Panel Decision for dispute CAC-ADREU-002627

Case number	CAC-ADREU-002627
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Domain names	gandi.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	GANDI SAS, Madame Françoise MACE, Legal department

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 ADR Panel is not aware of any pending or decided cases which relate to the disputed domain name.

FACTUAL BACKGROUND

Factual Background

The Complainant is a Société par actions simplifiée incorporated under French law registered with the Trade and Company Registry of Paris under number B 423 093 459 since 28 May 1999.

The Complainant is the owner of French National Trade mark No. 01 3 108 658 GANDI in International classes 9, 38 and 42, dated 26 June 2001 and CTM registration number 002712008 GANDI in International classes 9, 38 and 42 dated 3 May 2002. It is also the owner of the domain name gandi.net.and maintains a website at that address.

The Complainant is an accredited Internet domain name registrar, authorized to manage and register domain names on Internet and certified by the Internet Corporation for Assigned Names and Numbers (ICANN) for registration of .com .net .org .biz .info .name domain names. DNS.BE for registration of .be domain names and EURID, for registration of .eu domain names.

On 8 December, 2005, the Complainant filed an application for the domain name gandi.eu during the Sunrise Period. The application was received by EURid on 8 December 2005 at 20:17:06.734

The Complainant’s application was based on the French national trade mark registration GANDI, registered with the Institut National de la propriété industrielle on 26 June 2001, under number 01 3 108 658 in International classes 9.38 and 42.

The Complainant's application for registration of the domain name gandi.eu was rejected by the Respondent. The grounds on which the Respondent rejected the application have been given as follows:-

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "Regulation 874/2004 ") 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 (4) of the Regulation states that every applicant must submit documentary evidence that shows that he or she is the holder of the Prior Right claimed on the name in question;

Article 3 (d) of the Regulation states that the request for domain name registration shall include an undertaking from the applicant that it shall abide by all terms and conditions for registration and article 12 (1) 3 of the Regulation states that the Registry shall publish on its website a detailed description of all the technical and administrative measures that it shall use to ensure a proper, fair and technically sound administration of the phased registration period;

Section 13 (2) ii of the the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period {the "Sunrise Rules") states that extracts from commercial trademark databases are not acceptable as Documentary Evidence even if they reproduce exactly the same information as the official extracts;

Pursuant to section 21 (3) of the Sunrise Rules, the Validation Agent is not obliged, but 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 Complainant applied for the domain name GANDI on 8 December 2005. The documentary evidence was received on 13 December, 2005, which is before the 17 January 2006 deadline and consisted of extracts from a commercial database attesting:

- that the Complainant is the owner of the French registered trade mark GANDI; and
- that the Complainant is the owner of the CTM registration GANDI.

As article 13(2)ii of the Sunrise Rules unequivocally provides that extracts from commercial trademark databases are not acceptable as documentary evidence, the Respondent took the view that it had no other choice than to reject the Complainant's domain name application.

Principal Relevant Regulations and Rules

The principal provisions of Regulation 874/2004 and the Sunrise Rules governing this Complaint are as follows:

Article 14 of Regulation 874/2004 deals with Validation and registration of applications received during phased registration. At the third paragraph it is stated:

"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. The documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected."

The Sunrise Rules article 13.2. addresses the extent and nature of the documentary evidence required to establish Prior Rights for the purposes of an application in the Sunrise Period, based on registered trade marks.

Section 13.2 of the Sunrise Rules provides:

" Unless otherwise provided for in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for a registered trade mark:

(i) a copy of an official document issued by the competent trade mark office indicating that the trade mark is registered (certificate of registration, renewal certificate, official extract from the register, declaration by the trade mark office, publication of the fact of registration in an official journal, etc.); or

(ii) an extract from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts. In the foregoing cases, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark…"

Section 21.2 of the Sunrise Rules provides:

"2. The 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 provides

"3. 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."

A. COMPLAINANT

The Complainant submits that the Respondent's decision to reject its application conflicts with the Sunrise Rules, Regulation 874/2004, Regulation (EC) n°733/2002 dated on 22 April 2002 and Regulation (EC) n°1654/2005 dated on 10 October 2005) for the following reasons:-

Article 11 of the .Sunrise Rules states that, during the first phase of the Phased Registration Period, only domain names that correspond to

(i) registered Community or national trade marks or

(ii) geographical indications or designations of origin may be applied for by the holder and/or licensee (where applicable) of the Prior Right concerned, without prejudice to the names that may be applied for by Public Bodies, as referred to in Article 10(3) of the Public Policy Rules.

