Panel Decision for dispute CAC-ADREU-002570

Case number	CAC-ADREU-002570
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Domain names	sale.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	S.A.L.E. Deutschland GmbH, Thomas 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

nihil

FACTUAL BACKGROUND

The Complainant a licensee of the German registered trade mark "S.A.L.E." No. 30347221.9.
The owner of said trademark signed a license declarationon said trademark on December 6th, 2005, in which he declared to authorize the Complainant to apply for the registration of of the domain name "sale.eu" during the Phased Registration Period according to the Rules published by EURid.

The Complainant applied for registration of the domain name "sale.eu" with EURid on December 7th, 2005 during the "Sunrise Period". The necessary documents to prove his Prior Right were received by the Processing Agent on January 13th, 2006 and therefore within the determined forty days period and in due time. The Complainant according to EURid's own records on file was granted accordingly and rightly first position in queue. On June 16th, 2006 EURid informed th Complainant that his application for the Registrationof the domain name "sale.eu" had been denied because the presented evidence did not prove his Prior Right.

A. COMPLAINANT

The Decision of the Registry of June 16th, 2006 conflicts with the European Union Regulations No. 874/2004 dated April 24th, 2004 ("the Regulation (EC) 874/2004).

According to Chapter V Section 11 of the Regulation (EC) 874/2004, during the first phase of the Phased Registration Period, only Domain Names that correspond to registered Community or national trade marks or geographical indications or designations of origin may be applied for by the holder and/or licensee of the Prior Right concerned.

The Prior Right which was claimed by the Complainant is the German trade mark No. 30347221.9. "S.A.L.E." owned by S.A.L.E. Corporation, Santa Monica, California, USA. The said mark was registered by the competent national trade mark office , the Deutsche Patent- und Markenamt on March 9th, 2004 and is still active.

The Documentary Evidence filed with the application was according to Chapter V Section 13 of the Regulation (EC) 874/2004 a copy of the certificate of registration issued by the competent trade mark office, the Deutsche Patent- und Markenamt (Exhibit 1).

Since the Complainant is only a Licensee of the registered trademark and not the registered owner , he furthermore submitted an acknowledgment and declaration form as set in Chapter V Section 20, 20.1. of the Regulation (EC) 874/2004 .
This declaration contained the name of of the owner of the trade mark and licensor as well as the licensee, the Complainant and the

complete address of each party. It furthermore stated the trade mark and its registration number by the Deutsche Patent- und Markenamt. In this declaration, the owner of the referred trade mark, the S.A.L.E. Corporation declared to authorize the licensee to apply for the domain name "sale.eu" during the Phased Registration Period according to the Rules published by EURid. The document is duly completed and signed by both the licensor of the said trade mark and the Complainant as Applicant (Exhibit 2).

The application for the registration of the domain name "sale.eu" was therefore made in accordance to the Regulation (EC) 874/2004. The Decision of the Registry of June 16th, 2006 is in conflict with this Regulation.

The Decision of the Registry must therefore be annulled.

B. RESPONDENT

S.A.L.E. (hereafter "the Applicant") applied for the domain name SALE on 7 December 2005.

The processing agent received the documentary evidence on 13 January 2006, which was before the 16 January 2006 deadline.

The Applicant submitted documentary evidence consisting of a certificate of registration issued by the German Patent and Trademark Office stating that the composite trademark "S.A.L.E." is registered to "S.A.L.E. Corporation", a US company based in the United States (Santa Monica, Calofornia).

The documentary evidence also consisted of a license declaration signed between the holder of the trademark ("S.A.L.E. Corporation", represented by Dr. Alfred N. Klinger) and a licensee, "S.A.L.E. Thomas Schumann" (also represented by Dr. Alfred N. Klinger).

The Applicant did not submit documentary evidence substantiating that the Applicant (S.A.L.E.) was licensed to rely on the prior right of the owned by "S.A.L.E. Corporation" and licensed to "S.A.L.E. Thomas Schumann".

Based on the documentary evidence received, the validation agent found that the Applicant did not demonstrate that it was the holder or the licensee of a prior right on the name SALE.

Therefore, the Respondent rejected the Applicant's application.

The Complainant is "S.A.L.E. Deutschland GmbH".

