Panel Decision for dispute CAC-ADREU-002452

Case number	CAC-ADREU-002452
Time of filing	2006-07-27 14:09:45
Domain names	macgregor-group.eu

Case administrator

Name	Kateřina Fáberová

Complainant

Organization / Name	MacGregor Group AB, Valter Höijer

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

The applicant of the domain name macgregor-group.eu is MacGregor Group AB, a company established by Swedish legislation and registered in the Swedish Trade Register.

The application for macgregor-group.eu was filed through the accredited .eu Registrar MarkMonitor International Limited, during the second phase of the Sunrise Period, on February 7th, 2006 and was received by the Registry at 11:04:02.316.

The Documentary Evidence filed by the Applicant, (i.e. a company extract) was printed out from the European Business Register database, which has a direct link to the Swedish Companies Registration Office www.bolagsverket.se, which is the official on-line database for Swedish Trade Names.

The Registry has rejected Complainant's application for registration of the domain name macgregor-group.eu on the grounds that while in the request it was stated that the documentary evidence would be in Latvian, the documentary evidence filed was in Swedish.

A. COMPLAINANT

Complainant affirms that:

1. The Applicant of the domain name macgregor-group.eu is MacGregor Group AB, a company established by Swedish legislation and registered in the Swedish Trade Register.

2. According to Article 10 of the Commission Regulation (EC) No 874/2004 of 28 April 2004, Applicant claims a Prior Right to the disputed domain name on the basis of a company name protected under the law of one of the member states.

3. Complainant affirms that, According to Section 16(1) of the "Sunrise Rules", by providing EURid with the MacGregor Group's company extract, the Applicant sufficiently proved its prior rights on the domain name at issue.

4. Finally, Complainant insists, that the Documentary Evidence clearly shows that the official company name of the Applicant is MacGregor Group Aktiebolag and that the company name was registered on March 3, 1984. Based on the company name MacGregor Group Aktiebolag the Complainant is therefore entitled to apply for the domain names "macgregorgroup.eu" and "macgregor-group.eu".

Complainant’s Remedies Sought are:

1. The annulment of the decision taken by the Registry, and
2. The activation of the domain name macgregor-group.eu

B. RESPONDENT

Respondent’s response to complainant’s contentions is here below reported.
«Whereas in the request it was stated that the documentary evidence would be in Latvian (LV), the documentary evidence was in another language (SV). It should be noted that the validation process is a fully automated process. The effect of choosing the Latvian language (by the registrar in the case at hand) is that the documentary evidence would be sent to the validation agent's Latvian office, which cannot correctly interpret documents in Swedish. Therefore, the application was rejected by the validation agent».

DISCUSSION AND FINDINGS

Section 8 paragraph 4 of the Sunrise Rules affirms: “Documentary Evidence in another language than the language chosen in accordance with these Sunrise Rules will not be considered.”
It then appears that the Validation Agent, in accordance with the above provision, considering that the company extract, filed by the Applicant was in Swedish and not in Latvian as indicated in the request, correctly rejected the application.
Nevertheless the Panel observes the following:
The principal obligations of EURid regarding its decisions to register .eu domain names during the phased registration period are regulated by Article 14 of the Public Policy Rules, the final paragraph of that Article states that EURid shall register the domain name on a 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 second, third and fourth paragraphs of Article 14, here below reported:

Article 14, Paragraph 2: «The Registry, upon receipt of the application, shall block the domain name in question until validation has taken place or until the deadline passes for receipt of documentation. If the Registry receives more than one claim for the same domain during the phased registration period, applications shall be dealt with in strict chronological order».

Article 14, Paragraph 3: «The Registry shall make available a database containing information about the domain names applied for under the procedure for phased registration, the applicants, the Registrar that submitted the application, the deadline for submission of validation documents, and subsequent claims on the names».

Article 14, Paragraph 4: «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. The documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected».

Therefore, none of the provisions above has been violated by the Applicant, that on the contrary demonstrated the existence of a prior right with regard to the disputed domain name. This prior right was indeed verifiable through the documentary evidence submitted by the Applicant.
In addition, Article 14 paragraph 7 of the Public Policy Rules, points out (states) that: «The relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name».
That the Validation agent has the duty to examine whether the Applicant has prior rights on the name is also affirmed in the Sunrise Rules.
In fact: Section 21 Sunrise Rules – Examination by the Validation Agent states:
1. On the instructions of the Registry, the Validation Agent appointed by the Registry shall verify:
(i) whether the official requirements set out in Section 8 have been complied with; and
(ii) whether the requirements for the existence of a Prior Right to the name claimed by the Applicant in the application is fulfilled.
..omissis..
The use of the conjunction “and” between paragraph 1. (i) and 1. (II) has the clear scope to define precisely that the Validation shall verify not only Applicant’s compliance with the requirement set out in Section 8, but also whether the requirements for the existence of a Prior Right to the name claimed by the Applicant in the application is fulfilled.
In addition, Section 21 Sunrise Rules paragraph 2. states: «The validation agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received”».. omissis..
In this case, before rejecting Complainant’s application for the domain name macgregor-group.eu, the Validation Agent and EURid

should have verified whether or not the applicant demonstrated to be the the holder of a valid prior right.
On the contrary, it seems from the case file, that neither the Validation Agent or EURid examined the documentary evidence in order to verify whether the applicant had a valid prior right or not. Indeed, it appears that the application was rejected only on the basis that the company extract filed, was in Swedish and not in Latvian as indicated in the request .
In other words, it seems that there was no examination of the contents of the Documentary Evidence and fortiori of the Applicant's prior rights.