The Complainant submits that in compliance with this article 11, the Complainant is the owner of a registered national trademark and has provided the certificate of registration of the GANDI trademark.

Article 19.1 states that "registration of a Domain Name on the basis of a Prior Right consists in the registration of the complete name for which the Prior Right exists, as manifested by the Documentary Evidence" and article 13.2.(i) provides that "it is sufficient to submit" a "copy of an official document issued by the competent trade mark office indicating that the trade mark is registered (certificate of registration, ..)" as Documentary Evidence of a prior right based on a trademark.

The Complainant submits that it applied for registration for the complete name for which the prior right exists and has proved this right by supplying the required Documentary Evidence and therefore is in compliance with this article 19.1 and article 13.2.

The Complainant submits that its Documentary Evidence was submitted according to the .Sunrise Rules, and that the Respondent's disputed decision conflicts with Sunrise Rules and should be annulled.

The Complainant points to article 4.2 (b) of Regulation (EC) n°733/2002, that provides that "the Registry shall (b) register domain names in the .eu TLD through any accredited .eu Registrar requested by any: (i) undertaking having its registered office, central administration or principal place of business within the Community".

The Complainant submits that as it is a company having its registered office in France and is duly incorporated under French law and has been registered with the Trade and Company Registry of Paris as number B 423 093 459 since 28 May 1999, the Respondent should have registered the domain name gandi.eu as requested.

The Complainant further refers to article 10, Chapter IV, of Regulation 874/2004, regarding "Eligible parties and the names they can register", that states:

"1. Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts".

And in the second paragraph states that "'Prior rights' shall inter alia be understood to include registered national and community trademarks.

Article 10.2 of Regulation 874/2004 provides:

"2. The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists."

The Complainant submits that it follows that it is entitled to registration under the Sunrise Rules as

• it is the holder of a qualifying Prior Right being a national trade mark registration recognized by national law; and
• the trade mark registration right was granted by the Institut National de la propriété industrielle in France which is a public body; and
• the application was made for registration of the complete name “GANDI” for which the Complainant’s Prior Right exists; and
• the certificate of registration of the French national trade mark, which is the relevant document proving that such right exists was provided to the Respondent on 13 December 2005.

The Complainant further submits that it is a well known registrar, providing registration and management of domain names on the Internet, and only on the Internet. As a consequence, the Complainant is eager to register the name GANDI in most of the TLDs for which it is accredited and in particular EU zone, with the domain name gandi.eu.

The Complainant states that between the application of recording of domain name, on 8 December 2005 and the Respondent’s refusal on 23 June 2006, the Complainant has changed the address of its registered office. The address of the head office such as registered on the certificate of registration of the French GANDI trademark is thus different from the current address of the Company GANDI. That address was however valid at the time GANDI filed the application. Thus, the fact that the change of the address occurred should not be an obstacle to the registration of the domain name and should therefore not affect the Validation Agent’s assessment of the owner of the trademark and the applicant for the domain name as being one and the same.

The Complainant cites the decision of the ADR Panel in the decision Cabinet Capri v. EURid, Case No.00396 dated 13 June 2006, as support for the proposition that the Registry should not have a pure formalistic approach, but should apply a fair approach to the applicants. In that case the panellist stated that “justice shall always rule over the formalistic approach and technical means of communication.”

The Complainant considers that the Respondent and the Validation Agent had all documentation necessary to verify and validate the Complainant’s Prior Right to the name gandi.eu. In this regard the Complainant further cites the decision in CAPRI where the panel stated: “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 Complainant submits that its application for registration of the gandi.eu domain name was legitimate and that the Complainant has provided the necessary Documentary Evidence required for registration during the first Sunrise Period.

Finally, the Complainant argues that if its domain name application conflicted with any formal requirements, such formal requirements should be disregarded in view of article 4 of Regulation 733/2002, pursuant to which the Respondent is obliged to organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility.

The Complainant requests annulment of the disputed registry's decision (Paragraph B11 (c)) and an order directing the Respondent to register the Complainant as the owner of the domain name gandi.eu and to immediately activate the domain name.

