Panel Decision for dispute CAC-ADREU-003153

Case number	**CAC-ADREU-003153**
Time of filing	**2006-09-22 10:42:15**
Domain names	**premierproducts.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Premiere Products, Mr Roger Lawson-Lee**

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

The domain name <premierproduct.eu> (“the Domain Name”) was applied for on February 7, 2006, in the name of “Premiere Products”.

The validation agent received the documentary evidence on March 14, 2006. The application was rejected on June 29, 2006.

On September 19, 2006, a complaint against EURid (“the Respondent”) was filed to the Court, in the name of Premiere Products, Mr Roger Lawson-Lee (“the Complainant”).

In the following weeks, the Complainant and the Court engaged in a correspondence through the Court’s electronic platform. The Complainant was granted a prolonged deadline, and was offered to deliver the hard copy of its amended complaint by October 9, 2006.

The Court received the response to the Complaint on December 6, 2006.

The Panel was duly appointed on December 11, 2006.

A. COMPLAINANT

The Complainant contends as follows:

"The Applicant’s are the proprietors of prior Community Trade Mark Registration number 356980 (details attached) which in accordance with Rule 19(1) “Sunrise Rules” consists of the complete name of the domain name and all the alphanumeric characters included in the sign of the prior right are contained in the domain name applied for, in the same order as that in which they appear in the sign.

The general impression of the word is apparent, without any reasonable possibility of misreading the characters of which the sign consists or the order in which these characters appear.

The Applicant’s are also the 100% owner of Premier Products Limited, the details of which are attached."

B. RESPONDENT

The Respondent contends as follows:

1. GROUNDS ON WHICH THE REGISTRY HAS REJECTED THE APPLICATION FOR THE DOMAIN NAME PREMIERPRODUCTS BY PREMIERE PRODUCTS

In its application, the Complainant claimed a prior right on company name protected in the United Kingdom.

The documentary evidence consisted of a certificate of incorporation showing that the company “Vanguard Floor Maintenance Limited” changed its name to “Premiere Products Limited” on 13 December 2000.

The validation agent concluded that the domain name applied for, PREMIERPRODUCTS, did not consist of the complete name of the company name provided as documentary evidence.

Based on these findings, the Respondent rejected the Complainant’s application.

2. RESPONSE TO COMPLAINANT'S CONTENTIONS

a) The documentary evidence submitted by the Complainant did not establish the claimed prior right First the Respondent wishes to note that the Complainant did not want the Czech Arbitration Court to require the Respondent to disclose the documentary evidence to this Panel. Because the Respondent believes that the documentary evidence is necessary for this Panel to reach its decision, the Respondent decided to provide this Panel with the documentary evidence submitted by the Complainant. The documentary evidence is attached to this response. Then, the Respondent contends that the company name established by the documentary evidence does not consist of the complete name of the domain name applied for.

The Complainant submitted documentary evidence substantiating that the Complainant's company name relied upon as a prior right is "Premiere Products Limited".

Pursuant to article 10.2 of the Regulation and section 19 of the Sunrise Rules, the domain name based on this prior right must consist of all alphanumerical characters, except for the company type.

Therefore, the company name relied upon as a prior right could only serve as a prior right for the domain name “PREMIEREPRODUCTS”, which is the complete name for which the prior right exists, except for the company type.

Nevertheless, in the present case, the Complainant applied for the domain name PREMIERPRODUCTS. This is not the domain name which corresponds to the complete name for which the prior right exists, as written in the documentation. Indeed the letter E at the end of the word Premiere is omitted from the domain name applied for.

b) Documents submitted for the first time during the present ADR proceedings may not be taken into consideration

The Complainant contends that it is the owner of the Community trademark 356980 and that it is the owner of Premier Products Limited.

The Community trademark 356980 does not constitute the complete name of the domain name applied for because it reads "Premiere products" (and not "Premier Products"). Furthermore, the documents do not show that the Complainant is the owner of this trademark or that it is licensed by the owner of this trademark.

Neither do these documents show that the Complainant is the owner of "Premier Products Limited" or that it is licensed by this company.

Furthermore, even of those documents could establish the Complainant's prior right, the Respondent could not consider those documents as documentary evidence. Indeed, pursuant to the Regulation article 14 of the Regulation, the Respondent may only accept, as documentary evidence, documents that are received by the validation agent within 40 days from the submission of the application for the domain name.

Therefore, those documents were submitted 6 months after the end of 40 days period set forth by the Regulation. Accepting these documents as documentary evidence would clearly violate the Regulation.

Furthermore, article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation.

