Panel Decision for dispute CAC-ADREU-002742

Case number	CAC-ADREU-002742
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Domain names	telecare.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	TeleCare Systems & Communication GmbH

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

N/A

FACTUAL BACKGROUND

On February 8, 2006, the Complainant, TeleCare Systems & Communication GmbH applied to register the domain name “telecare.eu” during the Sunrise period. In the application TeleCare Systems & Communication GmbH stated that it is the holder of a prior right as the name of the applicant was TeleCare Systems & Communication GmbH. The Complainant presented also documentary evidence indicating that the name of the company is TeleCare Systems & Communication GmbH.

The Respondent refused to register the domain name “telecare.eu” in the name of the Complainant during the Sunrise Period on the ground that the documentary evidence furnished did not substantiate that the applicant for the domain name is the holder of the prior right on the name "telecare".

A. COMPLAINANT

The Complainant has disputed the decision of the Respondent and stated that as the Complainant has been using the name “telecare” for over ten years the Complainant is authorised to claim the domain name "telecare.eu".

The Complainant points out that the Complainant has been using names, which include the word “telecare”, in business concerns since 1995. The Complainant states that the brand has also been registered with the number AM 5496/2002 at the Austrian patent office. For years the complainant has been using the brand “telecare” for business connections all over Europe and this can be seen on notepapers, delivery notes, envelopes, pans and on other advertising materials. The Complainant also mentions, that the Complainant has used the Domain "telecaresystem.at" for many years.

Therefore the Complainant claims that the decision of the register is not consistent with european und austrian law. For this reason, the Complainant applies for rescind the decision of EURid from 2sec August 2006 and for receiving the Domain name "telecare.eu".

B. RESPONDENT

The Respondent states that the Complainant did not demonstrate that it was the holder of a prior right on the name "Telecare". Pursuant to article 10 (2) of the Regulation, a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based.

The Complainant submitted documentary evidence substantiating that the company name relied upon as a prior right is " TeleCare Systems & Communication GmbH ". As the Complainant applied for the domain name "Telecare.eu" (and not for the domain name which

corresponds to the complete name for which the prior right exists), the Respondent correctly rejected the Complainant's application.

The Respondent also states that the conformity of the Respondent's decision must only be evaluated with regards to the documentary evidence that Respondent was able to examine at the time of validation and therefore new documents proving the existence of the prior right that were presented together with the complaint may not serve as a basis to asses whether the Complainant is the holder of a prior right regarding the name "telecare". However for the sake of completeness the Respondent also notes that none of those documents could establish a prior right on the name "Telecare" alone.

DISCUSSION AND FINDINGS

In consideration of the Factual Background and the Parties' Contentions stated above, I come to the following conclusion:

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (Regulation) states that only holders of prior rights which are recognized 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 (the Sunrise Period). TeleCare Systems & Communication GmbH applied for the domain name "telecare.eu" and presented documentary evidence that should have proven that TeleCare Systems & Communication GmbH is the holder of a prior right during the Sunrise Period. TeleCare Systems & Communication GmbH stated that it is the holder of the prior right as the name of the company is TeleCare Systems & Communication GmbH. From there on it was up to the Respondent to decide whether to grant the requested domain name to TeleCare Systems & Communication GmbH or not.

According to Article 10 (2) of the Regulation 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. Section 19 (1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period "Sunrise Rules" further states that it is not possible for an applicant to obtain registration of a domain name comprising part of the complete name for which the prior right exists. The only exception to the aforesaid rule is provided in Section 19 (4) and according to that exception the company type (such as SA, GmbH) may be omitted from the complete name for which the prior right exists.

As the name of the company is TeleCare Systems & Communication GmbH, only the company type GmbH could have been omitted from the complete name. The Complainant applied not for the complete name TeleCareSystemsCommunication but only for part of that complete name- Telecare. According to the Regulation and Sunrise Rules the Complainant was not the holder of a prior right regarding the name "telecare" as the company name of the Complainant was not Telecare GmbH but TeleCare Systems & Communication GmbH. In previous ADR proceedings (01973 ICG and 2297 FENRISULVEN)the Panel has also found that the company name relied on as a prior right must be identical to the domain name sought.

The Complainant claims that it has used the brand "telecare" for years and it has also registered the brand at the Austrian Patent Office. According to the Regulation it is up to the applicant to submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. The Complainant did not provide the Registry in time with documentary evidence proving that TeleCare Systems & Communication GmbH is the owner of a trademark "Telecare" and therefore Respondent could not examine whether the Complainant could have been a holder of a prior right as the holder of a trademark. The panel would also like to note that the documentary evidence presented to the Complaint shows that the Complainant has used brand "Telecare Systems" and not the brand "Telecare".

Considering the aforesaid circumstances the Panel finds that the Respondent was entitled to reject the application to register domain name "telecare.eu" presented by TeleCare Systems & Communication GmbH during the Sunrise Period.

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	**Viive Naslund**

DATE OF PANEL DECISION 2006-12-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contests the Respondent's decision of rejecting the domain name application for "telecare.eu" during the Sunrise Period. According to the Respondent the application was rejected because from the documentary evidence which the Respondent was provided with it appeared that the Complainant did not apply for the domain name which corresponds to the complete name for which the prior right exists. The Complainant states that it has used company names comprising the word "telecare" since 1995 and the brand "telecare" for several years and therefore the Complainant should receive the domain name "telecare.eu".

The complete company name of the Complainant is TeleCare Systems & Communication GmbH. As the Complainant only applied for a domain name comprising part of this complete name - telecare.eu and did not present documentary evidence to the Registry proving that the Complainant is the holder of trademark "telecare", the Respondent was entitled to reject the application according to Article 10 of the Regulation and Section 19 of the Sunrise Rules.