Panel Decision for dispute CAC-ADREU-002669

Case number	**CAC-ADREU-002669**
Time of filing	**2006-08-07 11:07:30**
Domain names	**pft.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Knauf Information Services GmbH, Rudolf Schott**

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, concluded or pending, which have rendered or will render a decision on the domain name in dispute.

FACTUAL BACKGROUND

1. History of the Request for Registration

1.1. On February 17, 2006, the Complainant filed a request for the registration of the domain name <PFT.EU>, within the so-called Sunrise Registration Period.

1.2. On March 3, 2006, the Respondent received from the Complainant documentary evidence relating to its request of the disputed domain name. According to such evidence, the Complainant's application was based on the registration of a German trademark based on the sign "PFT" registered in the name of a German company named Knauf PFT GmbH & Co Kg.

1.3. After having revised Complainant's documentary evidences, the respondent denied the Complainant's application for the registration of the disputed domain name. In the corresponding notification to the Complainant, the Respondent based its decision on the fact that the "PFT" trademark on which the Complainant's application was based was not owned by it but by a different company. Additionally, the Respondent considered that no evidence had been provided in order to prove that the Complainant had been authorized by the "PFT" trademark owner to register the disputed domain name. Therefore, taking into account the fact that the Complainant had not been able to successfully prove that it was the owner or that it was an authorized licensee of the above-mentioned trademark, the Respondent decided to deny the Complainant's application.

2. History of the ADR Proceeding

2.1. On August 3, 2006, the Complainant filed before the Czech Arbitration Court (hereinafter, the "Court") a complaint (hereinafter, the "Complaint") in English and selected this language as the one to apply in the present dispute-resolution proceeding.

2.2. On August 7, 2006, the Court verified the payment of the fees corresponding to this proceeding, issued an official acknowledgement of receipt of the Complaint, and required EURid to confirm the exactness of the technical information provided in the Complaint.

2.3. On August 17, 2006, the Court verified that the Complaint did not contain any administrative deficiency and, therefore, proceeded to notify the Respondent of the formal commencement of the proceeding. In this notification, the Respondent was granted a 30 working days for filing its response to the Complaint (hereinafter, the "Response").

2.6. On October 3, 2006, the Respondent filed its Response before the Court which, after verifying it was not affected by any administrative deficiency, formally accepted it.

2.7. On October 5, 2006, the Court invited Mr. Albert Agustinoy Guilayn (hereinafter, the "Panel") to serve as the panel charged with deciding on the dispute at the center of this proceeding.

2.8. On October 9, 2006, the Panel filed before the Court his statement of acceptance and declaration of impartiality and independence in order to decide on the dispute of this proceeding. Thus, on the same date the Court notified the appointment of the Panel, indicating that a decision should be provided by November 3, 2006.

A. COMPLAINANT

The Complainant contends that the documents filed before the Respondent, when requesting the disputed domain name, showed clear evidence that the Complainant held a prior right –as such a concept is defined in Article 4(2)(b) of Regulation (EC) No. 733/2002- on the said domain name. At this, the Complainant considers that the Respondent, when denying its application, must have been confused as the Complainant is an existing legal entity which was licensed by Knauf PFT GmbH & Co. KG –the German "PFT" trademark holder- and could proceed in the registration of the disputed domain name.

In connection with this fact, the Complainant considers that, should the Respondent have had some doubts on the documentary evidence filed by the Complainant, it would have been obliged to file a short request, or notice, to it for the purpose of clarifying any point in its filing which was deemed by the Respondent as being confusing. Such behavior would comply with the minimal standards of diligence, and it should have been the one taken by the Respondent instead of simply rejecting its request for registration of the disputed domain name.

B. RESPONDENT

The Respondent contends that its decision rejecting the Complainant's application for registering the disputed domain name was based on the fact that, according to the documentary elements provided to it by the Respondent, the Complainant was not the actual owner of the alleged trademark. Therefore, under Article 10(1) of Regulation (EC) No. 874/2004, dated April 28, 2004, (hereinafter, "Regulation 874/2004"), the Respondent was obliged to reject the Complainant's application as it had not shown that it was the owner of a prior right, as required by Regulation 874/2004.

In this sense, the Respondent indicates that the Complainant did not file any license agreement executed with the actual trademark owner, allowing it to proceed with the registration of the disputed domain name. The Respondent considers that all documentary evidence necessary for assessing whether or not, under the Sunrise Period, the applicant for a given domain name is entitled to register the domain name had been actually provided by the applicant itself, who holds such a burden. The Respondent indicates that section 21(2) of the rules applying to the Sunrise Period clearly states that the validation agent (and, hence, the Respondent) shall examine whether an applicant has a prior right to the requested domain name exclusively on the basis of a prima facie review of the set of documentary evidences it has received.

