Panel Decision for dispute CAC-ADREU-002646

Case number	**CAC-ADREU-002646**
Time of filing	**2006-08-02 13:09:09**
Domain names	**rentacar.eu, rent-a-car.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**RENT A CAR, Mark BORE**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

The Complainant filed applications for registration (the "Applications") of the .eu domain names Rentacar.eu ("Domain Name A") and Rent-A-Car.eu ("Domain Name B") (together the "Domain Names") on 7 September 2005.

The Applications were based upon French trade mark registration RENT A CAR number 98 756 140 filed on October 26, 1998 and registered on February 4, 2000 (the "Trade Mark").

In decisions dated 21 June 2006 in respect of Domain Name A and 6 July 2006 in Respect of Domain Name B the Respondent rejected the Applications (the "Decisions") because the documentary evidence provided by the Complainant was considered insufficient to establish the Prior Right of the Complainant to the Domain Names within the meaning of Article 10(1) of the .eu Sunrise Rules (the "Sunrise Rules").

On 1 August 2006, the Complainant filed this complaint against the Decisions (the "Complaint") seeking an annulment of the Decisions and requesting that the Domain Names must be granted to the Complainant. These proceedings were formerly commenced on 14 August 2006.

A. COMPLAINANT

The Complainant contends the following:

(a) It has a Prior Right by means of its ownership of the Trade Mark according to Article 10(1) of the Commission Regulation 874/2004 (the "Regulation") and was eligible to apply for the Domain Names and should have thus benefited from the Sunrise period.
(b) Article 10(2) of the Regulation provides that registration of a Prior Right shall consist of the registration of the complete name to which the Prior Right exists, as written in the documentation which proves that such rights exist.
(c) It has submitted documentary evidence which proves that it is the owner of the Trade Mark which is identical to the Domain Names, demonstrating the Complainant's valid Prior Right for the purpose of validation of the Applications.
(d) The Trade Mark registration certificate submitted with the application for Domain Name B indicated that the Trade Mark

owner was VUTEL. The Complainant contends that VUTEL is the previous name of the Complainant which had changed its name and address following registration of the Trade Mark. Therefore, the Trade Mark owner and the Complainant for the Domain Names are one and the same.
(e) It has produced with the Complaint a certificate of the change of name and address of the Trade Mark owner at the French Trade Marks Registry together with a copy of the report of the extraordinary general meeting relating to the change of name.
(f) The Trade Mark owner and the Complainant have at all times remained the same corporate entity and this is demonstrated by the fact that the company number of the Complainant has always remained the same.
(g) The Trade Mark registration certificate is the sole official document which could have been submitted and it was not possible to file the change of name and address certificate. Such change of name and address would have only appeared on the renewal certificate which would not have occurred until 2008.
(h) The Validation Agent could have reasonably concluded on the basis of documentary evidence submitted that the Complainant had a Prior Right. If it had any doubt, it could have used its authority under Article 21.3 of the Sunrise Rules to conduct an investigation into the Prior Right claimed and the documentary evidence submitted by the Complainant.
(i) Such an investigation, if it is discretionary on the part of the Validation Agent would have proved the Complainant's Prior Right.
(j) The validation of the Applications could have been done by the Validation Agent easily by using a quick on-line check.
(k) The Applications should be examined in the light of the circumstances described above, the Decisions should be annulled and the Domain Names should be granted to the Complainant.

B. RESPONDENT

The Respondent contends as follows:
(a) In respect of Domain Name A the Complainant submitted documentary evidence consisting of a listing of trade mark information, apparently drafted by the Complainant itself or its trade mark agent. The Complainant did not submit any official document by a competent trade mark office or any print out from an official on-line database as required by Section 13(2) of the Sunrise Rules. Therefore the Complainant did not demonstrate that it was the holder or the licensee of the Prior Right in Domain Name A.
(b) In respect of Domain Name B the Complainant submitted documentary evidence consisting of a certificate of registration issued by the competent trade mark office in France showing the Trade Mark was registered in the name of VUTEL with the address 22 Rue La Boétie 75008 Paris. The Complainant did not submit documentary evidence substantiating that it was licensed by the owner of the Trade Mark or that it was the same person or the legal successor to the owner of the Trade Mark.
(c) The Regulation and Sunrise Rules clearly state that the burden of proof is with the applicant to demonstrate that it is the holder of a Prior Right. In order to meet its burden of proof, the applicant needs to submit official documents showing that the applicant is the holder of the claimed trade mark as indicated in the documentary evidence. When there is a difference between the name of the applicant and the name of the trade mark owner the applicant must submit official documents. If the applicant fails to do so its application must be rejected.
(d) Documents submitted after the 40 day period following the submission of an application may not be considered as documentary evidence for the purpose of the Regulation.
(e) The Complainant now submits new documents consisting of certificates of trade mark registration, record of name change showing that VUTEL changed its company name to Rentacar. However, this was not submitted within the 40 day period.
(f) The new documents were received on 1 August 2006 with the filing of the Complainant.
(g) Accepting new documents of documentary evidence would clearly violate the Regulation.
(h) Verification is the only task for the Panel in these proceedings and these proceedings should not serve as a "second chance" or an additional round providing the Complainant with an option to remedy its imperfect original application that was rejected during the Sunrise period.
(i) For the reasons stated above the Complaint must be rejected.

DISCUSSION AND FINDINGS

The Panel has divided its ruling into two sections the first dealing with Domain Name A and the second dealing with Domain

Name B.

