Panel Decision for dispute CAC-ADREU-002533

Case number	**CAC-ADREU-002533**
Time of filing	**2006-08-08 10:50:54**
Domain names	**vincentz.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Vincentz GmbH, Dr. Lothar Vincentz**

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 other legal proceedings.

FACTUAL BACKGROUND

On February 7, 2006, 11:31:55.629, Lothar Vincentz filed an application to register the disputed domain name <vincentz.eu>. The application took place during the so called Phase II of the phased registration (“Sunrise”) Period.
At the time of the domain name application, Lothar Vincentz claimed that it had a prior right to the domain name based on a German Trade Register excerpt.

This excerpt shows the existence of a company named “Vincentz GmbH” founded on September 9th 2004, appearing Dr. Lothar Vincentz as the Company Director “Geschäftsführer”. The processing agent received the documentary evidence on time and the validation agent concluded from the documentary evidence that the Applicant was not the Company itself, therefore the applicant failed to proof the ownership of a prior right. On those grounds, the Respondent rejected the Applicant's application.

On July 26, 2006, the Complainant filed its Complaint with the Czech Arbitration Court. On August 10, 2006, the Respondent submitted its Response to the Complaint.

A. COMPLAINANT

Given the brevity of the Complainant´s arguments, the Panelist reproduces herein below the Factual and Legal Grounds of the Complaint:

“According to Sunrise Phase 2-Rules for domain registration this phase is for trade mark holders or holders of other prior rights.
Quote:
"a holder of an other prior right that is protected under the national law of the member state where it is held"
By registration in the German trade register is Vincentz GmbH owner of this prior right. The company name minus the legal for of company (in this case GmbH) is registerable under the sunrise rules. All necessary documents had been submitted timely and complete.”

B. RESPONDENT

The Respondent contends that, while the application for the domain name <vincentz.eu> was based on a valid right (proved through an extract of the Hannover Companies Register), the Applicant for the domain name was not the holder of such right in the company name “Vincentz GmbH”, since such right goes to the company itself, not to a natural person, even not if this natural person.

The Respondent states that according to Article 14 (4) of the Regulation, every applicant must submit documentary evidence that shows

that he or she is the holder of the prior right claimed on the name in question. Since the burden of proof is with the applicant, the validation agent is not obliged, but 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.

According to the Respondent, since the Applicant failed to prove that it is the holder of a prior right, his application was duly rejected.

DISCUSSION AND FINDINGS

a) Relevant provisions

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that only holders of prior rights which are recognised or established by national or Community law shall be eligible to apply to register domain names during a period of phased registration before general registration of .eu domain starts. Pursuant to article 12 (2) of the Regulation licensees of trademark owner may also apply for the corresponding domain name.

Article 14 (4) of the Regulation states that “(…) every applicant must submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question. (…) 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 (…)”.

According to Articles 22 (1) (b) and 22 (11) of Regulation 874 a party is, following the decision by the Respondent to reject a domain name, entitled to initiate an ADR proceeding against the Registry on the grounds of non-compliance of that decision with Regulation 874 or with Regulation (EC) No 733/2002.

b) Findings

Regulation 874 lists several grounds to apply for a domain name during the "privileged" application phases (Sunrise I and II) and before the land-rush phase opens. In order to qualify for those privileged phases, applicants need to select a particular ground for their application and additionally, proof of that ground should be submitted.

The evidence of the prior right supporting the application for the domain name <vincentz.eu> was an excerpt of the Hannover Trade Register of the Company “Vincentz GmbH”. In that excerpt appears Dr. Lothar Vincentz as the Director (Geschäftsführer).

The Respondent states that the validation agent is not obliged to conduct its own investigations. In support of that argument, the Respondent relies on a number of decisions in which the Validation Agent or the Registry/Respondent are not under any obligation to investigate into the circumstances of the applications. The Panel notes, however, that in some instances, it would be expected that the Validation Agent made use of such investigative powers particularly if it would appear reasonable under the circumstances.

According to Article 10 of Regulation 874, only holders of prior rights are eligible to file domain name applications during the Sunrise phases. Therefore, the obligation for the applicant to prove that it is the holder of a prior right becomes critical. Dr. Lothar Vincentz, applicant for the domain name <vincentz.eu>, did not furnish evidence that he was the holder of the prior right. Accordingly, the Panel believes that, in the present case, the Validation Agent made a reasonable assessment under the circumstances based on the documents submitted.

The Panel also relies on Cases No. 2274 GCA and No. 2335 FELA to support its decision.

Consequently, the Respondent rightfully rejected the application for the domain name <vincentz.eu> .

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	José Checa

DATE OF PANEL DECISION 2006-11-08

Summary

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ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

According to Article 10 of Regulation 874, only holders of prior rights are eligible to file domain name applications during the Sunrise phases. Therefore, the obligation for the applicant to prove that it is the holder of a prior right becomes critical. Dr. Lothar Vincentz, applicant for the domain name <vincentz.eu>, did not furnish evidence that he was the holder of the prior right. Accordingly, the Panel believes that, in the present case, the Validation Agent made a reasonable assessment under the circumstances based on the documents submitted.