argument is that the Registry ought to have been aware that the Second Application merely amended the First and therefore the accuracy of the First Application should have been ensured and its priority date maintained.

It is worth noting that there is nothing in the Complaint which indicates that the Complainant explored other possible avenues for correcting the First Application. Although this is beyond my remit, it would have seemed quite sensible to contact the Registry, put it on notice of the error and try to make sure that the relevant files reflected this, so that the appropriate validation agent was put on notice. There is no sign in the evidence before me that the Complainant looked into what would be the proper or most effective means of trying to corect the error. It simply filed a second application. The Complainant has also provided no evidence that it sought to put the Registry on notice that the two applications were connected.

In the scope of an undertaking as large and as complex as the launch of the .eu domain, with all the associated administrative complexities, it would place an unnecessarily heavy burden on the Registry to somehow know that two separate applications were connected. I therefore have to reject the Complainant's argument that the Registry, with apparently no notification from the Complainant of such, ought to have known that two separate applications, in two different names an almost a month apart, were somehow connected. I consider that the Registry was correct to treat these two applications separately and that it had no basis for interpreting one as simply an amendment of the earlier one.

That issue dealt with, there are no other issues raised by the Complainant which I have been asked to address. The Complainant has not queried the Registry's decision in rejecting the First Application - which is surprising in view of only a slight difference between the First Application applicant and the name on the trade mark which comprised the documentary evidence for the First Application. Nevertheless, that is the case and a full exploration of the correctness of that decision is beyond my remit here.

Given this, the First Application falls and there is also no basis on which to question the Registry decision in allocating the domain to Plan-Net Services plc. The Complainant has not questioned the Plc Application which means that the Second Application was doomed to fail on the first-come, first-served principle.

In reaching this decision, the various points raised by the respondent have I believe been addressed, with the exception of the points in section 6, as numbered in part B above. The Respondent maintains that this ADR could not have dealt with issues relating to the First Application as the deadline for filing an ADR had expired by the time this ADR was issued. I do not agree with this. Section 22(2) of the Sunrise Rules states that any interested party may initiate an ADR within 40 days of the Registry decision to register the domain name concerned. I therefore consider that the Complainant could have validly questioned the Registry decision on the First Application within the context of the present ADR and that time, for ADR purposes, started running from the point when the Registry allocated the domain name and not when it rejected the First Application.

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	**James Mitchell**

DATE OF PANEL DECISION 2006-10-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

This Complaint concerns the attempted correction of a mistake in the Complainant's First Application for the domain name www.plan-net.eu, which it sought to correct by filing a further application for the same domain some three weeks later. However, an application for the same domain had been filed in the intervening three week period by a third party, who were subsequently granted the domain.

The Complainant's only argument is that the Registry ought to have been aware that the Second Application merely amended the First and therefore the accuracy of the First Application should have been ensured and its priority date maintained.

Nothing in the Complaint indicates that the Complainant explored other possible avenues for correcting the First Application. The Complainant did not try to contact the Registry, put it on notice of the error and so try to make sure that the relevant files reflected this, so that the appropriate validation agent was put on notice. There is no sign in the evidence that the Complainant looked into what would be the proper or most effective means of trying to corect the error. It simply filed a second application. The Complainant has also provided no evidence that it sought to put the Registry on notice that the two applications were connected.

In the scope of an undertaking as large and as complex as the launch of the .eu domain, with all the associated administrative complexities, it would place an unnecessarily heavy burden on the Registry to somehow know that two separate applications were connected. I therefore have to reject the Complainant's argument that the Registry, with apparently no notification from the Complainant of such, ought to have known that two separate applications, in two different names an almost a month apart, were somehow connected. I consider that the Registry was correct to treat these two applications separately and that it had no basis for interpreting one as simply an amendment of the earlier one.

That issue dealt with, there are no other issues raised by the Complainant which I have been asked to address. The Complainant has not queried the Registry's decision in rejecting the First Application, nor has it questioned the Registry decision in allocating the domain to the third party applicant. The Complainant's Second Application was therefore doomed to fail on the first-come, first-served principle.

The Compaint is therefore denied.