Therefore, only the documentary evidence which the Respondent was able to examine at the time of validation of the application should be considered by the Panel to assess the validity of the Respondent's decision (see notably cases ADR 294 (COLT), 954 (GMP), 1549 (EPAGES), 1674 (EBAGS), 2124 (EXPOSIUM), etc.).

This verification is the only task for the Panel in these proceedings, which may not in any case serve as a “second chance” or an additional round providing applicants an option to remedy their imperfect original application that was rejected during the Sunrise Period (see cases Nr. 551 (VIVENDI) and Nr. 810 (AHOLD)).

In other words, as decided in case Nr. 1194 (INSURESUPERMARKET), "[t]he ADR procedure is not intended to correct domain name applicants’ mistakes".

The new documents attached to the present complaint were not received by the validation agent during the 40 days period, which means that the Respondent could not use this information in taking its decision. Therefore, this new information may not be taken into consideration to evaluate whether the Respondent's decision conflicts with the Regulation, which is the only purpose of the present ADR proceedings.

For these reasons, the complaint should be denied.

DISCUSSION AND FINDINGS

In consideration of the Factual Background and the Parties' Contentions stated above, the Panel comes to the following conclusions :

I. - ABOUT THE PRIOR RIGHT CLAIMED BY THE COMPLAINANT

1. Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that only holders of prior rights which are recognised 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.

2. Article 10 (2) of the Regulation states 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, as written in the documentation which proves that such a right exists.

3. Pursuant to Article 14 of 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.

4. Considering the documentary evidence, it appears that the Complainant claimed a prior right on the company name "PREMIERE PRODUCTS LIMITED" protected in the United Kingdom.

5. Even if the Panel does not take into account the company type (i.e. : "LIMITED" in the present Case - see also Case n° 2471 TAIYO-YUDEN), one must consider that the domain name applied for ("PREMIERPRODUCTS") does not consist of the complete prior right claimed ("PREMIERE PRODUCTS"), as the letter "E" at the end of the word "PREMIER" is omitted.

6. Consequently, on the basis of the Article 10.2 of the Regulation, it is this Panel's finding that the documentary evidence filed by the Complainant in support of his application for the disputed domain name does not constitute a prior right.

7. Morevoer, even though the Sunrise Rules are not applicable in ADR proceedings (see Case n°2661, KLANGWERK, see also among others, Case n°1310, ASTRODATA) and the Panel had solely to review the duty of the validation agent and of the Registry under the EC Regulations, this Panel wishes to underline that the Complainant's contentions, on the grounds of Section 19.2 (not Section 19.1 as indicated by the Complainant) of the Sunrise Rules, are totally irrelevant. Indeed, the provisions of Section 19.2 deal with figurative or composite signs, which is not the kind of signs submitted in the documentary evidence by the Complainant.

II. - ABOUT THE DOCUMENTARY EVIDENCES SUBMITTED IN THE FRAMEWORK OF THE ADR PROCEEDING

8. To demonstrate that he had a prior right at the time of its application, the Complainant also refers to :

(i) a certificate of registration showing that the Community trademark 356980 "Premiere prodcuts" has been registered in the name of "The Premiere Polish company Limited"; and

(ii) a certificate of incorporation showing that the company "Booktrain Limited" changed its name to "Premier Products Limited" on 20

June 2005.

9. Without examining in details these new documentary evidences, the Panel whishes to remind that pusuant to the Article 14 of the Regulation, the Respondent can only accept, as documentary evidence, documents that are received by the validation agent within 40 days from the application for the domain name.

10. In the present case, the 40 days period ended on 19, March 2006 and the new documents were attached to the complaint filed on 19, September 2006. As a consequence, as this Panel already ruled (see Case n°1549, EPAGES), accepting these new documents as documentary evidence would clearly violate the Regulation.

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	**Frédéric Sardain**

DATE OF PANEL DECISION 2006-12-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Having reviewed the documentary evidence and having considered all other documents in the case file of this complaint, the Panel decides that:

(i) Pursuant to Article 10(2) of the Regulation, the domain name applied for ("PREMIERPRODUCTS") does not consist of the complete prior right claimed ("PREMIERE PRODUCTS"), as the letter "E" at the end of the word "PREMIER" is omitted, even if the Panel does not take into account the company type ("LIMITED").

(ii) Pursuant to Article 14 of the Regulation, EURid can only accept, as documentary evidence, documents that are received by the validation agent within 40 days from the application for the domain name. In the present case, the 40 days period ended on 19, March 2006 and the new documents were attached to the complaint filed on 19, September 2006. As a consequence, accepting new documents of the Complainant, submitted in the framework of this ADR proceeding as documentary evidence would, clearly violate the Regulation.

The complaint is dismissed.