Panel Decision for dispute CAC-ADREU-002448

Case number	**CAC-ADREU-002448**
Time of filing	**2006-07-27 14:02:06**
Domain names	**ecotours.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Eco Economy Tours**

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 not aware of any other legal proceedings in relation to the disputed domain name <ecotours.eu>.

FACTUAL BACKGROUND

The Complainant, Eco Economy Tours, has requested annulment of the decision made by the Respondent, EURid, regarding the domain name <ecotours.eu>. The Complainant has further requested the disputed domain name to be transferred to the Complainant.

The disputed domain name <ecotours.eu> was applied by the Complainant during the first phase of the phased registration period, i.e. the Sunrise I period.

The Complainant submitted documentary evidence on its registered national German trademark ECO TOURS to the validation agent timely within the 40 day deadline given.

The Respondent refused the Complainant's application on grounds that the documentary evidence was not sufficient to prove the claimed prior right.

The Complaint was first filed in German on 27 July 2006 and upon the request by ADR Centre later filed in English, which is the language of the ADR Proceedings in this case. The hardcopy version of the amended Complaint in English was received by the ADR Centre on 14 August 2006. The formal date of the commencement of the ADR Proceeding is 15 August 2006.

The Respondent filed a response to Complaint on 2 October 2006.

The Complainant filed on 24 October 2006.a Nonstandard Communication in order to produce further arguments against the decision made by the Respondent.

A. COMPLAINANT

The Complainant makes the following contentions:

The Complainant contends that its application for the domain name <ecotours.eu> should have been accepted by the Respondent, since the Complainant is the rightful holder of the national German trademark registration no. 1017054 ECO TOURS, registered for the Complainant on 5 October 1979.

The Complainant presents that the documentary evidence for their application was duly and timely submitted within the 40 day deadline.

The Complainant also brings forward that the decision to reject the application was not properly reasoned by EURid.

In the further Communication the Complainant contends that although the formal name of the applicant is Eco Economy Tours Reise und Service GmbH, it should have been obvious for the validation agent that the Applicant's name Eco Economy Tours can only be an abbreviation of the Applicant's and the right holder's name.

The Complainant further submits that the cover letter for the documentary evidence contained a stamp "Eco Economy Tours Reise- und Service GmbH" right above the applicant's signature, as well as the applicant's warranty and guarantee on the fact that the undersigned is the applicant and that the applicant is the holder or licensee of the prior right claimed.

The Complainant also contends that the German trademark office, among other national offices, accepts the abbreviation Eco Economy Tours to stand for Eco Economy Tours Reise- und Service GmbH in short.

B. RESPONDENT

The Respondent makes the following contentions:

The Respondent submits that in accordance with the Article 14 of the Commission Regulation (EC) 874/2004 the Applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on this documentary evidence submitted by the Applicant the validation agent shall examine whether the applicant has prior rights on the name.

Further, the Respondent states that the Section 20 (3) of the Sunrise Rules provides that in case the documentary evidence provided does not clearly indicate the name of the applicant as being the holder or the licensee of the prior right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer etc.) the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person or company indicated in the documentary evidence as being the holder of the prior right.

The Respondent further submits that the documentary evidence submitted by the Complainant consisted of the following:
1) A trademark certificate demonstrating that the German trademark no. 1017054 ECO TOURS had been registered by the company ECO ECONOMY TOURS REISE UND SERVICE GMBH, Baseler Str. 35, 6000 Frankfurt, Germany.
2) A certificate of renewal of the German registration no. 1017054 ECO TOURS, dated year 1999, which mentioned that at the time of the renewal the trademark was registered in the name of ECONOMY TOURS REISE UND SERVICE GMBH, Kirchner Str. 6-8, 60311 Frankfurt.

The Complainant's, and thereby also the applicant's name is ECO ECONOMY TOURS and the address is Sophienruhe 2, 65812 Bad Soden, Germany.

The Respondent contends that since the Complainant filed its application for the domain name <ecotours.eu> in the name of Eco Economy Tours and did not file any evidence substantiating that the applicant is the same entity or a legal successor of the holder of the trademark right claimed as a prior right as documentary evidence, the validation agent concluded that it was not demonstrated that the Complainant was the holder or the licensee of a prior right on the name ECO TOURS.

The Respondent finally submits that since the validation agent and the Respondent were faced with an application in which the Complainant (i.e. the Applicant) and the owner of the trademark had different company names as well as different addresses, the Respondent had no right and a fortiori no obligation to speculate on the relationship between the Complainant and the owner of the trademark and therefore the Respondent's decision to reject the Complainant's application was correct.

DISCUSSION AND FINDINGS

The Panel has considered the relevance of the unsolicited further Communication submitted by the Complainant and has decided to take the communication into account when deciding on the case. This is due to that the Panel is willing to gain as much information as possible on the circumstances of the case in order to render a justified decision.

The Article 14 (4) of the Commission Regulation (EC) 874/2004 states that the Applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on the Article 14 (10) the Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure set out in the Article 14.

