Panel Decision for dispute CAC-ADREU-003032

Case number	**CAC-ADREU-003032**
Time of filing	**2006-09-27 12:09:32**
Domain names	**seghorn.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Seghorn Inkasso GmbH, Achim Wüllkopf**

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 other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

On March 7th 2006, the company “Seghorn Inkasso GmbH” applied for registration of the disputed domain name “SEGHORN.EU” pursuant to article 10 (1) of Commission Regulation EC n. 874/2004, April 28, 2004 (phased registration).
The company chose to apply for the domain name during the so-called second “sunrise registration”, claiming its company name/trade name/business identifier.

On March 25th 2006, the Applicant sent documentary evidence to the Validation Agent that refused the validation on the basis that the Applicant did not sufficiently prove his prior right.

On September 24th 2006, the Complainant filed a complaint with the Czech Arbitration Court against the decision of EURid not to validate the applications for the domain name SEGHORN.EU.

The formal date of commencement of the ADR proceeding was September 27th 2006.

The ADR proceeding was commenced pursuant to the Regulations (EC) No. 733/2002 and No. 874/2004 (the Regulations).
In accordance with Paragraph B2 (a) of the EU Dispute Resolution Rules (ADR Rules), the Czech Arbitration Court has verified that the complaint satisfies the formal requirements of the ADR Rules and ADR Supplemental Rules of the Czech Arbitration Court.

Seghorn Inkasso GmbH opted to have the dispute decided by a single-member panel.

The undersigned Mr. Davide Luigi Petraz was chosen as Panelist for the present case, and accepted the Statement of Acceptance and Declaration of Impartiality and Independence.

A. COMPLAINANT

Seghorn Inkasso GmbH sent documentary evidence based on its complete company name “Seghorn Inkassogesselschaft mit beschrankter Haftung”, attaching a copy of the Companies’ Register information and an excerpt the Whois database of the .DE Registry (DENIC), in which the Complainant is quoted as the owner of the domain name SEGHORN.DE.
The Complainant affirms that, opposite to the company name quoted on Companies’ Register, it is also known as “Seghorn GmbH” or simply “Seghorn”.
The Complainant quotes specific laws from German Trade Mark Act as well as decisions and articles by the German Federal Supreme

Court and German “Code of Commerce” which protect trade names (“Firma”) and specifically protect a distinctive part of a company's name.
Therefore, the Complainant requests that the decision by EURid not to validate the domain name SEGHORN.EU in its name to be annulled and the disputed domain name to be transferred to Complainant.

B. RESPONDENT

The Respondent refused the validation of the disputed domain name under Regulation (EC) No. 874/2004 of 28 April 2004 published by European Commission and Sunrise Rules published by EURid Registry, in which it is stated that the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, and that the company “type” may be omitted from the complete name.
The documentary evidence that the Complainant submitted to the Validation Agent did show the complete company name of the Complainant, that is “Seghorn Inkasso GmbH”.
Respondent argues that, applying the two above-mentioned rules while examining the documentary evidence provided by the Complainant, the application for the domain name SEGHORN.EU had to be refused, as the “complete name” quoted on documentary evidence was “SEGHORN INKASSO GmbH”, and this gives the Complainant the right to apply for SEGHORN-INKASSO (as, in fact, it did) but not simply for SEGHORN.EU.

DISCUSSION AND FINDINGS

As prescribed by ADR Rules, this ADR proceeding has been initiated against the Registry, as the domain name has not yet been registered and activated yet. This means that the scope of this proceeding is to demonstrate “the reasons why a decision taken by the Registry conflicts with European Union Regulations” (ADR Rules, B 1 (b) (10) (ii)).
To evaluate this specific question, the Panelist shall refer to the Regulations and Rules arranged on the matter and judge the decision taken by the Validation Agent/Registry on the basis of the documentary evidence submitted by the Applicant.

The application of the domain name registration during the phased registration is regulated by the following articles of the EC Regulation No. 874/2004 of 28 April 2004:

Article 10 (1): “Holders of prior rights recognised 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. ‘Prior rights’ shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.”

Article 10 (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.”

Moreover, phased registration has been regulated by specific “Sunrise Rules” published by EURid Registry. The Panelist would like to quote the following articles that specifically refer to second phase:

Article 19 (1): “As stated in Article 10(2) of the Public Policy Rules, 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. 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.”

Article 19 (4): “For trade names, company names and business identifiers, the company type (such as, but not limited to, “SA”, “GmbH”, “Ltd.”, or “LLP”) may be omitted from the complete name for which the Prior Right exists.”

Article 21 (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.”

The Complainant sent two attachments to demonstrate its right on the disputed domain name.
The first is the Companies’ Register document, in which the “Firma” (trade name) registered is “Seghorn Inkassogesselschaft mit beschrankter Haftung”. By German law on companies with limited liability, the company type could be condensed to GmbH: in this specific case, the trade name can be written as “Seghorn Inkasso GmbH”.
The second attachment is an extract of DENIC database, in which “Seghorn Inkasso GmbH” is quoted as the owner of SEGHORN.DE domain name. This document is absolutely pointless, as the ownership of domain names in other registries (as .DE) does not constitute

a right or a preemption to register the corresponding domain name on the EU Registry.
Furthermore, it is absolutely unimportant to demonstrate the registration of such a domain name by the Complainant: this registration has not been subject to prior validation or examination, so it does not establish any right to that name.
Lastly, this document demonstrates the use of the complete name “Seghorn Inkasso GmbH” once again as the company/trade name of the Complainant.

