Panel Decision for dispute CAC-ADREU-003503

Case number	**CAC-ADREU-003503**
Time of filing	**2006-11-01 13:30:04**
Domain names	**cobumo.eu, perfectforpeople.eu, perfect4people.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Cobumo N.V., ir. Ferdinand Clevers**

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 any other pending legal proceedings which relate to the disputed domain names.

FACTUAL BACKGROUND

The Complaint concerns three domain names COBUMO; PERFECTFORPEOPLE; and PERFECT4PEOPLE (the “Domain Names”)

The Complainant applied for the domain name COBUMO on 14 February 2006 and submitted within time documentary evidence consisting of a certificate of registration with the Chamber of Commerce in Utrecht for the company, Cobumo B.V.

The Complainant applied for the domain name PERFECTFORPEOPLE on 14 February 2006 and submitted documentary evidence consisting of a certificate of registration with the Chamber of Commerce in Utrecht for the company, Perfect for People B.V. and a certificate of registration with the Chamber of Commerce in Utrecht for the company, Cobumo B.V.

The Complainant applied for the domain name PERFECT4PEOPLE on 15 February 2006 and submitted the same documentary evidence as for the domain name PERFECTFORPEOPLE.

Based on the documentary evidence received, the validation agent found that the Complainant did not demonstrate that it was the holder or the licensee of a prior right on the names COBUMO, PERFECTFORPEOPLE and PERFECT4PEOPLE and the Respondent refused the Complainant's applications.

A. COMPLAINANT

In summary the Complainant contends that:

1. It was the only applicant asserting Prior Rights in the names which were the same or similar to the Domain Names in the Sunrise Period.

2. Documentary evidence submitted provided ample proof of possession of the company identity and prior rights in the names which correspond to the Domain Names and consisted of abstracts of the Dutch Chamber of Commerce of Cobumo NV; Perfect for People B.V and Perfect4People B.V. The Complainant further contends that all the names are in use in a number of countries across Europe and abroad.

3. The documentary evidence submitted was the same as its successful application for PFP.eu.

4. The Complainant alleges that the validation agent did not appear to have examined the documentary evidence in detail and that the rejection of the applications for the Domain Names was incorrect.

The Complainant requests that Eurid's decision be annulled and that the Domain Names be transferred to the Complainant.

B. RESPONDENT

In summary the Respondent contends that :

1. The Regulation and the Sunrise Rules clearly provide that burden of proof is on the Complainant to demonstrate that it is the holder (or licensee) of the prior rights in the names in question. Under Article 10 of the Regulation only holders of priors of prior rights are eligible to register domain names during the period of phased registration and under Article 14 of the Regulation, the applicant must submit documentary evidence demonstrating that it is the holder of the name in question.

2. The Complainant failed to demonstrate that it was the holder of the prior rights as the documentary evidence received by the validation agent did not establish that the company names were protected under the law of the Netherlands. The law in various member states differs in respect of the protection afforded to company names. Evidence of prior rights in company names in the Netherlands must comply with Section 16 (5) of the Sunrise Rules and not section 16(4). Under Section 16(5) of the Sunrise Rules documentary evidence must include both the incorporation documents and proof of public use of the trade name. If the Complainant fails to discharge the burden of proof by providing adequate documentary evidence of its prior rights its application must be rejected.

3. In respect of the names PERFECTFORPEOPLE and PERFECT4PEOPLE no documentary evidence was submitted explaining the difference between the name of the Complainant and the names of the companies mentioned in the documentary evidence nor why the Complainant could rely on company names and trade names that were registered in another company's name. The Respondent acknowledges that, according to the documentation supplied, the Complainant owns 100% of the shares in Perfect For People. However, this does not automatically give the Complainant the right to rely on the prior rights of another company. The Respondent cannot assume the existence of a licensee-licensor relationship and no evidence of such a relationship was provided by the Complainant. Section 20 of the Sunrise Rules sets out the necessary documents that the applicant needs to provide in order to demonstrate how it is entitled to rely upon the claimed prior right where the name of the applicant and the name of the holder of the rights differ.

4. The Respondent and the validation agent have no obligation to investigate the circumstances of the application. The Sunrise Rules permit the validation agent in its sole discretion to investigate but no obligation is provided.

5. The Complainant's contention that it is the only applicant for the Domain Names is not relevant to this ADR proceeding which only relates to the question of the conformity of the Respondent's decision with the Regulation.

6. The argument that the Domain Name PFP was registered with the same documentary evidence is not relevant to determining the present case which must decide whether the decision to reject the application was in accordance with the Regulations. Section 22(4) of the Sunrise Rules provides that: "The decision of the Registry to register a domain name in the name of an Applicant has no value as a precedent in any judicial or non- judicial settlement of conflicts proceedings".

7. The Regulation and Sunrise Rules exist to give all holders of prior rights the opportunity to demonstrate these rights. This is an exception to the 'first come first served' principle. To benefit from this system the Complainant must comply with the correct procedure and substantiate its claims with sufficient evidence. The Complainant failed to do so and is therefore unable to take advantage of this process.

DISCUSSION AND FINDINGS

The issue to be decided is whether the Respondent was correct to reject the Complainant's application to register the domain names PERFECTFORPEOPLE, PERFECT4PEOPLE and COBUMO.

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (the "Regulation") states that: "Holders of prior rights which are recognised or established by national and/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". Prior rights are defined as including company names and business identifiers.

Article 12 of the Regulation provides that the request to register a domain name based on prior right must include a reference to the legal basis in national or Community law for the right to the name and other relevant information.