The Complainant seems to argue that it is the same person as the Applicant ("S.A.L.E."), since the complaint mentions that "the Complainant applied for registration of the domain name sale.eu with EURid on December 7th, 2005".

The Complainant also seems to argue that it is the same person as the licensee mentioned on the license declaration form ("S.A.L.E. Thomas Schumann" represented by Dr. Alfred N. Klinger), since the complaint mentions that "the Complainant is only a licensee of the registered trademark".

Therefore, the Complainant requests the Panel to annul the Respondent's decision.

The Respondent argues that the Regulation and the Sunrise Rules clearly and certainly provide that the burden of proof is with the Applicant to demonstrate that it is the holder of a prior right.

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.

If the Applicant fails to do so, its application must be rejected. Indeed, 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 burden of proof was with the Applicant to demonstrate that it is the holder or the licensee of a prior right

Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration.
Pursuant to article 14 of the Regulation, the applicant must to submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on this documentary evidence, the validation agent shall examine whether the

applicant has prior rights on the name.

It is therefore of crucial importance that the Respondent is provided with all the documentary evidence necessary for it to assess if the applicant is indeed the holder of a prior right.

The burden of proof was thus on the Applicant to substantiate that it is the holder or the licensee of a prior right (see for example cases 127 (BPW), 219 (ISL), 294 (COLT), 551 (VIVENDI), 984 (ISABELLA), 843 (STARFISH), 1931 (DIEHL, DIEHLCONTROLS), 2350 (PUBLICARE), etc3.3 The Respondent and the Validation agent were under no obligation to investigate into the circumstance of the application

Section 21.2. of the Sunrise Rules states that "[t]he Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules".

Section 21.3. of the Sunrise Rules states that "The Validation Agent is not obliged, but it 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".

The Respondent wishes to stress that Section 21.3. of the Sunrise Rules does not impose any obligation for the Validation agent to conduct its own investigation: it is a mere possibility that the Respondent can use "in its sole discretion".

No obligation for the Validation agent may therefore be derived from Section 21 (3), since of this provision does not state that the validation agent is obliged to conduct its own investigations, but merely that the validation agent is permitted in its sole discretion, to conduct its own investigations (see for example case 1483 (SUNOCO), ISL (219), 551 (VIVENDI), 2350 (PUBLICARE), and 843 (Starfish)).

The present ADR proceedings may not be used to remedy the Applicant's incomplete application

The Registry/validation agent cannot be expected and/or forced to speculate whether the Applicant is a holder of the prior right claimed, and therefore correctly rejected the Applicant's application. (see case 1443 (URBIS)).

Article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation.
This verification is the only task for the Panel in these proceedings, which may not in any case serve as a “second chance” or an additional round providing applicants an option to remedy their imperfect original application that was rejected during the Sunrise Period (see cases Nr. 551 (VIVENDI) and Nr. 810 (AHOLD)).
In other words, as decided in case Nr. 1194 (INSURESUPERMARKET), "[t]he ADR procedure is not intended to correct domain name applicants’ mistakes".

The Regulation and the Sunrise Rules give 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 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 by the Regulation for dealing with the thousands of applications received during the phased registration and making sure that these applications are substantiated.
The Applicant in the present case did not seize this opportunity, because its application did not correctly fulfil the substantial requirements.

Any right given to the Applicant to correct its defective application at this stage of the procedure would be unfair to the other applicants and would clearly be in breach of the Regulation and the Sunrise Rules, as stated in ADR 706 (AUTOWELT) and 1710 (PARLOPHONE, EMI, EMIMUSIC, EMIRECORDS, ANGEL, THERAFT).

This consideration is particularly important in the present case since other legitimate applicants with equally valid prior right are standing in the queue. When the first applicant in the line failed to fully comply the substantial requirements, its application must be rejected and the next applicant in line must now have the opportunity to try to demonstrate its prior rights. During the Sunrise Period, 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 documentary evidence did not demonstrate that the Applicant was the of a prior right

The Applicant's name is "S.A.L.E.".

The owner of the trademark is "S.A.L.E. Corporation".

The licensee of the trademark owner is "S.A.L.E. Thomas Schumann".

The Complainant is "S.A.L.E. Deutschland GmbH".

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. Section 20 of the Sunrise is therefore intended to cover all situation where the documentary evidence provided does not clearly indicate the name of the applicant as being the holder of the prior right claimed.