The documentary evidence sent by the Complainant and analyzed as above shows that the “complete name” of the Applicant is “Seghorn Inkassogesselschaft mit beschrankter Haftung”, which commonly can be condensed to “Seghorn Inkasso GmbH”.
As per Article 10 (2) of EC Regulation and Articles 19 (1) and 19 (4) of Sunrise Rules, the Complainant is allowed to apply for domain names containing the exact and complete sequence of words “Seghorn Inkasso”, as correctly stated by Respondent.

On the matter of the Complainant’s contentions, the Panelist would like to point out that the decisions by the Federal Supreme Court are not applicable to refute the validation decision. Article 10 (2) of EC Regulation, in fact, not only states the need to the identity of the domain name with Applicant company/trade name, but clearly refers to the written documentation which proves the right.
Documentary evidence submitted by Complainant neither, in any way, demonstrates that the Complainant has been known in the business simply as “Seghorn” nor that this is its usual trade name.
Moreover, as per Article 21 (2) of Sunrise Rules, the Validation Agent is required to evaluate the documentary evidence as received. In fact, under the Sunrise Rules, the Validation Agent is concerned only with establishing the prima facie ownership of the prior right at the time of the application, based on the documents filed by the applicant. This means that an Applicant should not expect the Validation Agent to engage in investigations or legal inquiries.
The Validation Agent has no discretional power to decide on his own whether or not an Applicant with a specific company name has the right to apply for a part of its name, when he is not supplied with suitable documentation. Hence, it is the Applicant’s duty to prove its rights, and to furnish the Validation Agent with all the documentation needed to verify them.

To further support the above-mentioned arguments, the Panelist would like to mention other ADR cases in which Complainants disputed the validation decision by the mean of incomplete or shortened business names.
In ADR Case No. 2499, the Panelist found a situation similar to the one examined by this very case, where a German company applied for a part of its business name. The Panelist concluded his decision stating that: “For the sake of good administration and considering the clear wording of Article 10 (2), the denomination to be taken into consideration is the full name of the Complainant as registered and appearing on the German trade register.”
The Panelist in ADR Case No. 2471 dealt with another German company, one that had a company name longer than the domain name for which it had applied. In this, “The Panel finds that in a case where an official register like the companies register is the basis for the proof of a priority right, neither the Validation Agent nor the Panel has the discretionary powers to find a different company name valid to qualify for a domain name than the one shown in the companies register.”
Similar decisions regarding company names partially-used in applying for domain names can be found as well in ADR Cases No. 2047 and No. 2297, where Danish companies applied for a domain name containing only part of their business names.

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	**Davide Luigi Petraz**

DATE OF PANEL DECISION 2006-12-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The company “Seghorn Inkasso GmbH” applied for the registration of the disputed domain name “SEGHORN.EU” pursuant to article 10 (1) of Commission Regulation EC n. 874/2004, April 28, 2004 (phased registration).
Company chose to apply for the domain name during the so-called second “sunrise registration”, claiming its company name/trade name/business identifier.
The Applicant sent documentary evidence to the Validation Agent, who refused the validation on the basis that the Applicant did not sufficiently prove his prior right.

The Complainant affirms that, opposite to the company name quoted on Companies’ Register, it is also known as “Seghorn GmbH” or simply “Seghorn”.

The Complainant quotes specific laws from German Trade Mark Act as well as decisions and articles by the German Federal Supreme Court and German “Code of Commerce” which protect trade names (“Firma”) and specifically protect a distinctive part of a company’s name.

The Complainant sent two attachments to demonstrate its right to the disputed domain name.
The first is a Companies’ Register document, in which the “Firma” (trade name) registered is “Seghorn Inkassogesselschaft mit beschrankter Haftung”. Under German law on companies with limited liability, the company type could be condensed to GmbH: in this specific case, trade name can be written as “Seghorn Inkasso GmbH”.
The second attachment is an extract from the DENIC database, in which “Seghorn Inkasso GmbH” is quoted as the owner of SEGHORN.DE domain name. This document is absolutely pointless, as the ownership of domain names in other registries (as .DE) does not constitute a right or a preemption to register the corresponding domain name on the EU Registry.
Furthermore, this document once again demonstrates the use of the complete name “Seghorn Inkasso GmbH” as the company/trade name of the Complainant.

Documentary evidence sent by Complainant and analyzed as above, shows that the “complete name” of the Applicant is “Seghorn Inkassogesselschaft mit beschrankter Haftung”, which commonly can be condensed to “Seghorn Inkasso GmbH”.

As per Article 10 (2) of EC Regulation and Articles 19 (1) and 19 (4) of Sunrise Rules, and based on documentary evidence sent, the Complainant is allowed to apply for domain names containing the exact and complete sequence of words “Seghorn Inkasso”, as correctly stated by the Validation Agent.

As per Article 21 (2) of Sunrise Rules, the Validation Agent is required to evaluate the documentary evidence as received. In fact, under the Sunrise Rules, the Validation Agent is concerned only with establishing the prima facie ownership of the prior right at the time of the application, based on the documents filed by the applicant. This means that an Applicant should not expect the Validation Agent to engage in investigations or legal inquiries.
The Validation Agent has no discretional power to decide on his own whether or not an Applicant with a specific company name has the right to apply for a part of its name, when it is not supplied with suitable documentation. Hence, it is the Applicant duty to prove its rights, and to furnish the Validation Agent with all the documentation needed to verify them.

The Complaint is, therefore, Denied.