Panel Decision for dispute CAC-ADREU-003366

Case number	**CAC-ADREU-003366**
Time of filing	**2006-10-17 12:04:55**
Domain names	**ciao.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Ciao GmbH, Alexandra Kilian**

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 any proceedings, pending or having been decided, related to the disputed domain name.

FACTUAL BACKGROUND

The application for the disputed domain name, CIAO, was submitted on 2 February 2006, at 12:50:06.845, and arrived as first in queue for this domain name.
The Applicant was Stichting Computers in het Amsterdams Onderwijs (CIAO) registered with the Dutch “Handelregister” under “KvK-nummer” 34135270 (hereinafter “the Applicant”).

CIAO GmbH, registered with the German “Handelsregister” under “HRB 160659”, (hereafter "the Complainant") was the next applicant in the line for the domain name CIAO. The Complainants application was submitted on the same day at 14:16:40.188.

The Respondent accepted the first application in queue and informed the Complainant of its decision by e-mail on 28 September 2006.

A. COMPLAINANT

The Complainant argues that the Respondent's decision to grant the domain name to the Applicant conflicts with the Regulation because the company name of the Applicant does not constitute the complete name of the domain name applied for.

The Complainant further contends that the Applicant cannot claim a prior right on “ciao” as required by Art. 10 Nr. 1 EC 874/2004 for registering domain names during the phased registration period. Art. 10 Nr. 2 EC 874/2004 states that the registration “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 Sunrise Rules states that “it is not possible for the Applicant to obtain registration of a Domain Name comprising part of the complete name for which the Prior Right exists.”

The Applicant did not apply with its full company name, which is “Stichting Computers in het Amsterdams Onderwijs (CIAO).” Therefore, “ciao” can be seen either as an abbreviation of the registered name for which the prior right exists or as part of the complete registered name for which the prior right exists.

The Complainant contends that in both cases the above-mentioned EU regulation clearly shows that this does not grant the Applicant the required prior right concerning the name “ciao”.

The Complainant requests the transfer of the domain name to the Complainant with the argument that according to Sec. 19.4. of the .eu Sunrise Rules the company type may be omitted from the complete name for which the relevant prior right exists. Therefore, “Ciao

GmbH" can claim a prior right on "Ciao".

B. RESPONDENT

First, the Respondent notes that the Complainant relied on its trade name and not its company name.

Indeed, pursuant to Annex 1 to the Sunrise Rules, company names in the Netherlands must be demonstrated by documentary evidence as referred to in Section 16(5) of the Sunrise Rules (for trade names or business identifiers) and not Section 16(4) of the Sunrise Rules (for company names in countries where Annex 1 allows such documentary evidence).

Whether or not the domain name applied for constitutes the complete name of the Applicant's company name is, therefore, not relevant to the present case because the Applicant claimed a prior right in its trade name "CIAO".

The documentary evidence received by the validation agent consisted of a certificate from the Chamber of Commerce in Amsterdam showing the following:

- the Applicant is also registered under a "short name" ("verkorte naam") CIAO; and

- the Applicant is using the domain name www.ciao.nl in the course of its activities.

Section 16 (5) of the Sunrise Rules was, therefore, complied with by the Applicant because the documentary evidence showed the following:

- an extract from that official register, mentioning the date on which the trade name was registered; and

- proof of public use of the trade name or business identifier prior to the date of Application (i.e., use of the name on the website www.ciao.nl to identify itself in the course of its activities: helping schools in Amsterdam to improve their use of computer technology in their teaching).

The company was created on 12 May 2000, and the certificate from the Chamber of Commerce in Amsterdam is dated 3 August 2005. Both dates are prior to the Applicant's application.

The webpage hosted on the domain name www.ciao.nl clearly shows that the Applicant uses its short name ("verkorte naam") CIAO to identify itself.

