Panel Decision for dispute CAC-ADREU-002586

Case number	**CAC-ADREU-002586**
Time of filing	**2006-08-01 10:50:03**
Domain names	**epal.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**European Pallet Association EPAL, Bernd Niebisch**

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 pending or decided legal proceedings which may affect the disputed domain name.

FACTUAL BACKGROUND

The Complainant has filed an application to register the domain name « epal.eu » on December 7, 2005 under Sunrise Period I, and completed its application on January 9, 2006 (within the prescribed time limit) with copies of its German, International and Community Trademark Registrations for EPAL, as well as a copy of an extract from the German Register of Associations.

The Respondent issued a Decision of Rejection of the domain application on June 18, 2006 on the ground that the Complainant's Prior Right had not been sufficiently substantiated.

The Validation Agent noticed a discrepancy in the name of the holder of the Prior Rights and that mentioned in the domain name application.

A. COMPLAINANT

The Complainant asserts that the Respondent has violated article 12 of Regulation No. 874/2004 and reproaches the Respondent to have adopted an unduly formalistic approach when examining the domain application, as it clearly transpired from the Documentary Evidence supplied in support of the domain name application that the discrepancy in the name of the Applicant was only due to a typographical error, but could not raise any doubt as to the fact that the Applicant for the domain name was the proprietor of the Prior Rights invoked.

The Complainant cites earlier ADR cases namely Case No. 00396 and Case No. 00253.

B. RESPONDENT

The Respondent claims that it has not breached any applicable rule but on the contrary strictly complied with the provisions of articles 10.1 and 14 of Regulation 874/2004 as well as Sec. 20.3 of the Sunrise Rules.

The Respondent states that the burden of proof is on the Complainant to demonstrate that it is the holder of a prior right ; that ADR proceedings are not intended to correct Complainant's mistakes ; that Validation Agents must only examine domain applications on the basis of the Documentary Evidence supplied (Sec.21.2. of Sunrise Rules) and has no obligation conduct its own investigations into the circumstance of the application ; that the application did not contain any explanation on the relationship between the Complainant and the holder of the Prior Right ; that article 12 of Regulation 874/2004 has not been breached and that the same is misconstrued by the Complainant.

The Respondent cites earlier ADR cases to support its position.

DISCUSSION AND FINDINGS

The Decision of Rejection of the domain name application is grounded on a discrepancy between the name of the applicant of the domain name and the name of the Prior Right holder.

The domain name application has been filed in the name of EUROPEAN PALLET ASSOCIATION EPAL, whereas the earlier trademark registrations No. 2054520, No. 617 158 and No. 472 415 supplied as Documentary Evidence stand in the name of EUROPEAN PALLET ASSOCIATION e.V.

The extract of the Association Register states that the name of the association is EUROPEAN PALLET ASSOCIATION e.V.

The Complainant admits that this discrepancy is due to its sole error.

The Panel observes that the application for the domain name contained no explanation as to this discrepancy and no information whatsoever which would have enabled the Validation Agent to understand either the relationship between the two entities or the reason why one single entity could be named according to two different names.

It is the Panel's opinion that the Respondent has followed and complied with the provisions of articles 10.1 and 14 of Regulation No. 874/2004 and Sec.20.3 of the Sunrise Rules.

It is also in observance of Sec. 21.2 of the Sunrise Rules that the Validation Agent had to examine the application exclusively on the basis of prima facie review of the first set of Documentary Evidence received.

As stated in earlier ADR cases, it does not belong to the Validation Agent to take the initiative to correct domain names applicant's mistakes [Case No. 810 "AHOLD"].

Besides, ADR proceedings are not intended to correct applicant's errors [Case No. 1194 "Insuresupermarket"] but only to reverse Registry's decisions when it turns out that the same has violated any of the applicable rules and regulations.

It belongs to the Complainant to demonstrate to what extent the Respondent is in breach of said rules.

In this respect, the Complainant only claims that the decision to reject the domain name application is in breach of article 12 of Regulation No. 874/2004 for it should have been obvious to the Respondent that the discrepancy in the name of the applicant was due to a simple clerical error and not to the existence of two different entities

According to the Complainant, the Respondent has violated its obligations to "ensure a proper, fair and technically sound administration of the phased registration period" and to "safeguard prior rights recognised by the Community or national law"

Concerning Article 12 of Regulation No. 874/2004, the Panel wishes to emphasize that the provisions thereof only provide the general principles of the phased registration periods but does not stipulate the practical aspects of the registration procedure.

Besides, as long as it is established that the deficiency in the application is due to the sole Complainant's responsibility and since it appears that the Respondent has scrupulously complied with the applicable of articles 10.1 and 14 of Regulation 874/2004 and Sec.20 and 21.2 of the Sunrise rules which give no other choice to the Validation Agent but to reject an application when the Documentary Evidence does not enable to check that the entity which seeks the registration of a domain name is the very same as that which hold the Prior Right, it is the Panel's opinion that the Complainant's argument that it was not granted a fair treatment, in violation of Article 12 of Regulation No. 874/2004, is ill-grounded.

As far as the obviousness of the Complainant's error is concerned, the Panel is of the opinion that the only way for the Respondent to determine whether the discrepancy was minor and obviously due to a clerical mistake was to conduct its own investigations in the circumstance of the application, as authorized by Sec.21.3 of the Sunrise rules.

But it must be observed that the Complainant has not relied upon nor has reproached to the Respondent any violation of Sec.21.3 of the Sunrise rules.

This issue therefore shall not be dealt with as it would amount to give a ruling “ultra petita”,
i.e.: on an issue which has not been raised by the Complainant.

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	**William Lobelson**

DATE OF PANEL DECISION 2006-10-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The application for the domain name « epal.eu » filed on December 7, 2005 under Sunrise Period I has been rejected by the Respondent on June 18, 2006 because of a discrepancy between the name of the applicant company as mentioned in the domain name application and the trademark registration relied upon.

The Complainant admits that it erroneously identified the applicant company in the domain name application, but claims that the Respondent could easily observe that the said discrepancy was only due to an obvious clerical mistake and that its unduly formalistic examination is in breach of Article 12 of Regulation 874/2004.

The Panel finds that the non disputed discrepancy in the name of the domain applicant is the sole Complainant’s responsibility and that the Decision of Rejection does not conflict with any of the applicable rules and regulations, including Article 12 of Reg. 874/2004, the provisions of which appears totally irrelevant in the present debate.

The Panel further notices that the Complainant does not criticize the Respondent for not having carried out its own investigation on the circumstance of the domain application pursuant to Section 21.3 of the Sunrise rules with a view to finding that the error in the name of the applicant was minor and not likely to cause a rejection of the domain name.

Therefore, whether or not the clerical error in the Applicant’s name is obvious and minor or not, it does not belong to the Panel to decide whether the Respondent should have cleared such mistake by conducting its own investigations to understand the discrepancy in the applicant’s name and allow the registration of the domain name, as this would amount to rule “ultra petita”.

The Complaint is denied.