Panel Decision for dispute CAC-ADREU-002564

Case number	**CAC-ADREU-002564**
Time of filing	**2006-07-31 13:18:08**
Domain names	**linagora.eu, toolinux.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**LINAGORA**

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 relate to the disputed domain names.

FACTUAL BACKGROUND

1. Linagora SA (hereinafter “the Complainant”) applied for the domain names linagora.eu and toolinux.eu (hereinafter “the Domain Names”) on 3 April 2006, i.e. during the Sunrise Period. The Complainant is the proprietor of the French trademark registrations for LINAGORA and TooLinux.

2. According to EURid, the validation agent received on 7 April 2006 only cover letters as supporting documentary evidence of the Complainant’s prior rights to the Domain Names. According to the Complainant, trademark certificates were submitted as documentary evidence.

3. The validation agent concluded that, in the absence of documentary evidence, the Complainant had not demonstrated that it is the holder of prior rights to the Domain Names and therefore rejected the applications.

4. ADR proceedings were initiated by the Complainant to annul the disputed decision and to attribute the Domain Names to the Complainant.

A. COMPLAINANT

1. The Complainant contends that it has sent the documentary evidence pertaining to the Domain Names within the prescribed time limits to EURid, namely copies of the registration certificates for the TooLinux and LINAGORA trademarks.

2. The Complainant contends further that EURid’s statement that only cover letters for the documentary evidence were received cannot reflect factual circumstances, as EURid’s WHOIS website indicated that documentary evidence for the applications was received on 7 April 2006, i.e. well before the deadline of 13 May 2006.

3. The Complainant finally contends that EURid’s decision to reject the applications was based on the fact that “the documentary evidence was not sufficient to prove the claimed prior right”, which the Complainant believes to indicate that EURid has received the documentary evidence, as otherwise EURid would have communicated that only cover letters were received.

4. The Complainant requests that the EURid’s decisions to reject the applications should be cancelled and that the Domain Names be attributed to the Complainant.

B. RESPONDENT

1. The Respondent, EURid, contends that the burden of proof is with the Complainant to demonstrate that it is the holder or the licensee of a prior right. As the validation agent only received two cover letters and no documentary evidence which would have demonstrated that the applicant is the holder of prior rights, the decision to reject the Complainant's applications was correct.

2. The Respondent contends that all documentary evidence must be submitted within a period of 40 days from the submission of the application for the domain name - which period in the present case ended on 13 May 2006. Therefore, documentary evidence submitted during the course of the ADR proceedings may not be taken into consideration.

3. The Respondent concludes that since the Complainant in the present case did not seize the opportunity to demonstrate its prior rights in the domain name application, the complaint must be denied.

DISCUSSION AND FINDINGS

1. It is set forth in Article 10(1) of the Commission Regulation (EC) 874/2004 that only the holder of a prior right is eligible to be granted the corresponding domain name. In case the applicant is the proprietor of the prior right in question, the documentary evidence must consist of evidence of the prior right. In the present case, the trademark registration certificates, which evidence that the Complainant indeed was the proprietor of the subject trademarks TooLinux and LINAGORA, were only submitted during the course of the ADR proceedings and were therefore not at the validation agent's disposal during the validation process. No substantive evidence to the contrary from the part of the Complainant has been provided to the ADR Court.

2. The statement by EURid that "the documentary evidence was not sufficient to prove the claimed prior right", which the Complainant believes to indicate that EURid has received the documentary evidence, would only appear to be the standard content of EURid's decision in cases where the validation agent has concluded that the documentary evidence (or lack thereof) is not conclusive in evidencing the existence of a prior right, and would not appear to indicate that the documentary evidence, apart from the cover letters, were indeed received by EURid or the validation agent.

3. The fact that EURid's WHOIS website contained information on the receipt of documentary evidence for the application would also appear to be only indicative of the fact that some documentary evidence was received by EURid. The statement on the EURid website does not indicate the substance of the received documentation.

4. Section 21 (2) of Sunrise Rules states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence it has received. Without the registration certificates it was unclear from the submitted documentary evidence if the Complainant was the proprietor of the French trademark registrations for TooLinux and LINAGORA.

5. As the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, the Panel does not find the rejection of the applications unreasonable, as the said requirement was not met.

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	**Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2006-10-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's applications for the domain names toolinux.eu and linagora.eu were refused on grounds that the submitted documentary evidence was not sufficient to prove the claimed prior rights. The Respondent, EURid, stated that since the Complainant did not produce documentary evidence to show that it is the holder of a prior right, the validation agent was correct in refusing the application.

The relevant trademark registration certificates were only submitted during the course of the ADR proceedings and were thus not at the

validation agent's disposal during the validation process. The Panel ruled that since the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, it is not unreasonable to reject the applications, as the said requirement was not met.