Panel Decision for dispute CAC-ADREU-002455

Case number	CAC-ADREU-002455
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Domain names	travehorizon.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	ENEKO SA - TRAVELHORIZON, Sergio Branco

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, which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant applied for the domain name TRAVELHORIZON (hereafter “the Domain Name”) on 23 January 2006, claiming as prior right a French trademark registration for “Travelhorizon” (hereafter “the Trademark”).

The Complainant submitted within the deadline as documentary evidence a certificate of the Trademark registered in its name i.e. Eneko SA.

However the application document mentioned as the applicant’s name “Travelhorizon” and not the name of the Complainant (Eneko SA).

The Complainant did not submit documentary evidence substantiating that the applicant (Travelhorizon) was licensed to rely on the French trademark owned by Eneko SA or that it was the same persone as Eneko SA.

Based on the documentary evidence received, the validation agent found that the applicant did not demonstrate that is was the holder or the licensee of the trademark relied upon as a prior right.

A. COMPLAINANT

The Complainant argues that it applied for the Domain Name not under its company name “Eneko SA” as mentioned on the trademark registration but under its trade name “Travelhorizon”.

The Complainant attaches to its complaint a copy of the commercial register of the Commercial Court of Aix en Provence testifying that the trade name of the company named “Eneko SA” is “Skihorizon – Travelhorizon”.

Therefore the Complainant requests the Panel to annul the Respondent’s decision and to transfer the Domain Name to the Complainant.

B. RESPONDENT

The Respondent argues that the Regulation and the Sunrise Rules clearly and certainly provides that the burden of proof is with the applicant (i.e. the Complainant) to demonstrate that it is the holder of the prior right claimed in its application.

When there is a difference between the name of the applicant and the name of the owner or the licensee of the prior right, the applicant must submit official documents explaining this difference.

The Regulation and the Sunrise Rules gives all the holders of prior rights the opportunity to demonstrate their prior rights during the phased registration which is an exception to the basic principle of the first-come first-served. In order to benefit from this opportunity to demonstrate its prior rights , the applicant must comply with the strict procedure laid out in the Regulation for dealing with the thousands of applications received during the phased registration and making sure that these applications are substantiated. If the applicant fails to do so, its application must be rejected. During the Sunrise rules the first applicant in the line does not have an unconditional right to the domain name, but only has an opportunity to try to clearly demonstrate that it is the holder of a prior right.

The Complainant in the present case did not seize this opportunity, as based on the documentary evidence the Complainant did not demonstrate it was the holder or licensee of the Trade Mark.

DISCUSSION AND FINDINGS

Under article 22 of the Public Policy Regulation the Panel has to assess whether the decision to reject the application for the Domain Name taken by Respondent conflicts with the Regulation 733/2002 and/or the Public Policy Regulation.

Having considered the Factual Background and the Parties' Contentions outlined above, the Panel sets out its the decision below.

Article 10.1 of the Public Policy Regulation provides that only holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply for a domain name during the sunrise registration period. Article 14 of the Public Policy Regulation provides that all claims for prior rights under Article 10.1 and 10.2 must be verifiable by documentary evidence which demonstrates the right under the law by virtue it exists.

The examination of the prior right claim by the validation agent is exclusively made on the basis of a prima facie review of the first set of documentary evidence received. The validation agent is not obliged to conduct its own investigation into the circumstances of the application (Section 21.2 and 21.3 of the Sunrise Rules).

The burden of proof was with the Complainant to substantiate that it is the holder or the licensee of the prior right invoked (see a.o. Cases 127 (BPW); 219 (ISL); 294 (COLT); 551 (VIVENDI)).

In the present case the documentary evidence submitted by the Complainant did not indicate the name of the applicant ("Travelhorizon") who applied for the Domain Name as being the holder of the prior right claimed. The Trade Mark registration mentioned as trade mark holder "Eneko SA".

When the name of the applicant and the name of the holder of the prior right differ, Section 20 of the Sunrise rules clearly lists the necessary documents that the applicant needs to provide in order to demonstrate how it is entitled to rely upon the claimed prior right pursuant to article 14 of the Regulation. In accordance with Section 20 (3) of the Sunrise Rules the applicant must submit official documents substantiating 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 case the documentary evidence provided does not clearly indicate the applicant as being the holder of the prior right claimed.

In the present case the Complainant failed to submit any document explaining the substantial difference in the names of the applicant ("Travelhorizon") and the name of the Trade Mark owner ("Enoko SA"),which left the Respondent with legitimate doubts as to whether the applicant was indeed the holder of the prior right claimed or was the licensee of the trade mark holder or simply any other person (see case 2268 EBSOFT).

The additional documents attached to the Complainant's complainant indicates that Complainant's tradename is "Skihorizon – Travelhorizon". However such documents have not been submitted as documentary evidence with the application. The application has therefore to be considered incomplete (case 1625 TELEDRIVE).

Therefore the decision of the Respondent to reject the Domain Name application does not conflict with the Regulation 733/2002 and/or the Public Policy Regulation.

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	Ignace Vernimme

DATE OF PANEL DECISION 2007-01-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant applied for the domain name TRAVELHORIZON (hereafter “the Domain Name”) on 23 January 2006, claiming as prior right a French trademark registration for “Travelhorizon” (hereafter “the Trademark”).

However the application document mentioned as the Applicant’s name “Travelhorizon” and not the name of the Complainant (Eneko SA).

The Complainant did not submit documentary evidence substantiating that the applicant (Travelhorizon) was licensed to rely on the French trademark owned by Eneko SA or that it was the same persone as Eneko SA.

Based on the documentary evidence received, the validation agent found that the applicant did not demonstrate that is was the holder or the licensee of the trademark relied upon as a prior right.

Article 14 of the Public Policy Regulation provides that all claims for prior rights under Article 10.1 and 10.2 must be verifiable by documentary evidence which demonstrates the right under the law by virtue it exists.

The examination of the prior right claim by the validation agent is exclusively made on the basis of a prima facie review of the first set of documentary evidence received. The validation agent is not obliged to conduct its own investigation into the circumstances of the application (Section 21.2 and 21.3 of the Sunrise Rules).

The burden of proof was with the Complainant to substantiate that it is the holder or the licensee of the prior right invoked.
In the present case the documentary evidence submitted by the Complainant did not indicate the name of the applicant (“Travelhorizon”) who applied for the Domain Name as being the holder of the prior right claimed. The Trade Mark registration mentioned as trade mark holder “Eneko SA”.

In accordance with Section 20 (3) of the Sunrise Rules the applicant must submit official documents substantiating 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 case the documentary evidence provided does not clearly indicate the applicant as being the holder of the prior right claimed.

In the present case the Complainant failed to submit any document explaining the substantial difference in the names of the applicant (“Travelhorizon”) and the name of the Trade Mark owner (“Enoko SA”), which left the Respondent with legitimate doubts as to whether the applicant was indeed the holder of the prior right claimed or the licensee of the trade mark holder or simply any other person.

The additional documents attached to the Complainant’s complainant indicates that Complainant’s tradename is “Skihorizon – Travelhorizon”. However such documents have not been submitted as documentary evidence with the application. The application has therefore to be considered incomplete.

Therefore the decision of the Respondent to reject the Domain Name application does not conflict with the Regulation 733/2002 and/or the Public Policy Regulation.