Panel Decision for dispute CAC-ADREU-002577

Case number	CAC-ADREU-002577
Time of filing	2006-08-07 10:22:16
Domain names	hotelport.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Regata Cechy a.s., Tomas Olexa

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 related to the disupted domain name.

FACTUAL BACKGROUND

The Complainanat is Regata Čechy, a. s., Czechia.

The request for the registration of the domain name hotelport.eu was filled via the registrar Ignum, s. r. o., Czechia.

The Complainant applied for the domain name hotelport.eu on December 10, 2005.

The validation agent, PriceWaterhouseCoopers, received the documentary evidence in time during a period (the Sunrise period) of phased registration of domain namens of the .eu Top Level Domain before the general registration of .eu domain starts.

With his decision the Respondent, European Registry for Internet Domains (EURID), denied the request for registration.

Against this decision the complainant filed a complaint with the Czech Arbiration Court.

A. COMPLAINANT

The Complainant argues that no detailed reasons were given by EURID and he assumes that the only reason for rejecting application was that the address of the Complainant on the application form was different than the address of Complainant on the trade mark certificate.

The Complainant also argues that there is only one company Regata Čechy, a. s., incorporated in Czechia, which can be easily verified in an internet search of the Czech corporate register.

The Complainant requests that the Panel decides about the annulment of the Respondent´s decision to reject his application and that the domain name must be registered in favour of the Complainant.

B. RESPONDENT

The respondent expresses that the applicant has submitted two trade marks as the documentary evidence. One of these trade marks contained many characters. Pursuant te section 19 (2) of the Sunrise Rules, the domain name HOTELPORT did not constitute of all the aplhanumerical characters of the trade mark.

The Respondent also expresses that the validation agent accidentally overlooked the second trade mark. The domain name HOTELPORT constituted of the complete name of the second trade mark.

DISCUSSION AND FINDINGS

In consideration of the factual background and the Parties contentions, the following legal conclusions must be reached:

It is evident that there is only one company, e. g. Regata Čechy, a. s., incorporated in the Czech corporate register.

The Complainant has a prior right based on his Czech trade mark HOTEL PORT (No. 248697) according to the documentary evidence which has been submitted by the complainant in time.

The EURID´s decision is based on the overlooking of the validation agent, PriceWaterhousCoopers. The validation agent accidentaly overlooked the second Czech national trade mark certificate (HOTEL PORT), No. 248697, which has been submitted by the Complainant in time.

The decision taken by the Respondent conflicts with the Art. 10 (1) and 12 (3) of the Comission Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerniny the implementation and functions of the .eu Top Level Domain and the principles governing registration.

If the ADR proceeding concerns a decision by the Registry not to register a domain name and the panel or panelist concludes that such decision conflicts with the Regulations, then upon the communication of the decision by the Provider, the Registry will register the domain name in the name of Applicant and will immediately activate the domain name.

According to the Art. B (11) (c) of the .eu Alternative Dispute Resolution Rules the Panel may decide in appropriate cases pursuant to the Procedural Rules, Registration Policy, Sunrise Rules and/or the Terms and Conditions that the domaine name in question shall be attributed.

The Complainant is the next applicant in the queue for the domain name concerned (see the WHOIS database from the date of November 2, 2006.)

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the EURID's decision be annulled,

the domain name HOTELPORT be attributed to the Complainant.

PANELISTS

Name	**Ivo Telec**

DATE OF PANEL DECISION 2006-10-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. The EURID´s decision is based on the overlooking of the validation agent, PriceWaterhousCoopers. The validation agent accidentally overlooked the second Czech national trade mark certificate (HOTEL PORT), No. 248697, which has been submitted by the Complainant in time.

2. The decision taken by the Respondent conflicts with the Art. 10 (1) and 12 (3) of the Comission Regulation (EC) No. 874/2004 of 28 April 2004 laying down public policy rules concerniny the implementation and functions of the .eu Top Level Domain and the principles governing registration.

3. Complainant is the next applicant in the queue for the domain name concerned.