When the names are different because the applicant is a licensee, article 20 (1) of the Sunrise Rules will apply and it is because the applicant is a transferee of the prior right, article 20 (2) of the Sunrise Rules will apply. For any other situation where the name of the Applicant is not the same as the name of the owner of the prior right, section 20 (3) of the Sunrise Rules states that: "If, for any reasons other than as are referred to in Section 20(1) and 20(2) hereof, the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer, etc.), 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 the present case, the documentary evidence submitted by the Applicant "S.A.L.E." did not indicate the name of the Applicant as being

the holder of the prior right claimed ("S.A.L.E. Corporation") or

the licensee of the trademark owner ("S.A.L.E. Thomas Schumann").

The Applicant failed to submit any document explaining this difference in the names, which left the Respondent with legitimate doubts as to whether the Applicant was indeed the holder of the prior right claimed, the licensee of the trademark holder or simply another person. "S.A.L.E." could indeed very well be any company ranging from "S.A.L.E. Corporation" (the holder of the prior right, which is not eligible to apply for a EU domain name since it is a US corporation, with principal place of business in the US), "S.A.L.E. Thomas Schumann" (the licensee of the trademark owner), "S.A.L.E. Deutschland GmbH" (the Complainant), or any other company whose name starts with S.A.L.E.

Since the Respondent correctly decided to reject the Applicant's application, pursuant to the Regulation, Respondent's decision may not be annulled and the domain name SALE may not be granted to the Applicant. Indeed, a domain name may only be attributed to the Applicant by this Panel, when the Panel finds that the Respondent's decision conflicts with the Regulation (article 11 of the ADR Rules). For these reasons, the complaint must be rejected.

DISCUSSION AND FINDINGS

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

Article 14 of the Regulation states that "every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question.(…) If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this.(…) 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 set out in the second, third and fourth paragraphs".

Article 20.3. of the Sunrise Rules states that "If, for any reasons other than as are referred to in Section 20(1) and 20(2) hereof, the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer, etc.), 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".

The panel has considered the following preceding ADR decisions supporting the arguments of the respondent:

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".

Case ADR 1299 (4CE), "In this case, the documentary evidence did not establish that the Applicant owned the prior right relied upon, since the name of the Applicant according to the Application differed from the name of the owner of the prior right according to the certificate of registration. Even though the apparent difference was relatively small, the names could have referred to different companies and there was no evidence that they were the same company. The Panel is satisfied that the Respondent was justified in rejecting the Application under Article 14 of Regulation 874/2004".

Case ADR 2350 (PUBLICARE), "The Applicant did not submit any other documentary evidence explaining the difference between the name of the Applicant and name of the trademark holder. Therefore the Respondent could have legitimate doubts if the Applicant and the trademark owner is the same company. "PubliCare" could indeed very well be a different company from "Publicare Marketing Communication Gmbh".

Case ADR 2268 (EBSOFT), "The Complainant did not submit official documents proving that the applicant is the same person or the legal successor to the person indicated in the documentary evidence as being the holder of the prior right. Therefore Registrar's obligation to examine if the applicant for the domain name is the same entity as the holder of a prior right was not verifiable by the presented documentary evidence".

Case ADR 1242 (APONET), "Therefore, in the absence of any document clearly indicating that a) VGDA Gmbh was the short term for Verwaltungsgesellschaft Deutscher Apotheker mbH; b) that VGDA was also an official company name of the Applicant; and c) considering the Complainant's burden of proof with respect to its prior rights and wording of relevant provisions governing registration of .eu domain names in Sunrise Period, the Panel concludes that the Respondent, without having at its disposal any pertinent document proving that VGDA Gmbh and Verwaltungsgesellschaft Deutscher Apotheker mbH were the same entity, did not err in its decision to reject the Complainant's application. On the contrary, this Panel considers that EURid, in accordance with, Paragraph 3. Section 11 of the Sunrise Rules, correctly considered the Applicant as a different entity from the holder of the Prior Right claimed".

Case ADR 810 (AHOLD), "As confirmed by sec. 20 of SR, it is important to make sure that the applicant is the same holder of the prior rights, to avoid any domain name registration deprived of legitimation on the applicant's side. As a result, when faced before a difference between the applicant name and the prior right holder name, correctly detected by the Validation Agent, the Registry may not accept the corresponding domain name application".

