Panel Decision for dispute CAC-ADREU-003529

Case number	**CAC-ADREU-003529**
Time of filing	**2006-10-24 14:31:45**
Domain names	**salzburgerland.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Salzburger Land Tourismus GmbH, Angela Zechmann**

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 other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

Salzburger Land Tourismus GesmbH (hereafter "the Complainant") applied for the domain name "SALZBURGERLAND" on 8 March 2006. The Complainant submitted as documentary evidence an excerpt from a company register showing that the Complainant's company name is "Salzburger Land Tourismus Gesellschaft m.b.H.".
The validation agent concluded from its examination of the documentary evidence that the Complainant had not proved that it was the holder of prior right to the name SALZBURGERLAND. Consequently, the Respondent rejected the application for the domain name SALZBURGERLAND.

A. COMPLAINANT

The Complainant, Salzburger Land Tourismus GmbH, is a limited liability company founded in 1986 and registered in the company register with the regional court of Salzburg. The Complainant's main objective is to promote tourism in Salzburg throughout the world. The Complainant claims to have 113 shareholders, among them all tourism organisations in the federal state of Salzburg, communities which do not have their own tourism unions, and chambers of commerce, labour and agriculture and the Salzburger BeteiligungsverwaltungsGmbH, owned by the federal state of Salzburg.

The Complainant, whose website is available in 11 languages, is owner of the TLD’s salzburgerland.at, salzburgerland.com, salzburgerland.info, salzburgerland.biz and salzburgerland.ag. The application for registration of a community trademark “SALZBURGERLAND, EIN KLEINES PARADIES” was filed on March 18, 2005. The actual registration of this trademark is, according to the Complainant, to be expected soon.

The evidence to prove the Complainant's prior right to register the disputed domain name during the Sunrise Period in accordance with article 10 (1) and (2) Commission Regulation (EC) 874/2004 has been fulfilled in accordance with the Sunrise “Rules” by submitting an excerpt of the company register. The Complainant further refers to a letter signed by the federal state of Salzburg, which was submitted with a preceding application and also with the Complaint. This letter indicates that the Complainant could be considered as an official tourism agency of the federal state of Salzburg.

The Complainant contends that EURid’s point of view that the submitted proof of the prior right is not sufficient is incorrect as the applied domain name is a short form of the Complainants company name Salzburger Land Tourismus GmbH. Therefore the decision of EURid violates the Commission Regulation (EC) 874/2004 of April 28, 2004.

The Complainant further contends that on April 6, 2006, a Matthias Monch registered the disputed domain name "salzburgerland.eu" claiming prior rights based on a registered national trademark of Malta. Mathias Monch registered on the same day at least one more domain name “vor.eu”. As Mr. Monch registered the said domain name in bad faith the application was disputed and the domain name was transferred to VOR Verkehrsverbund Region-Ost (VOR) GmbH in accordance with Art. 21 (3) (e) Commission Regulation (EC) 874/2004 of April 28, 2004 (Decision 01942).

The Complainant requested the annulment of the disputed decision taken by the registry as well as the transfer of the disputed domain name to him.

B. RESPONDENT

The Applicant has the burden of proof to demonstrate that it is the holder of the claimed prior right.

Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereinafter "the Regulation") states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration.

Pursuant to article 14 of the Regulation, all claims for prior rights must be verifiable by documentary evidence proving the right under the law by virtue of which it exists. Section 21.2. of the Sunrise Rules clearly explains that the validation agent examines whether the Applicant has a prior right to the name exclusively on the basis of a prima facie review of the first set of documentary evidence received and scanned by the processing agent.

Pursuant to article 10 (2) of the Regulation, a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based.

Section 19.4 of the Sunrise Rules provides for a clarification to this rule, by stating that: "For trade names, company names and business identifiers, the company type (such as, but not limited to, “SA”, “GmbH”, “Ltd.”, or “LLP”) may be omitted from the complete name for which the Prior Right exists".

Therefore, the company name relied upon as a prior right could only serve as a prior right to the name “Salzburger Land Tourismus”, which is the complete name for which the prior right exists, "as written in the documentation which proves that such a right exists" (except for the type of organization).

Therefore, the Respondent correctly rejected the Complainant's application pursuant to article 10.2 of the Regulation.

The Respondent refers to the ADR decisions 1053 (SANTOS), 1438 (ELLISON), 713 (HUETTINGER), 2224 (POWERON), 1427 (BONOLLO), 02499 (PSYTECH), 02494 (BPSC), 2297 (FENRISULVEN), 02047 (UNI-C), 2061 (MODLINE), 02093 (MAZUR), 470 (O2) and 2471 (TAIYO-YUDEN), etc.