Since the validation agent found that the Applicant correctly demonstrated its prior rights pursuant to section 16(5) of the Sunrise Rules, the Registry validated the Applicant's application.

Therefore, the Complainant's application could not be dealt with. Indeed, article 14 of the Regulation clearly states that: "If the Registry receives more than one claim for the same domain during the phased registration period, applications shall be dealt with in strict chronological order."

Since the Applicant was the first applicant to demonstrate its prior right on the trade name "CIAO," the Registry correctly accepted the Applicant's application.

DISCUSSION AND FINDINGS

Both applications were made during the "Sunrise period" and accompanied with documents proving their prior right within the deadline.

The Respondent accepted the first application in queue based on following grounds:

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 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.

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. Based on this documentary evidence, the validation agent shall examine whether or not

the applicant has prior rights on the name.

Section 16 (3) of the Sunrise Rules states that: "Since trade names are protected in all member states of the European Union, it is sufficient to provide the Validation Agent with the Documentary Evidence referred to in Section 16.5 below."

Section 16 (5) of the Sunrise Rules states that: "Unless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16(2) respectively 16(3): 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):

a. an extract from that official register, mentioning the date on which the trade name was registered; and

b. 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)."

The Applicant applied for the domain name CIAO on 7 February 2006 and claimed to be the owner of a prior right on the name CIAO in the form of a trade name "CIAO."

The processing agent received the documentary evidence on 17 March 2006, which was before the 19 March 2006 deadline.

The documentary evidence received by the validation agent consisted of a certificate from the Chamber of Commerce in Amsterdam showing that

- the Applicant is registered under the company name "Stiching Computers in het Amsterdams Onderwijs (CIAO)";

- the Applicant is also registered under a "short name" ("verkorte naam") CIAO; and

- the Applicant is using the domain name www.ciao.nl to identify itself in the course of its activities.

Received documentary evidence demonstrated use of the trade name in the course of its trade as required by Sunrise Rules.

The Panel finds that the validation agent correctly concluded, from review of the documentary evidence, that the Applicant was the holder of a prior right.

The Panel finds that the Respondent’s decision to accept the first application in queue for the domain name CIAO, made by the Applicant and supported by submitted documentary evidence, was in line with applicable Rules and Regulations. The Applicant was the holder of prior right as required by the Sunrise Rules in form of a trade name CIAO.

Taking all the above in consideration, the Panel finds that the Complaint must be rejected.

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	**Premysl Libal**

DATE OF PANEL DECISION 2007-01-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant disputes the Respondents decision to accept the first application in queue for the domain name CIAO. The Complainant contends that the Applicant cannot claim a prior right on “ciao” as required by Art. 10 Nr. 1 EC 874/2004 for registering

domain names during the phased registration period.

Art. 10 Nr. 2 EC 874/2004 states that the registration “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 Sunrise Rules states that “it is not possible for the Applicant to obtain registration of a Domain Name comprising part of the complete name for which the Prior Right exists.”

The Applicant did not apply under his full company name, which is “Stichting Computers in het Amsterdams Onderwijs (CIAO)”. “CIAO” can, therefore, be seen either as an abbreviation of the registered name for which a prior right exists or as part of the complete registered name for which a prior right exists. In both cases, the above-mentioned EU regulation clearly shows that this does not grant the Applicant the required prior right concerning the name “CIAO.”

The Panel finds that documentary evidence received demonstrated the use of the trade name in the course of trade as required by the Sunrise Rules.

The Panel finds that the validation agent correctly concluded, from reviewing the documentary evidence, that the Applicant was the holder of a prior right.

The Panel finds that the Respondent’s decision to accept the first application in queue for the domain name CIAO, made by the Applicant and supported by submitted documentary evidence, was in line with applicable Rules and Regulations. The Applicant was the holder of prior right as required by the Sunrise Rules in form of the trade name CIAO.

Taking all the above in consideration, the Panel finds that the Complaint must be Denied.