Panel Decision for dispute CAC-ADREU-002593

Case number	**CAC-ADREU-002593**
Time of filing	**2006-08-09 15:36:35**
Domain names	**die-jugendherbergen.eu, deutschesjugendherbergswerk.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Deutsches Jugendherbergswerk, Hauptverband für Jugendwandern und Jugendherbergen e.V., Deutsches Jugendherbergswerk, Hauptverband**

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 procedings relating to the disputed domain names.

FACTUAL BACKGROUND

The Complainant challenges the Registry's acceptance of the applications pertaining to the domain names DIE-JUGENDHERBERGEN and DEUTCHESJUGENDHERBERGSWERK submitted by Die Jugenherbergen in Rheinland-Pfalz un im Saarland, Germany (hereafter "the Applicant"), alledging that the applications should not have been accepted by the validation agent and the Registry as the Applicant does not have the necessary prior rights to the said names. Further, for the domain name DEUTCHESJUGENDHERBERGSWERK, the Complainant alledges that the Applicant has made its application in bad faith as the Complainant is the lawful holder of the said names.

The Registry (hereafter "The Respondent") maintains that the applications by the Applicant have fulfilled the formal requirements in documenting the necessary prior rights needed in order for the validation agent and the Registry to grant the domain names to the Applicant. Further, the Respondent notes that a complaint pertaining to cases such as this, i.e. inter alia pertaining to bad faith, should be directed towards the Applicant and not towards the Respondent.

A. COMPLAINANT

The Complainant argues that the Respondent (the validation agent) has not sufficiently examined the prior rights of the Applicant and that the Applicant has no prior rights in the names "DIE JUGENDHERBERGEN" and "DEUTCHESJUGENDHERBERGSWERK", which actually belong to the Complainant, cf. below.

1) In relation to the domain name DIE-JUGENDHERBERGEN the Complainant inter alia holds a German trademark "Jugendherberge", i.e. the word which forms the distinctive part of the domain name. Moreover, according to the Complainant "DIE JUGENDHERBERGEN" is used as a business identifier by the Complainant, but not the Applicant - except in context of "Die Jugenherbergen in Rheinland-Pfalz un im Saarland".

2) In relation to the domain name DEUTCHESJUGENDHERBERGSWERK the Complainant inter alia holds a German trademark "DJH", which according to the Complainant is a well known abbreviation for DEUTCHESJUGENDHERBERGSWERK. Further, the name has been used by the Complainant for almost 100 years and consequently the application by the Applicant for this domain name has been made in bad faith.

As a consequence of the above the registration of the two domain names should be annulled and they should be transferred to the only other applicant having demonstrated its prior right, i.e. the Complainant.

B. RESPONDENT

the Respondent maintains that it has received the required documentation pertaining to the relevant prior rights in time and that validation has taken place in accordance with the Sunrise Rules, cf. below:

1) In relation to the domain name DIE-JUGENDHERBERGEN:

The Applicant claimed that it was the holder of the following title of a protected literary and artistic work: "DIE JUGENDHERBERGEN".

Section 18 of the Sunrise Rules states that for trade names the following documentary evidence must be submitted:

1. a copy of the cover or image of the literary and artistic work containing the title concerned (together with a brief description of (a) the work, or (b) the content of the work, a photograph of the work, etc.), and

2. an affidavit signed by a competent authority, legal practitioner or professional representative stating that the Applicant holds the claimed rights in respect of the said title on the date of the Application, that the work in question has lawfully been made public and that the title is distinctive

The Applicant submitted as documentary evidence:

1. a copy of the cover of a book and also what appears to be the summary of the book (on the first page), the copy also contained the ISBN code

2. an affidavit signed by an attorney-at-law

The Applicant also submitted a copy of a journal which stated that the signs were protected as titles.

2) In relation to the domain name DEUTSCHESJUGENDHERBERGSWERK:

The Applicant claimed that it was the holder of a trade name "DEUTSCHESJUGENDHERBERGSWERK".

Section 16 of the Sunrise Rules states that for trade names the following documentary evidence must be submitted:

1. an extract from an official register, mentioning the date on which the trade name was registered; and

2. proof of public use of the trade name or business identifier prior to the date of application

The Applicant submitted as documentary evidence:

1. an extract from the register, clearly mentioning the date of registration

2. a copy of what seems to be an information/promotional leaflet, showing that the trade name was being used

The documentary evidence also consisted of an affidavit from an attorney-at-law stating that the Applicant was the holder of a trade name.