B. RESPONDENT

The Respondent refers to article 14 (4) of Regulation 874/2004 that states that every applicant must prove its Prior Rights by submitting Documentary Evidence that shows that he or she is the holder of the Prior Right claimed on the name in question.
The requirements for an applicant to prove its Prior Rights, and in particular its trademark rights, are further set out in the Sunrise Rules.

Section 13 (2) ii of the Sunrise Rules states that extracts from commercial trademark databases are not acceptable as documentary evidence even if they reproduce exactly the same information as the official extracts:

"Unless otherwise provided for in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for a registered trademark:

(i) a copy of an official document issued by the competent trademark office indicating that the trade mark is registered (certificate of registration, renewal certificate, official extract from the register, declaration by the trade mark office, publication of the fact of registration in an official journal, etc.); or

(ii) an extract from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same

information as the official extracts".

The Complainant does not dispute that it is bound by the Sunrise Rules. For the sake of completeness, the Respondent refers to the following non-exhaustive list of cases in which the Panels have applied the Sunrise Rules: case n° 210 (BINGO), 127 (BPW), 293 (POOL), 810 (AHOLD), 1407 (LEXOLUTION), 954 (GMP), 119 (NAGEL).

In case No. 954 (GMP), the panel held in a similar situation that the respondent was correct in rejecting the domain name application on the basis that the documentary evidence consisted only of an extract from a commercial, and not an official, trademark database:

"The Complainant does not dispute that it submitted an extract of a commercial database. Moreover, it appears from the complaint that the Complainant is well aware of the rule provided by section 13 (2) ii of the Sunrise Rules which states that extracts from commercial trademark databases are not acceptable as documentary evidence even if they reproduce exactly the same information as the official extracts. What the Complainant seems to be getting at is that this rule is too strict and should not have been applied in the case at hand.

[…] Its failure to comply to section 13 (2) ii of the Sunrise Rules is reason enough for this Panel so as to reject the Complainant's application".

In casu the Complainant does not dispute that it submitted an extract of a commercial database.

Moreover, it appears from the Complainant's submissions, that the Complainant is well aware of the rule provided by section 13 (2) ii of the Sunrise Rules pursuant to which "extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts".

The Complainant however does not discuss section 13 (2) ii of the Sunrise Rules in its Complaint. The Complainant only claims that it complied with section 13 (2) i of the Sunrise Rules as it asserts to have submitted an "official document issued by the competent trademark office".

However, the Complainant merely submitted a print-out of the French and European Community trademarks from a commercial trademark database. Such print-out obviously does not constitute an "official" document, nor is it issued by the "competent trademark office".

Consequently, as the Complainant's application did not comply with section 13 (2) i and section 13 (2) ii of the Sunrise Rules, the Respondent had no other choice than to reject the Complainant's application.

The Complainant has argued that despite the clear-cut text of section 13 (2) ii of the Sunrise Rules, even if it may be true that its domain name application conflicted with formal requirements, such formal requirements should be disregarded in view of article 4 of Regulation 733/2002, pursuant to which the Respondent shall organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility.

The Respondent accepts that it has indeed the general obligation set out in article 4 of Regulation 733/2002. However, pursuant to this obligation, article 12.1 of the Regulation requires the Respondent to set out "a detailed description of all the technical and administrative measures that it shall use to ensure a proper, fair and technically sound administration of the phased registration period". The Respondent has complied with article 12.1 of the Regulation by implementing the Sunrise Rules.

Once again, the applicability of the Sunrise Rules is not disputed by the Complainant and is accepted, amongst others, by Panels inter alia in cases n° 210 (BINGO), 127 (BPW), 293 (POOL), 810 (AHOLD), 1407 (LEXOLUTION), 954 (GMP), 119 (NAGEL).

Although some of the formal requirements in the Sunrise Rules, such as the requirement of section 13 (2) ii may be considered rather harsh by some domain name applicants, such requirements are necessary for the efficient and fair processing of the massive amount of domain names that the Respondent received during the Sunrise period.

As the Panel in case n° 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".

In case n° 1627 ("PLANETINTERNET"), the Panel agreed with the Panel in ISL and further explained that "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".

The Respondent submits that for the above reasons, the Complaint must be rejected.

