Panel Decision for dispute CAC-ADREU-002358

Case number	**CAC-ADREU-002358**
Time of filing	**2006-07-21 11:55:10**
Domain names	**currency.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**M. Oomens**

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 of which the Panel is aware.

FACTUAL BACKGROUND

On December 7, 2005 an application was made during the Sunrise Period to register the domain name currency.eu, based on the claimed prior right in Maltese registered trademark C&U&R&R&E&N&C&Y, No.44008, registered on August 29, 2005 in the name of Lively Ltd, of Yorkshire, England.

On June 1, 2006, the Respondent rejected the application.

A. COMPLAINANT

The documentary evidence, provided within the due time, included both the trademark registration certificate and a Licence Declaration showing the Domain Name Applicant, Roos IT, of Amstelveen, Netherlands, as licensee of the trademark from Lively Ltd. The entitlement of the Domain Name Applicant to register the domain name was thus demonstrated.

The Complaint included copies of both documents.

B. RESPONDENT

The documentary evidence provided within the due time did not include the Licence Declaration. The provision of that document with the Complaint comes too late for it to be considered.

DISCUSSION AND FINDINGS

Article 14 of Commission Regulation (EC) No 874/2004 requires every applicant to submit, within forty days from the submission of its application for the domain name, documentary evidence showing that he or she is the holder of the prior right claimed. The issue is therefore not whether the applicant is the holder of a prior right but rather whether the applicant demonstrates this within forty days.

In light of the conflicting contentions of the parties as to what constituted the documentary evidence submitted within the forty day period, the Panel cannot be satisfied that that documentary evidence included the Licence Declaration. The Complainant has therefore failed to discharge its burden of proof in this regard.

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	Alan Lawrence Limbury

DATE OF PANEL DECISION 2006-10-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

On December 7, 2005 an application was made during the Sunrise Period to register the domain name currency.eu, based on the claimed prior right in Maltese registered trademark C&U&R&R&E&N&C&Y, No.44008, registered on August 29, 2005 in the name of Lively Ltd, of Yorkshire, England. On June 1, 2006, the Respondent rejected the application.

The Complainant contends that the documentary evidence, provided within the due time, included both the trademark registration certificate and a Licence Declaration showing the Domain Name Applicant, Roos IT, of Amstelveen, Netherlands, as licensee of the trademark from Lively Ltd. The entitlement of the Domain Name Applicant to register the domain name was thus demonstrated. The Complaint included copies of both documents.

The Respondent contends that the documentary evidence provided within the due time did not include the Licence Declaration. The provision of that document with the Complaint comes too late for it to be considered.

The Panel finds that Article 14 of Commission Regulation (EC) No 874/2004 requires every applicant to submit, within forty days from the submission of its application for the domain name, documentary evidence showing that he or she is the holder of the prior right claimed. The issue is therefore not whether the applicant is the holder of a prior right but rather whether the applicant demonstrates this within forty days.

In light of the conflicting contentions of the parties as to what constituted the documentary evidence submitted within the forty day period, the Panel cannot be satisfied that that documentary evidence included the Licence Declaration. The Complainant has therefore failed to discharge its burden of proof in this regard.

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