Panel Decision for dispute CAC-ADREU-003213

Case number	CAC-ADREU-003213
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Domain names	tat.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	TAT-TECHNOM-Antriebstechnik Gesellschaft m.b.H., Ing. Matthias Mayer

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 has no information about other pending procedures related this case

FACTUAL BACKGROUND

a) TAT Technom Antriebstechnik GesmbH (hereafter "the Complainant") applied for the domain name TAT on 7 February 2006, claiming a prior right on the name "TAT".
b) The processing agent received the documentary evidence on 23 February 2006, which was before the 19 March 2006 deadline.
c) The Complainant submitted documentary evidence consisting of:
1 a certificate of registration for the company “TAT-Technom-Antriebstechnik Gesellschaft m.b.H.”;
2 an affidavit undersigned by a legal practitioner (Rechtsanwalt); and
3 a copy of the Complainant’s letter showing that the Complainant’s logo is composed of the stylized letters “TAT” and the remaining elements of the company name “Technom Antriebstechnik GesmbH”.
c) Based on the documentary evidence received, the Respondent found that the Complainant did not clearly establish that it was the holder of the claimed prior right and rejected the Complainant’s application.

A. COMPLAINANT

a) The domain tat.at of the Complainant is registered at nic.at and it is in constant use;
b) The term "TAT" is the watchword of the enterprise of the Complainant and is composed of the initial letters of the full name of the enterprise, which is "TECHNOM-AntriebsTechnik";
c) The letterpaper presented by the complaint shows that the term "tat" is emphasized in business transactions, which makes the enterprise known under that watchword;
d) The Complainant has used the name “TAT” for which a former law is put forward since 1988;
e) The laws of the Republic of Austria grant an immaterial property law to the legal user of a special term of the enterprise and in cases of impairment of that right by the use of that term in business by a second party the right to forbearance is granted.;
f) In accordance with § 43 of the Code of Civil Law (ABGB) of the Republic of Austria the party entitled to use a name may claim for this right of forbearance and in case of fault for damages;
g) Domains which include a name or sound like a name are also protected by § 43 ABGB especially because of its distinguishing function and function as a name;
h) As the Complainant has the registered domain tat.at at his disposal, the Complainant has already required the protected right for the business term "TAT";
i) The former right of the Complainant to use this business term has been proved with the presented documents when the application for registration was submitted;
j) Therefore, the Complainant requests the Panel to annul the Respondent’s decision.

B. RESPONDENT

a) The Complainant's trade name does not constitute the complete name of the domain name applied for;
b) Although the Complainant submitted documentary evidence establishing its company name, the Complainant also claims that it is the holder of a prior right consisting of business identifier on the name TAT alone;
c) The documentary evidence received by the validation agent within the deadline included
an affidavit undersigned by a legal practitioner (Rechtsanwalt) and a copy of the Complainant's letter showing that the Complainant's logo is composed of the stylized letters "TAT" and the remaining elements of the company name "Technom Antriebstechnik GesmbH";
d) However, the documentation supporting the affidavit clearly shows that the Complainant is not using TAT as a trade name, but "TAT" with the remaining elements of the company name "Technom Antriebstechnik GesmbH";
e) The information submitted by the Complainant regarding its alleged use of the name TAT alone, in particular via its registered domain name TAT.AT was not enclosed with the documentary evidence which means that the Respondent could not use this information in taking its decision;
f) Based on the documentary evidence received, the validation agent found that the Applicant did not clearly establish that it was the holder of the claimed prior right (the using of "TAT" alone as a trade name);
g) Therefore, the Respondent rejected the Applicant's application and the complaint should be denied.

DISCUSSION AND FINDINGS

In accordance to article 10 (1) of Commission Regulation /EC) No. 874/2004 of 28 April 2004 (hereinafter referred to as "the Regulation"), holders of prior rights, such as, interalia, trade names and business identifiers, recognized 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, i.e., the so called Sunrise period.
During the Sunrise period, domain names were made available only to the holders of prior rights. When applying during Sunrise, applicants were asked to back up their claim with documentary evidence.
Pursuant to Article 14 of the Regulation, all claims for prior rights must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which exists. Every applicant shall submit documentary evidence that shows that he or she is the holder of the prior right claimed on the name in question.
Sunrise Rules (Section 16 (5) and 12 (3)) sate that for trade names and business identifiers it is sufficient to submit the folloing Documentary Evidence for trade names and business:
a) Where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is located):
i. An extract from that official register, mentioning the date on which the trade name was registered; and;
ii. Proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state);
b) Where registration is not obligatory, the following Documentary Evidence must be submitted by the applicant:
i. An affidavit signed by a competent authority, legal practitioner, or professional representative, accompanied by documentation supporting the affidavit or;
ii. A relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states.

Without prejudice of the above said, 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.
As it is stated on recital (12) of the Regulation, validation agents should assess the right which is claimed for a particular name on the basis of evidence provided by the applicants. Bearing this in mind, the Panel, in order to decide, will disregard the Complainant's information regarding its registered domain name TAT.AT.
The Complainant argued that its prior right regarding the business term "TAT" has been proved by a produced extract of the register of companies. The Complainant, together with its complaint, only joints an extract of the Austrian Register of Companies written in German language.
A Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules (Paragraph B11 (a)). According to eu.Alternative Dispute Resolution Rules (hereinafter referred to as "ADR Rules") the Complainant shall annex any documentary or other evidence, including ant evidence concerning the rights upon which the Complainant relies, together with a schedule indexing such evidence (Paragraph B1 (g)(16)). On the other hand, pursuant to the ADR Rules, all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding, which, in this case, is the English language (Paragraph A3 (a)).
In response to the Czech Arbitration Court request, the Respondent joint the Documentary Evidence related to the disputed domain name

(tat), as defined in the Sunrise Rules, which is also written in German language.
Considering that the two documents above mentioned are written in another language than the language of the ADR Proceeding, the Panel will disregard them (Paragraph A3 (c) of the ADR Rules).
Nevertheless, we consider that it is not sufficient to submit an extract from the trade or commercial register in order to substantiate the existence of a trade name or business identifier, specially, because this document only mentions the entire name ("Firma") of the company - TAT-Technom-Antriebstechnik Gesellschaft m.b.H.- and not the trade name or business identifier for what the company is allegedly known.
Considering the above said, the Panel understands that the Complainant doesn't prove that the decision taken by the Respondent conflicts with the European Union Regulations.
In consequence, the Panel doesn't find any grounds to decide the annulment of the decision taken by the Respondent.

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	**Manuel Lopes Rocha**

DATE OF PANEL DECISION 2006-12-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. 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.
2. According to ADR Rules the Complainant shall annex any documentary or other evidence, including ant evidence concerning the rights upon which the Complainant relies, together with a schedule indexing such evidence (Paragraph B1 (g)(16)).
3. Pursuant to the ADR Rules, all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding, which, in this case, is the English language (Paragraph A3 (a)).
4. The documents submitted by the Parties are disregarded by the Panel because they are written in another language than the language of the ADR Proceeding (Paragraph A3 (c) of the ADR Rules).
5. Notwithstanding, it is not sufficient to submit an extract from the trade or commercial register in order to substantiate the existence of a trade name or business identifier, specially, because this document only mentions the entire name ("Firma") of the company - TAT-Technom-Antriebstechnik Gesellschaft m.b.H.- and not the trade name or business identifier for what the company is allegedly known.
6. Considering the above said, the Panel understands that the Complainant doesn't prove that the Respondent's decision conflicts with the European Union Regulations.
7. For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Complaint is denied.