Case ADR 1627 (PLANETINTERNET), " The validation agent conducted a prima facie review of the submitted document, and in conjunction with point (ii) below, reached the conclusion that as the names did not match, and there was no other documentary evidence to explain such a discrepancy, that the applicant (i.e. the Complainant) had not established its prior right"....."the Regulations and the Sunrise Rules were clearly drafted to ensure a fair distribution of .eu domain names during the phased period and if an applicant fails to fulfil its primary obligations, then, even where such failure is due to an oversight or genuine mistake, the application must be rejected by the validation agent".

Case ADR 1625 (TELEDRIVE), "Moreover, when examining an application for a domain name, the Registry's obligation is to examine whether the applicant holds a prior right to the domain name (Article 14 of the Regulation). The right must be verifiable by the presented documentary evidence. This shall demonstrate that the right exists and that the applicant is the holder of this right claimed on the domain name. In the presented case the documentary evidence submitted by the Complainant showed that the IAV GmbH Ingenieurgesellschaft Auto und Verkehr, and not the iav GmbH is the holder of the trade mark TELEDRIVE. Therefore, the documentary evidence in support of the application for the domain name teledrive.eu was incomplete"..... " when there is a queue of applicants a priori entitled to the domain name, it would appear improper if the Validation Agent carried out investigations to help an applicant when that applicant did not fulfill its duties (…) every applicant in the queue has a legitimate expectation to obtain the domain name and therefore, the observance of the application requirements must be strict. This Panel shares the view of the NAGEL case that the principle first-come, first-served is more properly described as "first-come-and-substantiate, first-served" (case no. 00119 NAGEL). ".

Case ADR 00127 (BPW), "Section 21.3 of .eu Sunrise Rules reads that the Validation Agent is not obliged, but it 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. Since the burden of proof was on the applicant (Complainant) who clearly failed to proof the ownership rights according to Section 21.3. of .eu Sunrise Rules it was on sole discretion of the Validation Agent to conduct its own investigation and it

cannot be deemed as the breach of the Section 21.3 of .eu Sunrise Rules if he decided not to conduct any investigation. Summarizing the above stated, I did not find the contested decision to reject the application of the Complainant made by the Respondent in conflict with any of the European Union Regulations".

Case ADR 01323 (7X4MED), "Therefore, it cannot be reasonably anticipated that the validation agent (although it has the permission to do so pursuant to Section 21 (3) of the Sunrise Rules) would investigate into the circumstances of each and every domain name application where the documentary evidence submitted by the applicant does not comply with the requirements set forth by Sunrise Rules".

Case ADR 00501 (LODE, PROCARE), the Panel decided that "In this case, the documentary evidence in support of the applications for the Domain Names was incomplete in respect of the requirements set out in Section 20.1 of the Sunrise Rules. The Panel accepts that the applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant".
As the Panel in ADR 219 (ISL) stated: "One could argue that sympathy is overruled by the applicable Regulations serving among other purposes the (cost-effective) functionality of the phased registration and the principles hereof".

Panel has also considered the following decisions which might support the opposite opinion:

Case ADR 00181 (OSCAR) „ Contrary to the Respondent's submission, the Complainant's argument that the identity of the addresses in the application and in the documentary evidence and the similarity in the names of the applicant nad of the trademark owner make the name recognisable is very relevant. These facts that demonstrate that the Complainant was the applicant during the phased registration period and that the Complainant is the owner of the Prior Right on which the application is based. The intended purpose of the phased registration period as set out in Recital 12 of said Regulation 874/2004 was „to safeguard prior rights recognised by Community or national law". ….„In the circumstances this Panel is satisfied that on the particular facts of this case, a teleological or purposive interpretation of the legislation would classify the problem met by the Complainant in this case as being technical and not legal. The Complainant complied with both the Regulation and the Sunrise Rules insofar as it was possible so to do. The possibility of applying under an acronym was not available to it under either the Regulation or the Sunrise Rules."