Domain Name A

The Panel accepts the Complainant's claim that it is the owner of the Trade Mark. However, section 13(2) of the Sunrise Rules lists the documents which are required to be submitted to substantiate a Prior Right in respect of a registered trade mark. Domain Name A was filed by the Complainant without any eligible supporting documents demonstrating that the Complainant was a holder or a licensee of a Prior Right of the name Rentacar, pursuant to Article 14 of the Regulation and Section 13 of the Sunrise Rules. The Documentary Evidence must be filed within 40 calendar days following receipt of the application by the Registry (Section 2 of the Sunrise Rules). The Complainant did not file such Documentary Evidence within the time limit specified. Under Section 21 of the Sunrise Rules the Validation Agent is not obliged to notify an applicant if it has not provided the required documentary evidence to support the fact that it is the holder of the prior right claimed.

As a result the Panel finds that the Complainant has failed to demonstrate that it was a holder of the Prior Right pursuant to Article 14 of the Regulation or Section 13(2) of the Sunrise Rules, and therefore entitled to take advantage of the Sunrise procedure for the registration of a .eu domain name.

Domain Name B

As regards the application for Domain Name B the situation is somewhat different since the Complainant submitted a copy of a trade mark certificate demonstrating ownership of the Trade Mark and which was notionally a document that satisfied the requirements of Section 13(2) of the Sunrise Rules and Article 14 of the Regulation. However, the Respondent states that the trade mark certificate submitted with the application gave the name of the Trade Mark Owner as VUTEL. At face value, therefore, the Complainant did not apparently have a Prior Right as required under the Sunrise Rules. The Complainant cites in support of its contentions the case of Schoeller (case no. 00253). It is to be noted that the decision in Schoeller was arrived at on the grounds that the supporting documents showed only minor discrepancies in the name and address of the trade mark owner compared to that of the supporting documentation provided. In this case the situation is different in that name of the trade mark owner and its address was entirely different from the name and address of the Complainant.
Article 14 of the Regulation is clear in that the applicant for a domain name during the Sunrise period is required to submit "documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question".
The question therefore to be decided is to what extent the Validation Agent was under a duty to investigate why such an apparent discrepancy existed and to what extent it was obliged to check whether the documents submitted were correct.
The Complainant indicates that a "simple check" would have revealed that the trade mark owner and the Complainant were identical. The Respondent contends that:
(a) The Complainant should not get another "bite of the cherry".
(b) The volume of applications received during the Sunrise period were such that it was not practical or reasonable for the Validation Agent to investigate all cases where the documentation provided is deficient.
The Panel notes under Section 20.3 of the Sunrise Rules that the Complainant was required to file documentary evidence showing that it was the holder of the Prior Right, where the Complainant had been the subject of a name change. The Complainant contends that it was unable to file the certificate of name change because it was only able to file one document of proof. It was however, open to the Complainant to file an extract from an official (on-line) database pursuant to Section 13.2(ii) of the Sunrise Rules which would have satisfied the requirements concerning documentary evidence.
The Panel also notes that under Section 21(1) of the Sunrise Rules the Validation Agent and the Registry are not obliged to notify the Complainant where the requirements for proving the existence of the Prior Right to the name has not been complied with. In the circumstances of the present case, the Panel finds that the Validation Agent was under no duty to request further documentation from the Complainant.
The Panel agrees with the Respondent that, unlike in the case of Schoeller where there was a high probability that the trade mark owner and the Complainant were one and the same, in this instance there was no such evidence provided or apparent on the face of the documents provided by the Complainant. It was therefore reasonable for the Validation Agent to conclude that the documentary evidence supplied by the Complainant did not establish a Prior Right under the Regulation or the Sunrise Rules. As such the Validation Agent was not under an obligation to investigate the correct identity of the owner of the Trade Mark. This is not a case where there was a small discrepancy in the spelling of the Complainant's name or

address.
The Panel has sympathy with the Complainant. However, such ownership was not demonstrated to the Validation Agent at the time of the filing of the Application in accordance with Article 14 of the Regulation and the Sunrise Rules and therefore the Complainant is not entitled to the registration of the Domain Names in accordance with the Sunrise procedure.

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	**Simon Bennett**

DATE OF PANEL DECISION 2006-10-31

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant applied during the Sunrise Period for the domain names Rentacar.eu and Rent-a-Car.eu on 7 September 2005. The domain name applications were rejected due to the fact that the documentary evidence provided by the Complainant was considered insufficient to establish a Prior Right namely:

(a) in respect of Rentacar.eu the failure to submit an official document proving that the Complainant was the owner of the prior right; and

(b) in respect of Rent-A-Car.eu the owner of the trade mark was different from the Complainant and such difference was not explained in the documentary evidence.

The Complainant submitted with its Complaint new documents demonstrating that it had the right to the trade mark and the basis upon which the prior right could be established. These documents did not form part of the original documentary evidence submitted during the Sunrise Period.

The panel rules as follows:

(a) Rentacar.eu - the Complainant failed to demonstrate that it was a holder of the prior right because it did not submit an official document proving that it was the owner of the Prior Right, as it was required to do under Section 13(2) of the Sunrise Rules. It was, therefore not entitled to take advantage of the Sunrise Procedure for the registration of a .eu domain name.

(b) Rent-a-Car.eu - the documentary evidence submitted did not comply with the requirements of Article 14 of the Regulation as the owner of the trade mark upon which the Prior Right was based was different from the Complainant. The Complainant had therefore failed to comply with the Regulation.

The Complainant submitted that the Validation Agent was under a duty to request further documents from the Complainant if such documentary evidence was deficient. However, the Panel found that under Section 21(1) of the Sunrise Rules the Validation Agent and the Registry are not obliged to notify the Complainant where the requirements for proving the existence

of the Prior Right to the name have not been complied with. In the circumstances of the present case, the Panel finds that the Validation Agent was under no duty to request further documentation from the Complainant.

The Panel dismisses the Complaint.