DISCUSSION AND FINDINGS

Section 13 (2) ii of the Sunrise Rules expressly states that extracts from commercial trademark databases are not acceptable as documentary evidence even if they reproduce exactly the same information as the official extracts.

While the Complainant has submitted that it filed a certificate of registration of the French national trade mark with its application for registration of the gandi.eu domain name on 13 December 2005, this is not correct, as the documents submitted were in fact extracts from commercial trademark databases.

The Respondent is therefore correct in stating that the Documentary Evidence supplied by the Complainant in prosecuting its application did not comply with Section 13 (2) ii of the Sunrise Rules.

The Complainant in this case is itself a registrar, and of all applicants, it should have been aware of and complied with the formal proofs required by the Sunrise Rules. Furthermore as the Respondent points out, the submissions of the Complainant do not address Section 13 (2) ii of the Sunrise Rules. Whether this was unintentional lacuna in the Complaint or an intentional attempt to obfuscate the issue, in the view of the ADR Panel this was a lamentable omission by the Complainant.

Section 21 (3) of the Sunrise Rules provides that the Validation Agent is not obliged, but 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.

Despite the fact that the Validation Agent had prima facie evidence of the Complainant’s ownership of the French national trade mark GANDI and the CTM registration for the GANDI trade mark, it would appear that the Validation Agent did not exercise its discretion granted under section 21(3) of the Sunrise Rules.

Since the Validation Agent has been given a discretion, it has a duty to exercise that discretion.

It is implicit in the Response that the Respondent’s position is that since the Sunrise Rules expressly exclude the type of evidence submitted by the Complainant, the Validation Agent was correct in not carrying out an investigation into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced.

The Respondent has submitted that by implementing the Sunrise Rules, it has complied with Article 12.1 of Regulation 874/2004 that requires the Respondent to set out "a detailed description of all the technical and administrative measures that it shall use to ensure a proper, fair and technically sound administration of the phased registration period".

Having considered the evidence and submissions filed in these proceedings, this ADR Panel makes the following findings of fact viz.

• it is not disputed that the Complainant is and was at all material times the owner of French National Trade mark No. 01 3 108 658 GANDI in International classes 9, 38 and 42, dated 26 June 2001 and CTM registration number 002712008 GANDI in International classes 9, 38 and 42 dated 3 May 2002;

• contrary to the Complainants claims, the documents submitted by the Complainant did not comply with the requirements of the Sunrise Rules and in particular the express provision in Section 13.2.ii that extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts;

• the Complainant is incorrect in claiming that a certificate of registration of the French national trade mark was filed on 13 December 2005 as the documents submitted were merely extracts from commercial databases ;

• the Complainant did eventually provide a certificate from the Institut National de la propriété industrielle that complied with the evidential requirements of the Sunrise Rules, but only as an annex to the Complainant.

The application procedure in this case was governed by the Sunrise Rules. While it is clear that the Complainant could have produced the required Documentary Evidence in the form provided by the Sunrise Rules it failed so to do.

That being said however, the application submitted by the Complainant established a prima facie case that it was entitled to the registration in the first phase of the Sunrise Period.

Pursuant to section 21 (3) of the Sunrise Rules, the Validation Agent was not obliged, but was 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.

There is no evidence as to whether the Validation Agent exercised that discretion. On the balance of probabilities, given that the Response does not address this point, it is possible to infer that, despite having been presented with prima facie evidence that the Complainant was entitled to be registered as the owner of the gandi.eu domain name, the Validation Agent did not even consider whether it should exercise the discretion to investigate further.

With a right comes a duty to exercise it appropriately. It would follow that the Validation Agent has a duty to consider when and if that discretion should be exercised. Furthermore the discretion should be exercised in a reasonable manner and notwithstanding the fact that it is expressly stated to be a “sole” discretion of the Validation Agent, the Validation Agent should not be at large to decide in an arbitrary manner whether to exercise it or not. In the absence of any guidance from the Regulations or the Rules it would seem appropriate that reasonableness should be the guiding principle.

Section 21.2 of the Sunrise Rules provides 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.”. The statement that the Validation Agent carries out the obligation “exclusively” on the basis of the prima facie review of the first set of Documentary Evidence would seem on its face to contradict the express grant of a discretion to investigate further in Section 21. Insofar as this is an ambiguity in the Sunrise Rules it would seem to be appropriate that the rules should be interpreted in favour of the Respondent.