The Section 20 (3) of the Sunrise Rules provides that in case the documentary evidence provided does not clearly indicate the name of the applicant as being the holder or the licensee of the prior right claimed (e.g. because the applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer etc.) the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person or company indicated in the documentary evidence as being the holder of the prior right.

The Section 21 (2) of the Sunrise Rules states that the validation agent determines exclusively on the basis of a prima facie review of the submitted documentary evidence if the applicant has a valid prior right to the applied domain name. Additionally, the Section 21 (3) gives the validation agent a right in its sole discretion to conduct further investigations into the circumstances of the application.

The name of the Complainant (i.e. the Applicant) Eco Economy Tours was different from the name indicated in the trademark registration certificate as the name of the holder of the trademark right: eco ECONOMY TOURS Reise und Service GmbH. The name of the Complainant was also different from the name indicated in the trademark registration renewal certificate as the name of the holder of the renewed trademark right: ECONOMY TOURS Reise und Service GmbH.

Further, the address of the Complainant was different from the address indicated in the trademark registration certificate as the address of the holder of the trademark right and also different from the address indicated in the trademark registration renewal certificate as the address of the holder of the renewed trademark registration.

At the time of submitting the documentary evidence to the validation agent the Complainant did not submit any official documentation evidencing that the Complainant (i.e. the Applicant) is the same company as the holder of the trademark right, which was claimed as a prior right.

In the Complaint the Complainant has not submitted any such documentation, which would clearly evidence that the Complainant is the same company as the holder of the trademark right, which was claimed as a prior right. Neither has the Complainant provided such documentation in their further writ. Further, the Complainant has given no explanation on why the addresses of the Complainant and the trademark holders are all different from one another.

In accordance with the Commission Regulation (EC) 874/2004 and the Sunrise Rules the burden of proof on demonstrating that the Applicant of a .eu domain name is the holder of the prior right claimed in the application is on the Applicant. Without documentation evidencing that the Complainant is the same company as the holder of the trademark registration no. 1017054 ECO TOURS, which was claimed as a prior right in the application for the domain name <ecotours.eu>, it was not clear to the validation agent whether the Applicant was the same company as or the legal successor to company indicated in the documentary evidence as the holder of the prior right.

Even if the validation agent had conducted investigations of its own, it remains very questionable whether it would have been able to conclude whether or not the three companies were one and the same, as the circumstances have not become clear to the Panel even though the Panel has carefully examined all the submissions made by the Complainant and additionally has conducted internet searches on its own initiative.

Even though it can well be argued that the reasoning for rejection made by the Respondent should be more exhaustive, it must be noted that the time scaled process created for the phased Sunrise registrations is not likely in practice to allow truly well founded reasoning in each notification of rejection.

Based on the foregoing, the Panel finds that the decision made by the Respondent to reject the application made by the Complaint was justified and therefore rejects the Complaint.

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	**Sanna Aspola**

DATE OF PANEL DECISION 2006-11-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Eco Economy Tours, has requested annulment of the decision made by the Respondent, EURid, regarding the domain name <ecotours.eu>. The Complainant has further requested the disputed domain name to be transferred to the Complainant.

The disputed domain name <ecotours.eu> was applied by the Complainant during the first phase of the phased registration period, i.e. the Sunrise I period. The Complainant timely submitted documentary evidence on its registered national German trademark ECO TOURS to the validation agent. The Respondent refused the Complainant's application on grounds that the documentary evidence was not sufficient to prove the claimed prior right.

The name of the Complainant (i.e. the Applicant in the application) Eco Economy Tours was different from the name indicated in the trademark registration certificate as the name of the holder of the trademark right: eco ECONOMY TOURS Reise und Service GmbH. The name of the Complainant was also different from the name indicated in the trademark registration renewal certificate as the name of the holder of the renewed trademark right: ECONOMY TOURS Reise und Service GmbH. Further, the address of the Complainant was different from the address indicated in the trademark registration certificate as the address of the holder of the trademark right and also different from the address indicated in the trademark registration renewal certificate as the address of the holder of the renewed trademark registration.

In accordance with the Commission Regulation (EC) 874/2004 and the Sunrise Rules the burden of proof on demonstrating that the Applicant of a .eu domain name is the holder of the prior right claimed in the application is on the Applicant. Without documentation evidencing that the Complainant is the same company as the holder of the trademark registration no. 1017054 ECO TOURS, which was claimed as a prior right in the application for the domain name <ecotours.eu>, it was not clear to the validation agent whether the Applicant was the same company as or the legal successor to company indicated in the documentary evidence as the holder of the prior right.

Even if the validation agent had conducted investigation of its own, it remains very questionable whether it would have been able to conclude whether or not the three companies were one and the same, as the circumstances have not become clear to the Panel even though the Panel has carefully examined all the submissions made by the Complainant and additionally has conducted internet searches on its own initiative.

Based on the foregoing, the Panel finds that the decision made by the Respondent to reject the application made by the Complaint was justified and therefore rejects the Complaint.