Panel Decision for dispute CAC-ADREU-002499

Case number	**CAC-ADREU-002499**
Time of filing	**2006-08-02 12:54:24**
Domain names	**psytech.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**psytech GmbH, Thomas Jäger**

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 pending or decided legal proceedings which relate to the Disputed Domain Name.

FACTUAL BACKGROUND

This decision arises from an appeal by the Complainant, Psytech GmbH, against the decision by the Respondent, EURid, to decline to register the domain name Psytech.eu ("the Disputed Domain Name") to the Complainant under the Sunrise period.

On 7 February 2006, Psytech GmbH applied for the domain "Psytech" under the top level domain ".eu" during the second so-called "sunrise period". The complainant submitted documentary evidence consisting of a copy of the excerpt from the commercial register and an abstract of the partnership agreement of the company. These documents were received by EURid on 2nd March 2006 within the deadline set for doing so.

On 14 June 2006, EURid informed via electronic communication the Complainant refusing the disputed domain name "psytech.eu".

On 2nd August 2006, the complainant filed a complaint before the Czech Arbitration Court, requesting the annulment of the rejection decision and the registration of the disputed domain name in his favour.

The acknowledgment receipt of complaint was duly forwarded on even date and EURid, on 10 August 2006, communicated to the Czech Arbitration Court all information concerning the application for the disputed domain name.

On 27 September 2006, the Respondent filed a response to the Complaint.

On 29 September 2006, the Czech Arbitration Court appointed Mr David-Irving TAYER as sole panelist in this case. The Panel finds that it was properly constituted and submitted the Statement of acceptance and Declaration of Impartiality in compliance with the ADR Rules and Supplemental ADR Rules.

A. COMPLAINANT

The complaint challenges this decision considering that the Complainant's sunrise application met all requirements of the .eu Sunrise Rules and Regulations (EC) No. 874/2004 and No. 733/2002.

The complainant reminded the wording of Section 16(1) and 16 (4) (i) of the .eu Sunrise Rules where it is stated respectively that (i) "if an Applicant claims a Prior Right to a name on the basis of a company name protected under the law of one of the member states […], it is sufficient to prove the existence of such Prior Right in accordance with Section 16(4) […] and (ii)."it shall be sufficient to submit an

extract from the relevant companies or commercial register as Documentary Evidence".

The Complainant went on mentioning that he submitted a copy of the German Handelsregister with the Validation Agent which evidenced that Complainant is registered with the German Handelsregister under the name Psytech GmbH.

The Complainant specified that the descriptive elements „Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren" (translated as: "psychological development of technology and implementation of scientific methods") do not form part of the official name of Complainant's company as they follow the indication of the legal form "GmbH".

Moreover, according to the Complainant, the descriptive elements which as such cannot be protected as an absolute right according to Sec. § 5 (2) of the German Trademark Act do only form part of the company name if they are indicated before the legal form of the company (e.g. "psytech Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren GmbH") but not if they follow a company's legal form.

The Complainant therefore concluded that it is obvious from the documentary evidence submitted that Complainant's official company name is "psytech GmbH". And that he was entitled to domain name "psytech.eu", bearing in mind that the .eu Sunrise rules clearly state that for "trade names, company names and business identifiers, the company type (such as, but not limited to, "SA", "GmbH", "Ltd." or "LLP") may be omitted from the name for which the prior right exists."

The Complainant concluded to the annulment of the decision and the domain name psytech.eu registered in his name.

B. RESPONDENT

The Respondent reminded the rules set by Article 10 (2) of the Regulation and more particularly that the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, "as written in the documentation which proves that such a right exists".

The Respondent argued that the name written on Handelsregister of the Amtsgericht München (German Trade Register) is "Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren", and not solely PSYTECH GMBH.

Hence, and pursuant to article 10.2. of the Regulation, the Respondent had to reject the Complainant's application, since PSYTECH is not the complete name for which the prior right exists, as written in the documentary evidence which proves that such right exists (i.e. Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren).

The only elements which, in that respect, may be omitted, pursuant to section 19(4) of the Sunrise Rules is the company type (such as GmbH).

The very clear wording of article 10.2 of the Regulation and section 19(4) of the Sunrise Rules would obviously not be respected by omitting other elements of the company name as written in the documentary evidence.

The Respondent concluded that it correctly rejected the Complainant's application and the complaint must be dismissed.

DISCUSSION AND FINDINGS

In accordance with Paragraph B11 (a) of the ADR Rules the Panel shall decide a Complaint on the basis of the statement and documents submitted and in accordance with the Procedural Rules.

Pursuant to Paragraph B7 (d) of the ADR Rules the Panel shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence. Furthermore, the Panel is permitted in its sole discretion to conduct its own investigations on the circumstances of the case, Paragraph B7 (a) of the ADR Rules.

The Panel has reviewed the statements and allegations of Complainant and conducted its own investigation on the circumstances of the case. The claims of Complainant all relate to the interpretation of Paragraph 10 (2) of Regulation (EC) n° 874/2004 as to what has to be construed by the notion of "complete name". Paragraph 10 (2) of Regulation (EC) n° 874/2004 deals with the registration on the basis of a prior right in the Sunrise period and stipulates:

"The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exist, as written in the documentation which proves that such a right exists".

In the present case it has to be determined whether the Complainant complied with this exigency in other words whether the portion of a German trade name placed after the legal form should be considered as forming part of the trade name and therefore the domain name be reserved for the entire denomination.

From his investigation the Panel has found that in Germany, as in the present case, a company can be incorporated as a “Gesellschaft mit beschränkter Haftung “(company with limited liability) and that according to German Law, this designated extension must be used along side its “given name” but may be abbreviated to “GmbH” (Chapter 1 § 4 of the German law on limited companies)

Moreover, further elements may be added after the legal form.

In so far as the Panel knows or can determine, the use of these added words is not a mandatory requirement of German company law.

The non mandatory use of the added denomination does not constitute in the opinion of the Panel a sufficient reason for considering that it does not form part of the registered trade name. Moreover, the fact that the added terms "Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren" would not be a valid prior right to be evoked in a trade mark matter -due to the absence of distinctive character as exposed by the complainant- would not again be sufficient to conclude that it does not form part of the full trade name.

Hence, even if Psytech GmbH is known under the shorten denomination Psytech or Psytech Gmbh in the course of trade, it is incorporated as "Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren".

For the sake of good administration and considering the clear wording of Article 10 (2), the denomination to be taken into consideration is the full name of the Complainant as registered and appearing on the German trade register.

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	**David Irving Tayer**

DATE OF PANEL DECISION 2006-10-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In the present case the Complainant, a German company called "Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren", requested the reservation for domain name "psytech.eu". Eurid rejected the application based on the fact that the domain name must contains all the terms of the prior right claimed.

The complainant challenged the decision of rejection arguing that the descriptive elements which as such cannot be protected as an absolute right according to Sec. § 5 (2) of the German Trademark Act do only form part of the company name if they are indicated before the legal form of the company (e.g. “psytech Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren GmbH”) but not if they follow a company’s legal form.

Upon exmination the Panel rules that the non mandatory use or the absence of distinctive character does not constitute a sufficient reason for considering that it does not form part of the registered trade name.

Moreover, even if Psytech GmbH is known under the shorten denomination Psytech or Psytech Gmbh in the course of trade, it is incorporated as "Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren".

For the sake of good administration and considering the clear wording of Article 10 (2), the denomination to be taken into consideration is the full name of the Complainant as registered and appearing on the German trade register.

The complaint was therefore denied.