Panel Decision for dispute CAC-ADREU-002514

Case number	**CAC-ADREU-002514**
Time of filing	**2006-07-27 13:59:28**
Domain names	**pcdent.eu, medistar.eu, amicus.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**CompuGROUP Holding AG, Ilka Andrea Schumann**

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 ist not aware of any other proceedings related to the disputed domain names.

FACTUAL BACKGROUND

The Complainant applied on December 7, 2005 in the Sunrise Period I for the domain names: “medistar.eu”, “amicus.eu” and “pcdent.eu”. The prior rights on which the applications were based on were
- the Czech trademark 183364 “PC DENT” owned by DIALOG MIS spol s r o, and
- the Czech Trademark 193143 “AMICUS” owned by DIALOG MIS spol s r o and
- the German trademarks 1165592 “Medi Star” as well as 1153751 “MediStar PRAXISCOMPUTER” both owned by MEDISTAR Praxiscomputer GmbH.

Furthermore, Complainant filed statements from the above mentioned owners that Complainant, which is the mother company of the owning companies with a 100% share, is entitled to use the above mentioned trademarks 183364 “PC DENT” and 193143 “AMICUS” without limitation, inter alia for domain name applications in its own name. Another statement with the same general wording was filed for a mark 1153751 “Medi Star”. The statement for the “Medi Star” mark was signed by “Frank Gotthardt, managing director”, for the other two marks with “Frank Gotthardt, executive head”.

In the complaint, Complainant proved that Mr. Frank Gotthardt is the managing director of the Complainant and of the MEDISTAR Praxiscomputer GmbH. For the company DIALOG MIS spol s r o, a registry excerpt is submitted indicating that RNDr. Vladimir Junger is the executive head of this company acting for this company.

On June, 15 2006, the application for the domain “medistar.eu” was rejected by the Respondent. On June 21, 2006 and June 26, 2006, respectively, the applications for the domain names “amicus.eu” and “pcdent.eu” were rejected by the Respondent.

In this ADR proceeding, Complainant filed for all trademarks license declarations signed by Mr. Frank Gotthardt.

A. COMPLAINANT

The Complainant requests annulment of the decisions of the Respondent to reject the three domain name applications.

According to Complainant, the signature of Mr. Frank Gotthardt as managing director of Complainant and one licensor and at the same time as managing director of the mother company for the other licensor was legally and practically sufficient to prove the necessary license for the Respondent. The application and the documentary evidence was accordingly correct.

B. RESPONDENT

The Respondent is of the opinion that the validation agent acted correctly rejecting the domain name application, since no evidence for a prior right of the applicant was submitted. The submission of further documents in the ADR proceedings is too late to be considered. The Respondent requests the Complaint to be rejected.

The validation agent concluded correctly from its examination that the letters, which stated that the Complainant was granted unlimited user rights, were unduly signed. Therefore, the Respondent rejected the Complainant's applications.

The three letters which were submitted as documentary evidence were all signed by Mr. Frank Gotthardt in his alleged capacity of Executive Head / Managing Director of the respective owners of the trademarks. The respective owners were a German company from Hannover and a Czech company. The Complainant is a German company from Koblenz.

At the time of validation it appeared that Mr. Frank Gotthardt is not the Managing Director / Executive Head of the respective owners of the trademarks. The validation agent had no information on the capacity of Mr. Frank Gotthardt in relation to the respective owners of the trademarks. Mr. Frank Gotthardt appears to be known only in relation to the Complainant. Mr. Frank Gotthardt is indeed the Chairman of the Executive Committee of the Complainant.

The signature of the owner of the trademarks (the licensor) is an essential element when proving that a licence exists. In the case at hand, it appeared that the letters were only signed by the alleged licensee. As the letters appeared to be unduly signed, the validation agent concluded that the Complainant had not established that it was the holder of prior rights.

Although the Complainant has now submitted evidence from which it appears that Mr. Frank Gotthardt is the Managing Director of Medistar Praxiscomputer GmbH, owner of the MEDISTAR trademark, the Respondent would like to stress that there was no such proof before the validation agent. As explained above, there was uncertainty as to the capacity of Mr. Frank Gotthardt. The Complainant could have easily avoided this uncertainty by submitting all documentary evidence within the 40 days deadline. Whereas in hindsight it appears that Mr. Frank Gotthardt was the Managing Director, it must still be stressed that the Complainant failed to carry its burden of proof (see for example cases 127 (BPW), 219 (ISL), 294 (COLT), 551 (VIVENDI), 984 (ISABELLA), 843 (STARFISH), 1931 (DIEHL, DIEHLCONTROLS)).

As the panel clearly summed up in case ADR 1886 (GBG), "According to the Procedure laid out in the Regulation the relevant question is thus not whether the Complainant is the holder of a prior right, but whether the Complainant demonstrated to the validation agent that it is the holder of a prior right. If an applicant fails to submit all documents which show that it is the owner of a prior right the application must be rejected".

