Panel Decision for dispute CAC-ADREU-002355

Case number	**CAC-ADREU-002355**
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Domain names	**postmix.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**EGI Post-Mix Ausschank- und Kontrollsysteme GmbH, Robert Eggler**

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

On 7 December 2005, day of commencement of the Sunrise Period for the registration of .eu domain names, an application for registration of the domain name "postmix.eu" (the "Domain Name") was filed on behalf of an entity called "EGI Post-Mix GmbH" (the "Application").

On 26 December 2005, documentary evidence in support of the Application was submitted. The evidence consisted of a Certificate by the German Trademark Office that the trademark "POSTMIX" belongs to a German company called "EGI Post-Mix Ausschank- und Kontrollsysteme GmbH".

On 2 June 2006, EURid, acting as Registry in accordance with Article 14 of the Regulation, analysed the Application and rejected it.

On 12 July 2006, before the expiration of the forty-day period provided for in Section 22(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules"), "EGI Post-Mix Ausschank- und Kontrollsysteme GmbH" (the "Complainant") filed a Complaint (the "Complaint") before the ADR Centre for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "ADR Centre").

The Complaint was addressed against EURid's decision of 2 June 2006.

On 28 July 2006, EURid provided the registration information requested by the ADR Centre.

The ADR Centre issued a notice of commencement of proceedings on 2 August 2006.

EURid filed its response to the Complaint within the time limit provided for.

A. COMPLAINANT

The Complainant's Complaint requests the annulment of EURid's decision not to assign the Domain Name to them and requests that the Domain Name be attributed to them.

The Complainant considers that the rejection of the Application by EURid is unnecessarily formal, since it is based on the fact that the

name contained in the Application ("EGI Post-Mix GmbH") was different from the Complainant's full name ("EGI Post-Mix Ausschank- und Kontrollsysteme GmbH"), as holder of the prior right on which the Application was based. The Complaint asserts that it is the same entity, with the same address and that the difference is a consequence of the use of the Complainant's short postal address name in the Application.

B. RESPONDENT

EURid's response contends that, in accordance with the Sunrise Rules, the applicant had the burden to explain the difference between the name that appears in the Application and that in the trademark certificate, but it failed to do so when submitted the documentary evidence. In addition, the response states that the Complainant modified, in breach of Article 8(3) of the Sunrise Rules, the content of the cover letter generated on the web site of the Registry, to replace the name used in the Application for the full name which appears as the trademark owner.

DISCUSSION AND FINDINGS

The present case deals with a dispute that has arisen in a number of occasions in .eu domain name cases and to which different panels have given different solutions. Some of these decisions have been cited by the parties in support of their respective arguments. The question is whether a discrepancy between the name appearing in the application to register a .eu domain name during the Sunrise Period and the full name of the holder of the prior right supporting the application should lead to rejection of the application.

The Complainant relies on the decisions of the ADR cases No. 181 (OSCAR) and 253 (SCHOELLER) that annulled two EURid's decisions to reject two applications, on the basis that, notwithstanding that the names of the applicant and the prior right holders were not identical, the facts demonstrated that the Complainant and the trademark owner were the same entity.

EURid relies on other ADR cases such as No. 1242 (APONET), 1625 (TELEDRIVE) or 2075 (E-MOTION) that confirmed EURid's decisions rejecting applications on the basis that the names of the applicants were not coincident with those of the prior rights submitted with the documentary evidence.

Article 14 of the Commission Regulation (EC) No. 874/2004, of 28 April 2004 (the "Regulation") provides that the role of the validation agent is to verify, solely on the basis of the documentary evidence submitted, whether or not the applicant holds a prior right. Similarly, Section 11.3 of the Sunrise Rules provides that the applicant must be the holder of a prior right. Section 20.3 of the Sunrise Rules provides that, in case of discrepancies between the identity of the applicant and that of the holder of the prior right, "…the Applicant must submit official documents sustaining that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right".

In the present case, the Complainant failed to do so. The Complainant filed no documents in support nor gave any reasons for this discrepancy when submitting its documentary evidence. Therefore, the decision of EURid must be considered adopted in accordance with the Regulation and the Sunrise Rules (although in cases like this, where it seems clear that the applicant and the holder of the prior right are the same entity, it would be advisable that the validation entity had made use of the discretion provided for in Section 21.3 of the Sunrise Rules, to conduct its own investigations into the circumstances of the application, the prior right and the documentary evidence).

The cases alleged by the Complainant (ADR cases No. 00181 (OSCAR) and 00253 (SCHOELLER)) referred to situations in which the Complainant alleged that the reason for entering a name in their applications which differed from that of the holder of the prior right was that the automated system of the registrar with which the application was filed, only accepted a limited number of characters (30) which was not sufficient to type the applicants' full names. In that case, the applicant had complied with the Regulation and the Sunrise Rules insofar as it was possible. This is not the situation in the current case, where this reason has not been alleged by the Complainant.

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	**Alejandro López Ortiz**

DATE OF PANEL DECISION 2006-10-23

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a Complaint against EURid, in respect of EURid's decision not to grant the domain name "postmix.eu" to it.

The Panel decided to dismiss the Complaint.

EURid's task is to verify, solely with the basis of the documentary evidence submitted, whether or not the applicant holds a prior right. Where there is a discrepancy between the name of the applicant and the name of the holder of the prior right in the documentary evidence submitted, the burden to prove that difference lies with the applicant.

In the current case, the Complainant failed to file any documents in support or to give any reasons for the discrepancy when submitting its documentary evidence. Therefore, the decision of EURid must be considered adopted in accordance with the Regulation and the Sunrise Rules and the Complaint shall be denied.