Panel Decision for dispute CAC-ADREU-003141

Case number	**CAC-ADREU-003141**
Time of filing	**2006-09-26 11:24:01**
Domain names	**bano.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**josef bano**

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

None

FACTUAL BACKGROUND

On 13 December 2005, during the Sunrise Period for the registration of .eu domain names, an application for registration of the domain name "bano.eu" (the "Domain Name") was filed (the "Application"). The application details included, in the field "name", the words "Josef Bano"; and in the field "organization", the words "Bano Naturprodukte GmbH".

On 29 December 2005, documentary evidence in support of the Application was submitted. The evidence consisted of a Certificate by the Austrian Trademark Office that the trademark "BANO" belongs to an individual called "Bano Josef Mag.".

On 14 August 2006, EURid, acting as Registry in accordance with Article 14 of the Regulation, analysed the Application and rejected it.

On 11 September 2006, before the expiration of the forty-day period provided for in Section 22(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules"), Mr Josef Bano (the "Complainant") filed a Complaint (the "Complaint") before the ADR Centre for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "ADR Centre").

The Complaint was addressed against EURid's decision of 14 August 2006.

On 5 October 2006, EURid provided the registration information requested by the ADR Centre.

The ADR Centre issued a notice of commencement of proceedings on 6 October 2006.

EURid filed its response to the Complaint within the time limit provided for.

A. COMPLAINANT

The Complainant's Complaint requests the annulment of EURid's decision not to assign the Domain Name to him and requests that the Domain Name be attributed to him.

The Complainant states that his application for the Domain Name was denied, notwithstanding the fact that he was the applicant of the Domain Name; and that he is the rightful holder of the Austrian trademark "BANO" since 1985.

The Complainant states that since the registration form necessary to file the Application included a question about an existing company (probably the field "organization"), he fulfilled it with the name of the company "Bano Naturprodukte GmbH", under which the Complainant allegedly operates.

The Complainant alleges that a misunderstanding existed with his Registrar, United Domains, with whom he apparently holds a portfolio of domain names, under his own name, "Josef Bano" and that, for that reason, only himself coulf be the applicant.

B. RESPONDENT

EURid's response contends that, in accordance with Article 3(1) of the Sunrise Rules, where in an application for a domain name filed within the Sunrise Period the field "organization" is completed with the name of an entity, that entity is the applicant; only where the field "organization" is left blank, the applicant is the individual whose name appears in the filed "name"; and that, under Article 10(1) of the Commission Regulation (EC) No. 874/2004, of 28 April 2004 (the "Regulation"), only the holders of prior rights are eligible to apply for domain names during the Sunrise Period. Since the Application included in the field "organization" the name "Bano Naturprodukte GmbH" and the documentary evidence submitted showed that the holder of the prior right was Josef Bano Mag. and not "Bano Naturprodukte GmbH", the Application had to be rejected.

DISCUSSION AND FINDINGS

The Regulation provides in Article 10 to 14 for the so-called "phased registration", a period during which holders of certain rights may apply to register domain names coincident with those rights, with precedence to any other applicants. This "phased registration" was devised with the purpose of reducing subsequent disputes over domain names between registrants and holders of rights.

For that reason, the "phased registration" is subject to very formal proceedings, aimed at verifying that the applicants are in fact holders of prior rights and that the domain names applied for coincide with these prior rights. This verification is carried out by a validation agent, taking into consideration the documentary evidence submitted by the applicant.

Article 12 of the Regulation provides that the Registry (EURid) has to publish a detailed description of all the technical and administrative measures that it shall use to ensure a proper, fair and technically sound administration of the phased registration period. These measures are the Sunrise Rules, to which the Applicant adhered.

The Sunrise Rules contain, in Section 3(1), the obligations of any applicant when completing the application for a domain name during the phased registration period. This Section provides that it must be included "...the full name of the Applicant..." and that "...where no name of a company or organisation is specified, the individual requesting registration of the Domain Name is considered the Applicant; if the name of the company or the organisation is specified, then the company or organisation is considered the Applicant...".

This Section therefore provides for the way in which an applicant must proceed when submitting its application. So, in the current case, when the application was fulfilled, it was clearly stated that the applicant was "Bano Naturprodukte GmbH". Section 3(1) of the Sunrise Rules should not be interpreted in a way as to impede the correction of any clerical or material mistake made when filling the application out. However, in the current case there is no evidence showing that the person filing the application tried to amend a material mistake immediately after, or even at the moment of submitting the documentary evidence to the validation agent. Therefore, the consequence of Section 3(1) of the Sunrise Rules is that "Bano Naturprodukte GmbH" must be considered to be the applicant.

As a consequence, it must be determined that EURid correctly rejected the Application, since this company is not the holder of a prior right over the sign "BANO"; instead, Mr Josef Bano is.

The Panel would like to make two additional comments: firstly, this decision does not preclude Mr Josed Bano from applying for the Domain Name once it is freed, particularly taking into account that there are no other applicants in the queue who submitted documentary evidence during the Sunrise Period. Secondly, that in case Mr Bano considers that the Registrar has failed to follow his instructions or has acted negligently, he may initiate any legal actions he considers appropriate under the laws applicable to their contractual relationship.

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	Alejandro López Ortiz

DATE OF PANEL DECISION 2006-12-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a Complaint against EURid, in respect of EURid's decision not to grant the domain name "bano.eu" to them.

The Panel decided to dismiss the Complaint.

In accordance to Section 3(1) of the Sunrise Rules, the Application was made by a company called "Bano Naturprodukte GmbH"; however, the documentary evidence showed that the prior right over the word "BANO" was hold by Mr Josef Bano, personally. Therefore, EURid correctly complied with their task when rejected the Application, since it verified that the Applicant was not a holder of a prior right.