Case ADR 00396 (CAPRI), „ The Panel/the Panelist therefore came to the following conlusion:
• The Panel/ the Panelist is of the opinion that the justice shall always rule over the formalistic approach and technical means of communication.
• The complainant has finally proven that he is and was before filing the .eu domain name application an owner of the relevant Community trademark CAPRI, No. 000276113, he therefore properly claimed his prior right for the relevant .eu domain name.
• It has to be stated that the complainant has made many mistakes in its application which were very confusing nad could have let the registry to believe that the complainant has not proven its right.
• The registry had, however, all possible means and rights to validate properly the prior rights. The registry is not only allowed but even obliged to obey all respective relevant regulations and obligations from these regulations to provide fair and complete validation process. The registry could have done the same validation process s the Panel/the Panelist did which would allow the registry to review more deeply the application and easily remove all relevant discrepancies in the .eu domain name application. ¨
• There are many technical issues which do not give the applicants appropriate possibilities and space to fill fully and withnout any mistakes the applications. The technique can not be an obstacle to register properly the .eu domain name and grant the priority rights."

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

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The panel has considered the following preceding ADR decisions supporting the arguments of the respondent:

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according to Section 21.3. of .eu Sunrise Rules it was on sole discretion of the Validation Agent to conduct its own investigation and it cannot be deemed as the breach of the Section 21.3 of .eu Sunrise Rules if he decided not to conduct any investigation. Summarizing the above stated, I did not find the contested decision to reject the application of the Complainant made by the Respondent in conflict with any of the European Union Regulations".

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Case ADR 00501 (LODE, PROCARE), the Panel decided that "In this case, the documentary evidence in support of the applications for the Domain Names was incomplete in respect of the requirements set out in Section 20.1 of the Sunrise Rules. The Panel accepts that the applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant".
As the Panel in ADR 219 (ISL) stated: "One could argue that sympathy is overruled by the applicable Regulations serving among other purposes the (cost-effective) functionality of the phased registration and the principles hereof".

Panel has also considered the following decisions which might support the opposite opinion:

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• It has to be stated that the complainant has made many mistakes in its application which were very confusing nad could have let the registry to believe that the complainant has not proven its right.
• The registry had, however, all possible means and rights to validate properly the prior rights. The registry is not only allowed but even obliged to obey all respective relevant regulations and obligations from these regulations to provide fair and complete validation process. The registry could have done the same validation process s the Panel/the Panelist did which would allow the registry to review more deeply the application and easily remove all relevant discrepancies in the .eu domain name application. ¨
• There are many technical issues which do not give the applicants appropriate possibilities and space to fill fully and withnout any mistakes the applications. The technique can not be an obstacle to register properly the .eu domain name and grant the priority rights."

After careful consideration the Panel came to the following conclusion:

- The justice shall always rule over the formalistic approach and technical means of communication, but the necessary evidence of Priority Right has to be presented or derived form the submitted documents.

- The burden of proof of the Priority rights is undisputedly on the Applicant, not the Respondent. The Validation agent and the Respondent should question the submitted documents and apply all reasonable means of interpretation of the submitted documents but in case that the priority right is not proven, the Validation Agetnt and the Respondent has to reject the application in compliance with the Rules.

- In this particular case the Panel has examined the exhibits annexed to the complaint and found that
the Applicant failed to submit any document explaining this difference in the names, which left the Respondent with legitimate doubts as to whether the Applicant was indeed the holder of the prior right claimed, the licensee of the trademark holder or simply another person. "S.A.L.E. Thomas Schumann" (the licensee of the trademark owner), and "S.A.L.E. Deutschland GmbH" (the Complainant), seem to be

two different companies with a different place of business and there is no link or evidence that the Complainant has any legal rights to the licensed trademark regardless how connected the entities are. If there is any explanation for this situation (e.g. the transformation of Applicant into the Complainant, it is missing in the submitting documents and such explanation cannot be derived from any documents in the ADR file.
- Therefore the Panel came tio the conclusion that the Applicant failed to submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question and the application was rejected according to the Rules

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	**Martin Maisner**

DATE OF PANEL DECISION 2006-11-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Applicant failed to submit any document explaining this difference in the names, which left the Respondent with legitimate doubts as to whether the Applicant was indeed the holder of the prior right claimed, the licensee of the trademark holder or simply another person. The Applicant and the Complainant seem to be two different companies with a different place of business.
Therefore the Panel came to the conclusion that the Applicant failed to submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question and the application was rejected according to the Rules.