Moreover, it shall be noted that Mr. Frank Gotthardt still does not appear to be the Executive Head of Dialog MIS spol. s.r.o., the owner of the AMICUS and PCDENT trademarks, which again evidences the uncertainty described above.

DISCUSSION AND FINDINGS

The Sunrise period I was established to give proprietors of certain registered rights the chance to register .eu domain names corresponding to their registered rights. Since many hundred thousands applications were expected, the Sunrise Rules provided strict formal rules to allow the validation agents acting on behalf of the Respondent a quick and correct decision whether or not an applicant’s request in the Sunrise Period is justified. In the case of an applicant different to the right owner the Sunrise Rules require the submission of standard licence declarations signed by the licensor and the licensee.

It is evident that the Complainant did not formally fulfil these requirements by submitting statements of the right owners that Complainant is entitled to use the trademarks in question. However, in the Panel´s view, the form and the general content of the statements as such are sufficient to prove the license of the Complainant, since the statements are to a far extent and sufficiently equivalent to the licence declarations showing the subject of the licence, the consent of the licensor and by submitting it to the Respondent also the consent of the licensee.

However, the concrete circumstances of the case do not justify the annulment of Respondent’s decision in total, since the power of Mr. Frank Gotthardt to act for the right owner/licensor of the Czech trademarks is not without doubt and not proven. With regard to DIALOG MIS spol s r o, owner of the Trademarks “AMICUS” and “PC Dent”, the Complainant itself has submitted a document showing as “executive head” another person than Mr. Frank Gotthardt entitled to act for this company. The fact that Complainant has a 100% business share on this company does not necessarily mean that the managing director of the Complainant can act for this other company, here the right owner/licensor.

With respect to the MEDISTAR Praxiscomputer GmbH, Mr. Gotthardt is clearly managing director of both German companies and can

generally act for both companies. In the panel´s view, the license for the trademark Medi Star was accordingly proven and comprehensible for the validation agent by the submitted documents. Since both trademarks were submitted, the obvious error by licensing the “Medi Star” trademark under the registration number of the “MediStar Praxiscomputer” Trademark does not justify another evaluation.

Accordingly the complaint must be denied with regard to the request to annul Respondent´s decision to reject the registration of “amicus.eu” and “pcdent.eu”, but confirmed as to the annulment of Respondent´s decision to reject “medistar.eu”.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) of the Rules, the Panel orders that the complaint is denied with regard to the domain names “amicus.eu” and “pcdent.eu”, but granted with respect to EURID´s decision for the domain name “medistar.eu”, which shall be annulled and the domain name "medistar.eu" be registered for the Complainant.

PANELISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2006-10-31

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant applied on December 7, 2005 in the Sunrise Period I for the domain names: “medistar.eu”, “amicus.eu” and “pcdent.eu”. As documentary evidence Complainant filed statements of the owners of prior rights being daughter companies of Complainant with the content that Complainant is entitled to use these trademarks without limitation, inter alia for domain name applications in its own name. For the “medistar.eu” domain name, Complainant filed two trademarks, one being “Medi Star” and the other one “MediStar PRAXISCOMPUTER” whereas the mentioned statement referred to “Medi Star”, but used the number of the “MediStar PRAXISCOMPUTER” trademark. All statements were signed by a Mr Frank Gotthardt. All applications were rejected by the Respondent.

The Complainant has evidenced Mr. Frank Gotthardt being the managing director of the Complainant and of one of the prior right owners. For the other prior right owner, a registry excerpt was submitted indicating that another person is the executive head of this company acting for this company.

It is the Panel´s view that the form and the general content of the statements as such are sufficient to prove the license of the Complainant, since the statements are to a far extent equivalent to the licence declarations showing the subject of the licence, the consent of the licensor and by submitting it to the Respondent also the consent of the licensee.

However, the power of Mr. Frank Gotthardt to act for the prior right owner/licensor of the trademarks “AMICUS” and “PC DENT” was not without doubt and is not proven since another person was designated as “executive head” to act for this company. The fact that Complainant has a 100% business share on this company does not necessarily mean that the managing director of the Complainant can act for this other company, here the right owner/licensor.

With respect to the remaining domain name “medistar.eu” Mr. Gotthardt is clearly managing director of both the licensor and the licensee (Complainant) and can generally act for both companies. In the panel´s view, the license for the trademark Medi Star was accordingly proven and comprehensible for the validation agent by the submitted documents. Since both trademarks were submitted, the obvious error by licensing the “Medi Star” trademark under the registration number of the “MediStar PRAXISCOMPUTER” Trademark does not justify another evaluation.

The Panel accordingly orders that the complaint is denied with regard to the domain names “amicus.eu” and “pcdent.eu”, but granted with respect to the domain name “medistar.eu” which shall be registered for the Complainant.