In fact, the Documentary Evidence provided by the Applicant, i.e. the MacGregor Group's Company Extract, contained all the information needed (and requested by both the EC Regulations and Sunrise Rules) to prove Applicant's prior rights on the name "macgregorgroup". Indeed, the relevant data were expressed under titles such as "Identifikation", "StatusInformation", "RegistreringsInformation" and KontaktInformation". All words easily intelligible by any individual familiar at least with one of the following languages: English, French, Italian and German.

It is the Panel's view that, in the case that the Validation Agent appointed to examine the application under reference, was unfamiliar with any of the languages above indicated, he should have turned to someone else for help in translating the document, appealing to the faculty given to him by the provision under Paragraph 3 of Section 21 Sunrise Rules which states that: «The Validation Agent is not obliged, but it is permitted in its sole discretion, to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced».

The Applicant met all the requirements set forth in the Regulation by sending in time the Documentary Evidence proving his prior rights to the approved Registrar. The Complainant carried out all reasonable and necessary actions compliant with the Regulation to protect its prior rights.
Taking into consideration the principles set out in "Sunrise rules" and Regulation EC 733/2002, and in consideration of the aim of the phased registration procedure stressed by paragraph 12 of Regulation EC 874/2004, which affirms that: «In order to safeguard prior rights recognised by Community or national law, a procedure for phased registration should be put in place. Phased registration should take place in two phases, with the aim of ensuring that holders of prior rights have appropriate opportunities to register the names on which they hold prior rights. The Registry should ensure that validation of the rights is performed by appointed validation agents. On the basis of evidence provided by the applicants, validation agents should assess the right which is claimed for a particular name. Omissis..», the Respondent should have considered the Documentary Evidence sent by the Applicant, through the accredited Registrar, to the Validation Agent.

Therefore the Panel having considered all the above and in accordance with Article 11, paragraph 2 of the Public Policy Rules, which provides that: «In the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation (EC No 874/2004) or with Regulation (EC) No 733/2002», finds that the Respondent's decision conflicts with the relevant EC-Regulations.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the EURID's decision be annulled.

PANELISTS

Name	**Fabrizio Bedarida**

DATE OF PANEL DECISION 2006-10-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Applicant of the domain name macgregor-group.eu is MacGregor Group AB, a company established by Swedish legislation and registered in the Swedish Trade Register. According to Article 10 of the Commission Regulation (EC) No 874/2004 of 28 April 2004, applicant claims a Prior Right to the disputed domain name on the basis of a company name protected under the law of one of the member states. Complainant affirms that, according to Section 16(1) of the "Sunrise Rules", by providing EURid with the MacGregor Group's company extract, the Applicant sufficiently proved its prior rights on the domain name at issue. Complainant requests the annulment of the decision taken by the Registry, and the activation of the domain name macgregor-group.eu.

Respondent, pointing out that the validation process is a fully automated process, affirmed that the Registry has rejected Complainant's application for registration of the domain name macgreor-group.eu on the grounds that while in the request it was stated that the

documentary evidence would be in Latvian, the Documentary Evidence filed was in Swedish.

The Panel observed the following:
The principal obligations of EURid regarding its decisions to register .eu domain names during the phased registration period are regulated by Article 14 of the Public Policy Rules, the final paragraph of that Article states that EURid shall register the domain name on a 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 second, third and fourth paragraphs of Article 14. None of the provisions above has been violated by the Applicant, that on the contrary demonstrated the existence of a prior right with regard to the disputed domain name. In addition, Article 14 paragraph 7 of the Public Policy Rules, points out that: «The relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name».
In this case, it seems from the case file that the application was rejected only on the basis that the company extract filed was in Swedish and not in Latvian as indicated in the request. In other words, it seems that there was no examination of the contents of the Documentary Evidence and fortiori of the Applicant's prior rights. The Applicant met all the requirements set forth in the Regulation by sending in time the Documentary Evidence proving his prior rights to the approved Registrar. Taking into consideration the principles set out in "Sunrise rules" and Regulation EC 733/2002, and in consideration of the aim of the phased registration procedure stressed by paragraph 12 of Regulation EC 874/2004, it is the Panel's view that the Respondent should have considered the Documentary Evidence sent by the Applicant, through the accredited Registrar, to the Validation Agent.

Therefore the Panel finds that the Respondent's decision conflicts with the relevant EC-Regulations.