In the present case, in the opinion of the ADR Panel, given that the Respondent had established a prima facie case that it was entitled to be registered as the owner of the gandi.eu domain name it was inappropriate that the Validation Agent did not consider whether or not to exercise its discretion and carry out an investigation. In the particular circumstances of the present case, such an investigation would not have been either time consuming or expensive. A simple enquiry requesting the Complainant to provide extracts from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO, in lieu of the obviously bona fide extracts from commercial databases that had been submitted, would have been sufficient.

The Respondent has argued that the Sunrise Rules should be applied in this case, including the rule in section 13 (2) ii that some applicants may find to be rather harsh but is necessary for the efficient and fair processing of the huge amount of applications received. While that point is well made, nonetheless, even during the Sunrise Period with large numbers of applications, each application should be considered on its own merits. While section 13 (2) ii of the Sunrise Rules may well be necessary for the “efficient” processing of the applications, the procedure is governed by all of the Sunrise Rules and a failure by the Validation Agent to consider whether or not to exercise the discretion granted to it to investigate further in an appropriate case would not produce a “fair processing”.

The change of address by the Complainant was not an issue in the decision making process and as such is not relevant to this decision.

In the circumstances this ADR Panel determines that the decision to reject the Complainant’s application for registration of the gandi.eu domain name should be annulled because in the particular circumstances of this case, the Validation Agent failed in its duty to consider whether or not to exercise the discretion granted to it under section 21 (3) of the Sunrise Rules.

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

PANELISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2006-11-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Section 13 (2) ii of the Sunrise Rules states that extracts from commercial trademark databases are not acceptable as documentary evidence even if they reproduce exactly the same information as the official extracts.

In its application under the Sunrise Rules for registration of the gandi.eu domain name, the Complainant merely submitted a print-out of the French and European Community trademarks from a commercial trademark database as Documentary Evidence to prove its Prior Rights.

The Validation Agent and the Respondent took the view that the print-out submitted by the Complainant did not constitute an "official" document, nor was it issued by the "competent trademark office". The Application was rejected.

The Complainant submits that it is entitled to registration of the gandi.eu domain name under the Sunrise Rules as

• it is the holder of a qualifying Prior Right being the national trade mark registration GANDI recognized by national laws of France; and
• the trade mark registration right was granted by the Institut National de la propriété industrielle in France which is a public body; and
• the application was made for registration of the complete name “GANDI” for which the Complainant’s Prior Right exists; and
• the certificate of registration of the French national trade mark, which is the relevant document proving that such right exists was provided to the Respondent on 13 December 2005.

The ADR Panel made the following findings of fact viz.

• it is not disputed that the Complainant is and was at all material times the owner of French National Trade mark No. 01 3 108 658 GANDI in International classes 9, 38 and 42, dated 26 June 2001 and CTM registration number 002712008 GANDI in International classes 9, 38 and 42 dated 3 May 2002;

• contrary to the Complainants claims, the documents submitted by the Complainant did not comply with the requirements of the Sunrise Rules and in particular the express provision in Section 13.2.ii that extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts;

• the Complainant is incorrect in claiming that a certificate of registration of the French national trade mark was filed on 13 December 2005 as the documents submitted were merely extracts from commercial databases ;

• the Complainant did eventually provide a certificate from the Institut National de la propriété industrielle that complied with the evidential requirements of the Sunrise Rules, but only as an annex to the Complainant.

The ADR Panel decided to annul the Respondents decision because:

i. given that the Complainant had established a prima facie case that it was entitled to be registered as the owner of the gandi.eu domain name it was inappropriate that the Validation Agent did not consider whether or not to exercise its discretion and carry out an investigation. The investigation would not have been very time consuming or expensive. A simple enquiry requesting the Complainant to provide extracts from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO in lieu of the obviously bona fide extracts from commercial databases that had been submitted would have been sufficient.

ii. the change of address by the Complainant was not an issue in the decision making process and as such is not relevant to this decision.

iii. the Respondent’s decision to reject the Complainant’s application for registration of the gandi.eu domain name should be annulled because in the particular circumstances of this case, the Validation Agent failed in its duty to consider whether or not to exercise the discretion granted to it under section 21 (3) of the Sunrise Rules.