Taking into account such a rule, the Respondent contends that the documentary evidence submitted by the Complainant should stand on its own and prove that the Complainant was actually entitled to register the disputed domain name; that it held a prior right to it. The Respondent indicates that it did not receive from the Complainant any documentary evidence within the timeframe set forth by the rules governing the Sunrise Period showing that it was authorized by the actual owner of the alleged German "PFT" trademark to register the disputed domain name. Therefore, after conducting a standard review of the submitted documentation, it was obliged to deny the Complainant's application.

DISCUSSION AND FINDINGS

As a preliminary observation, the Panel deems necessary to note that the object of this proceeding is to find out whether the Respondent's decision -rejecting the Complainant's application for the registration of the disputed domain name within the Sunrise Period- constitutes an infringement of Regulation 874/2004. This is to say, the core question posed in the present proceeding is to determine whether or not the Respondent's decision, denying the Complainant's application, is a breach of Regulation 874/2004 or any other regulation applying to .EU domain names.

In this sense, it is important to note that the above-mentioned question is closely related to the provision of evidence by the Complainant in connection with its prior right to the disputed domain name, according to the conditions and timeframe foreseen by Regulation 874/2004. As a matter of fact, the registration of domain names during the Sunrise Period is an exception to the general 'first-come,

first-served' principle. Therefore, such an exception must be strictly applied fulfilling the regulatory framework set forth by Regulation 874/2004.

As a consequence of the above, in this proceeding the Respondent's behavior must be analyzed taking into account the evidence provided at the moment of filing his application. In accordance with such evidence, the trademark alleged by the Respondent in order to prove the existence of a prior right was owned by a different company. In this respect, the Complainant filed, jointly with the complaint, a copy of a license agreement with the said company, authorizing the Complainant to register the disputed domain name.

Nonetheless, according to the evidence provided by the parties, such an agreement was not provided -not even mentioned- in the application originally filed by the Complainant before the Respondent. Thus, at the moment of evaluating the documentation provided by the Complainant was reviewed by the Respondent, the Respondent was not able to be aware of the existence of such an agreement and, hence, of the rights of the Complainant in connection with the disputed domain name.

At this point, the issue to be posed is which degree of diligence and care should be required of the Respondent in connection with the evaluation of the applications filed during the Sunrise Period. Such an issue has been recurrently analyzed by a large number of previous decisions (for example, decisions in Case ADR 249 (COLT); Case ADR 954 (GMP); Case ADR 1549 (EPAGES); Case 1674 (EBAGS); or Case ADR 2124 (EXPOSIUM)). In this respect, the panels have persistently considered that, given the large amount of applications filed during the Sunrise Period and the limited amount of time and resources of the Respondent in order to decide on such applications, only a prima facie revision could be reasonably required from the Respondent.

This reasoning leads the Panel to consider that any analysis of such filings should be strictly based on the documentation filed by the applicant, without the Respondent being obliged to pursue further investigations in case the said documentation was insufficient in order to prove the actual holding of a prior right on the requested domain name by the applicant. Many decisions (for example, decisions on Case ADR 551 (VIVENDI); Case ADR 810 (AHOLD); or Case ADR 1194 (INSURESUPERMARKET)) have even taken a step further by indicating that proceedings as the present one cannot be a “second chance” for applicants which have provided incorrect or incomplete documentation on the alleged prior rights. Therefore, any analysis on this type of issues should be strictly limited to the documentation originally filed with the corresponding application before the Respondent.

Taking into account the above-described arguments, it seems clear that the analysis to be applied in this case should be limited to the documentation filed in the original application for registration of the disputed domain name. In this respect, and taking into account the evidence provided by the parties, it seems clear to the Panel that, when evaluating the said application, the Respondent was unable to find that the Complainant had executed a license agreement with the owner of the alleged trademark, as no copy of such an agreement had been included by the Complainant in its application. Having practiced a reasonable and sufficient analysis, the Respondent was, therefore, forced to deny the Complainant’s application due to the lack of coherence between the request and the filed documentation.

Given the above-described circumstances, the Panel must consider the decision adopted by the Respondent as valid and did not infringe upon Regulation 874/2004 or any other applicable regulation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders the Complaint denied

PANELISTS

Name	**Albert Augustinoy**

DATE OF PANEL DECISION 2006-11-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed the Complaint as a consequence of the Respondent rejecting its application for the domain name “pft.eu” within the Sunrise Period.

The rejection by the Respondent was based on the fact that, according to the documentary evidence provided by the Complainant to the Respondent, the trademark on which the Complainant based its prior right to the domain name was not registered by it, but rather by another company, and the Complainant did not provide evidence showing that it had been licensed to use the said trademark.

After having reviewed the documents provided by the Parties, the Panel has been able to determine that originally the Complainant did

not file any license agreement between it and the actual owner of the alleged trademark. The Panel considers that not filing such documentation at that time (regardless of whether it was provided at a later stage) must lead to the dismissal of the Complaint as, at the moment of the filing of the corresponding application, the Respondent was totally unable to verify such a license.