Consequently, as all required documents were submitted, the validation agent rightfully concluded - on the basis of the documentation received - that the Applicant was the holder of a prior right and therefore entitled to the domain names in question.

As to the Complainant's arguments relating to the Applicant's possible bad faith registration, the Respondent maintains that any proceedings relation to such allegations should be directed towards the Applicant itself, as the Respondent is not able to represent the Applicant in this matter. The Respondent further refers to the ADR-cases: No. 532 URLAUB, 382 TOS, 191 AUTOTRADER, 335 MEDIATION, 685 LOTTO, 1239 PESA, 1317 FEE and 1867 OXFORD.

Based on the above, the Respondent is of the opinion that the complaint should be denied.

DISCUSSION AND FINDINGS

According to article 10.1 of Commission Regulation (EC) No. 874/2004 (herinafter "the Regulation")holders of prior rights shall be eligible to apply for domain names during a period of phased registration (the Sunrise Period(s)). Article 10.2 of the Regulation states that registration in such instances shall take place in accordance with written documentation which proves that such a right exists and according to preamble no. 12 of the Regulation the validation agent should, on the basis of evidence provided by the applicants, assess the right which is claimed for a particular name.

Article 14 of the Regulation further elaborates on the validation procedure and inter alia states that the validation agent shall inform the Registry if 1) the documentation has not beeen received in due time (irrelevant for this case), or 2) if the documentary evidence does not substantiate a prior right, cf. paragraph 7 of the article. The Regulation does not elaborate further on the duties of the validation agent, however relevant for this case, sections 16 and 18 of the Sunrise Rules specifically list the necessary minimum documentary evidence to be submitted by an applicant basing its application on prior rights pertaining to company names, trade names, business identifiers and distinctive titles of protected literary and artistic works.

In the view of this Panel, the examination to be performed by the validation agent pertaining to applications based prior rights as set forth in sections 16 and 18 of the Sunrise Rules, relates to the formal and not the substantial aspects of the documentation supplied by an applicant. Thus, if - as in this case - provided with apperently proper documentary evidence supporting an applicants alleged prior rights, the validation agent cannot take upon itself the role of a court of law or of another relevant authority and undertake a assesment as to whether the prior rights according to the documents are legally valid but must perform a prima facie formal assessment of the documentation only. If the documentation appeers to be in order, the validation agent is not in a position to reject it unless possibly under very special circumstances, e.g. if it is clear that the documentation has been falsified. No such circumstances have been documented in this case.

As the Applicant has provided in form the necessary documentation, cf. the Respondents contentions, the Respondent has not been entitled to reject the applications pertaining to the domain names DIE-JUGENDHERBERGEN and DEUTCHESJUGENDHERBERGSWERK, but has - according to article 10.2 of Commission Regulation (EC) No. 874/2004 - been required to grant the registration to the Applicant.

As it has been the case in a number of previous decisions under the ADR procedures, cf. inter alia decision Nos. 1239 PESA and 1317 FEE, a complaint claiming bad faith on part of an applicant must in a case such as this one be initiated against the domain name holder, i.e. the Applicant and not the Respondent.

In accordance with the above the decision of the Respondent is affirmed and the complaint denied.

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	**Kim G. Hansen**

DATE OF PANEL DECISION 2006-11-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contested the acceptance by the Registry during the phased registration period of applications pertaining to the domain names DIE-JUGENDHERBERGEN and DEUTCHESJUGENDHERBERGSWERK claiming that the Applicant did not have the required prior rights. Further in relation to one of the domain names it was claimed that registration had taken place in bad faith.

The Applicant had submitted the required supporting documentation pertaining to prior rights within the time limit set forth.

Having - as in this case - received the proper documentation required under sections 16 and 18 of the Sunrise Rules, which sections specifically list the necessary minimum documentary evidence to be submitted by an applicant basing its application on prior rights pertaining to company names, trade names, business identifiers and distinctive titles of protected literary and artistic works, the Registry is not in a position to reject an application.

Further, a complaint claiming bad faith on part of an applicant must in a case such as this one be initiated against the domain name holder, i.e. the Applicant and not the Registry.

For these reasons the Complaint was denied.