Article 14 of the Regulation provides that : “All claims for prior rights under Article 10 (1) must be verifiable by documentary evidence which demonstrates the rights under the law by virtue of which it exists”. Under the Regulation every applicant must submit documentary evidence that shows that it is the holder of the prior right claimed on the name in question. If the documentary evidence does not substantiate a prior right the validation agent must notify the Registry of this. The Registry shall register the domain name, on the first come first served basis, if it finds that the applicant has demonstrated a prior right in accordance with the procedure set out in the Article 14.

Section 20.3. of the Sunrise Rules states that "If, for any reasons other than as are referred to in Section 20(1) and 20(2) hereof, the Documentary Evidence provided does not clearly indicate the name of the Complainant as being the holder of the Prior Right claimed (e.g. because the Complainant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer, etc.), the Complainant must submit official documents substantiating that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right".

It is clear from the provisions referred to above that the burden of proof is on the Complainant to show that it is the holder of prior rights in the names in question. The Complainant asserts that that it had prior rights in the form of registered company names which correspond to the Domain Names. It is not in dispute that the Complainant submitted the certificates of incorporation for the companies whose corporate name corresponds with the Domain Names. However, the protection given to company names differs in member states. In respect of the Netherlands, Annex 1 to the Sunrise Rules requires the applicant to submit "Documentary evidence as referred to in Section 16(5) of the Sunrise Rules (and not Section 16(4) of the Sunrise Rules)" and states that " use of the company name in the course of trade must be demonstrated (cf trade names)".

Section 16 (5) of the Sunrise Rules provides 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):
(i) 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 Complainant must fulfil the requirements of both Section 16(5) (a) and (b). Whilst the Complainant met the requirements of Section 16(5) (a) by submitting evidence of the registration of the companies with the Chamber of Commerce Utrecht, it did not comply with the requirements of Section 16(5) (b) requiring proof of public use of the trade names or business identifier. The Complainant states that the names are in use in a number of countries across Europe and abroad but has not submitted evidence of that use, such as proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name is used as provided by Section 16(5)(b).

The Complainant argues that it was the only applicant in the Sunrise Period to apply for the three Domain Names. However, the first come, first served principle during the Sunrise Period is subject to the applicant proving, in accordance with the Regulation and the Sunrise Rules, that it holds the prior rights in the name in question. The Respondent rejected the Complainant’s application to register the Domain Names as the Complainant had failed to establish that it had prior rights in accordance with the Regulation and the Sunrise Rules.

The Complainant asserts that the application for the domain name PFP was registered using the same evidence and on the same grounds as that submitted for the Domain Names the subject of these ADR proceedings. In that regard, Section 22(4) of the Sunrise Rules provides that: “The decision by the Registry to register the Domain Name in the name of an Applicant has no value as a precedent in any judicial or non-judicial settlements of conflicts proceedings …”. Accordingly, the fact that the application for the Domain Name PFP was successful has no bearing on the application for the Domain Names the subject of these ADR proceedings.

The Complainant (the applicant for the names PERFECTFORPEOPLE and PERFECT4PEOPLE) explains that Perfect For People B.V and Perfect4People B.V are owned 100% by the Complainant. At issue is whether the Complainant has prior rights in the names PERFECTFORPEOPLE and PERFECT4PEOPLE. Section 20 of the Sunrise Rules sets out what documentary evidence must be produced where, as in this case, the name of the applicant and the names applied for are not the same. Cobumo N.V and Perfect For People B.V and Perfect4People B.V are separate entities. The Panel accepts that it does not automatically follow that a parent of a wholly owned subsidiary is licensed to use that subsidiary's name. Section 20 requires that the documentary evidence provided must clearly indicate the name of the Complainant as the holder of the prior right and sets out the evidence to be provided if there is a licence, transfer or name change. Again the burden of proof is on the applicant to submit the required documentary evidence to establish it has the prior

rights in question.

In ADR 501 (LODE, PROCARE), the Panel stated that: "In this case, the documentary evidence in support of the applications for the Domain Names was incomplete in respect of the requirements set out in Section 20.1 of the Sunrise Rules. The Panel accepts that the applicant should not expect the Registry or the Validation Agent to engage in its own investigations to establish the exact relationship between the registered holder of the trade mark and the applicant".

The Respondent refused the Complainant's application to register the Domain Names as the Complainant had failed to demonstrate a Prior Right under the Regulation and the Sunrise Rules. In the opinion of the Panel the Respondent was right to do so and the Complainant should be dismissed.

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	**Veronica Marion Bailey**

DATE OF PANEL DECISION 2007-01-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complaint concerns three domain names COBUMO; PERFECTFORPEOPLE; and PERFECT4PEOPLE (the "Domain Names")

The burden of proof is on the Complainant to show it is the holder of prior rights in the names in question. The Complainant submitted documentary evidence consisting of certificates of registration with the Chamber of Commerce in Utrecht for the company names but did not submit proof of use of those names as required by Section 16(5) of the Sunrise Rules.

The Complainant was the only applicant for the Domain Names in the Sunrise Period. However, in the Sunrise Period the first come first served principle is subject to the applicant proving it holds prior rights to the names in question.

A prior successful application for a domain name based on the same evidence submitted in connection with the applications for the Domain Names has as proivded in Section 22(4) of the Sunrise Rules no precedent value in these ADR proceedings.

Section 20 of the Sunrise Rules sets out the documentary evidence to be provided to demonstrate a prior right where the name of the applicant is not the same as the holder of the prior right in that name.

The burden of proof is on the applicant to show it has prior rights and the validation agent may, but is not obliged to carry out it own investigations.

The Respondent refused the Complainant's application to register the Domain Names as the Complainant had failed to demonstrate a Prior Right under the Regulation and the Sunrise Rules. In the opinion of the Panel the Respondent was right to do so and the Complainant should be dismissed.