Panel Decision for dispute CAC-ADREU-002640

Case number	**CAC-ADREU-002640**
Time of filing	**2006-08-04 14:20:39**
Domain names	**albion.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**ALBION Group, s.r.o.**

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 proceedings which relate to the disputed domain names.

FACTUAL BACKGROUND

1. Albion Group s.r.o (hereinafter “the Complainant”) applied for the domain name albion.eu (hereinafter “the Domain Name”) on 7 December 2005, during the Sunrise Period. The Complainant is the licensee of the Czech trademark no. 254174 ALBION.

2. The validation agent received the Documentary Evidence for the application on 5 January 2006, which was before the deadline of 16 January 2006.

3. The Documentary Evidence consisted of, inter alia, a registration certificate for the Czech trademark ALBION, proprietor of which is Mr. Jaroslav Smetana, i.e. a different party than the Complainant.

4. The Complainant states that a license declaration, duly signed by the proprietor of the trademark ALBION, was submitted along with other Documentary Evidence to the validation agent. The Complainant states that the pdf file submitted with the complaint to the ADR Court is the pdf file which was transmitted to the validation agent. The Respondent, however, states that the pdf file submitted to the validation agent comprised of all other claimed documents, except the said license declaration. A pdf template of the submitted Documentary Evidence was submitted to the ADR Court, in turn, by the Respondent. The said file does not contain a license declaration.

5. The validation agent concluded that in the absence of a license declaration, the Complainant had not demonstrated that it is the holder of a prior right to the Domain Name and therefore rejected the application.

6. ADR proceedings were initiated by the Complainant to annul the disputed decision and to attribute the Domain Names to the Complainant.

A. COMPLAINANT

1. The Complainant contends that Documentary Evidence to support the application for the Domain Name was sent by the registrar to the Respondent on 5 January 2006 as a pdf file which comprised of database extract of the trademark registration for the mark ALBION, registration certificate for the trademark ALBION, Complainant’s certificate of incorporation and a license declaration for the trademark ALBION.

2. The Complainant contends that it is eligible to register the Domain Name during the Sunrise Period as it has obtained a license from the proprietor of the trademark ALBION, in respect of which the prior right is claimed.

3. The Complainant further contends that the license declaration was an inseparable part of the Documentary Evidence for the Domain Name application and was transmitted to the Respondent.

4. The Complainant finally requests that the EURid's decisions to reject the application should be cancelled and that the Domain Name be attributed to the Complainant.

B. RESPONDENT

1. The Respondent, EURid, contends that the burden of proof is with the Complainant to demonstrate that it is the holder or the licensee of a prior right. As the validation agent did not receive a license declaration which would have demonstrated that the Complainant has a prior right in the form of an entitlement to use the subject trademark ALBION, the decision to reject the Complainant's application was correct.

2. The Respondent contends that in case an applicant fails to submit documentary evidence for the validation agent which would enable it to assess if the applicant indeed is the holder of a valid prior right, the validation agent has to reject the application.

3. The Respondent contends that all documentary evidence must be submitted within 40 days from the submission of the application for the domain name, which in the present case ended on 16 January 2006. Therefore, documentary evidence submitted during the course of the ADR proceedings may not be taken into consideration. Therefore, the license declaration form submitted during the course of these ADR proceedings may not be taken into consideration.

4. The Respondent concludes that since the Complainant in the present case did not seize the opportunity to demonstrate its prior rights in the Domain Name, the complaint must be denied.

DISCUSSION AND FINDINGS

1. It is set forth in Article 10(1) of the Commission Regulation (EC) 874/2004 that only the holder of a prior right or a licensee of such a right is eligible to be granted the corresponding domain name. In case the applicant is the proprietor of the prior right in question, the documentary evidence must consist of evidence of the prior right. In case the applicant is a licensee of a prior right, the said right must be substantiated by submitting a license declaration form.

2. The Complainant claims that it submitted a license declaration form to the Respondent and attached to the complaint a template of the pdf file submitted to the validation agent. The said template contained a duly executed license declaration form. The Respondent, however, stated that such a pdf file was never received by the validation agent and produced a pdf template which it claimed was actually received by the validation agent. This template did not contain the license declaration form.

3. Section 21 (2) of Sunrise Rules states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the documentary evidence it has received. Section 21(3) of the Sunrise Rules gives the validation agent a possibility to conduct further investigations into the circumstances of the application. In the present case, the existence of a license cannot be such a matter which the validation agent reasonably should investigate.

4. The question before the Panel is, therefore, how to judge between two sets of submitted evidence in the form of two different pdf templates, both claimed to be the Documentary Evidence de facto delivered to the validation agent.

5. The Panel has considered that the pdf template provided by EURid as de facto Documentary Evidence must be given priority, since the Compalinant has not been able to provide indisputable evidence in favor of the authenticity of the pdf template it has submitted in the course of this ADR proceeding. Therefore the Panel must consider that the license declaration form was not duly submitted to the validation agent.

6. As the burden of proof is on the applicant to provide conclusive information to the validation agent to enable it to make a prima facie decision on the matter, the Panel does not find the rejection of the application unreasonable, as the said requirement was not met.

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	**Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2006-11-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's application for the domain name albion.eu was refused on grounds that the submitted documentary evidence was not sufficient to prove the claimed prior right. The Respondent, EURid, stated that since the Complainant did not produce documentary evidence in the form of a license declaration to show that it is the licensee of the underlying prior right, the validation agent was correct in refusing the application.

The Complainant claims that it submitted a license declaration form to the Respondent and attached to the complaint a template of the pdf file submitted. The said template contains a duly executed license declaration form. The Respondent, however, stated that such a pdf file was never received by the validation agent and produced a pdf template, which it claimed was actually received by the validation agent. This template did not contain the license declaration form.

The Panel considered that the evidence produced by EURid must be given priority and therefore ruled that the license declaration form was not submitted as Documentary Evidence. Since the burden of proof is on the applicant to provide relevant information to the validation agent to enable it to make a prima facie decision on the matter, it was not unreasonable to reject the subject application, as the said requirement was not met.