Finally pursuant to 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. In the present case, the 40 days period ended on 17 March 2006 and thus the information submitted by the Complainant thereafter must not be accepted as Documentary Evidence, although in the Respondent's opinion the submitted documents are not relevant anyhow.

For all these reasons, the complaint shall be rejected.

DISCUSSION AND FINDINGS

(1)
The Complainant challenges the Registry´s decision on the basis of Article 10 of Commission Regulation 874/2004 of 28 April 2004.
Article 10 (1) of said Regulation 874/2004 provides that holders of Prior Rights, 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, and that prior rights includes, inter alia, registered national and community trademarks, trade names, business identifiers and company names.
Article 10 (2) of Commission Regulation 874/2004 states that registration on the basis of such a priority right shall consist of the registration of the complete name for which the prior right exits, as written in the documentation which proves that such a right exists.
Concering company names the Sunrise Rules include further criteria for cases where an application is based on a company name.
Section 16 (1) of the Sunrise Rules states that a company name is the official name of a company, i.e. the name under which the company is registered. According to Section 16 (4) of the Sunrise Rules an excerpt of the relevant companies or commercial register

gives sufficient proof of this priority right.
Section 19 (1) of the Sunrise Rules states that it is not possible for an applicant to obtain the registration of a domain name comprising part of the complete name for which the prior right exits.
Finally Section 19 (4) of the Sunrise Rules allows the identification of the type of association (such as “SA”, “”GmbH” or “Ltd.”) to be omitted from the complete name for which the prior right exists.

(2)
The Complainant´s application was supported by an excerpt from the companies register. This excerpt gives evidence that the name of the Complainant is “SALZBURGER LAND TOURISMUS Gesellschaft m.b.H.”.
The Panel finds that the question of the “Complete Name” in the case of a company name is adressed in detail in the above mentioned regulations. Article 10 (2) of Commission Regulation 874/2004 clearly expresses that the “complete name” as written in the documentary evidence is the basis for the registration of a domain name. Further details concerning company names are included in the Sunrise Rules. The only exception of the principle of completeness can be found in Section 19 (4) of the Sunrise Rules that allows the type or organization – in this case the “Gesellschaft m.b.H.” – to be omitted.

The complete name according to the companies register is “SALZBURGER LAND TOURISMUS Gesellschaft m.b.H.”. If the company designation “Gesellschaft m.b.H.” would be omitted the complete name reads “SALZBURGER LAND TOURISMUS “. Therefore the company name of the Complainant would qualify as priority right to the registration of “salburgerlandtourismus.eu” but not to “salzburgerland.eu”.

(3)
The Panel disagrees with the Complainant´s argument that the Registry should have regarded “Salzburgerland” as a short form of “SALZBURGER LAND TOURISMUS Gesellschaft m.b.H.”. There is no legal basis in the EU Regulation or the Sunrise Rules that short forms of company names have to be taken into account by the Registry. Such short forms of company names might well state a priority right, e.g. as a business identifier (Section 16 (3) of the Sunrise Rules), but no such right has been claimed by the Complainant in the present Application.

(4)
The Complainant has filed additional documents within the ADR proceedings.
The Panel is aware that the question whether additional evidence is allowed to be examined during the ADR proceedings has been addressed in several decisions in the past. There is substantial case law that all evidence has to be presented during the validation process (cases no. 127 (BPW), 219 (ISL), 294 (COLT), 843 (STARFISH)) and therefore new evidence presented for the first time during the ADR proceedings should be disregarded.
The Panel is also aware that in several cases additional evidence has been taken into account. In case no. 253 (SCHOELLER) and case no. 396 (CAPRI) additional evidence was taken into account to clarify documentary discrepancies that had lead to the application´s rejection.

The Panel finds the new additional evidence referred to by the Complainant in any case to be insufficient to prove the priority right claimed by the Complainant. The letter from the provincial government does not even indicate which priority right to be claimed. The letter from the Office of Harmonization in the Internal Market concerns the figurative mark “SalzburgerLand Ein kleines Paradies” which prima vista is not sufficient to prove priority right to “Salzburgerland”. None of the documents refer to the priority right claimed by the Complainant.

(5)
The Panel has taken into account that the Complainant may well be the owner of priority right to “Salzburgerland” and has found several indications in the Complaint that such priority rights may exist. However it is clear from the evidence that the Complainant has no priority rights based on its company name while other priority rights have not been claimed by the Complainant in the present Application. As the priority right has not been proven the Panel finds that the decision by EURid does not conflict with the Regulation and is in accordance with Article 10 of Commision Regulation 874/2004.

(6)
With regard to the Complainant´s argument that the next applicant in the queue has acted in bad faith, the Panel finds that this argument can not be taken into account in the present proceedings. Such arguments could only be heard in an Article 22 1 (a) proceeding against the future owner of the domain name while the present proceedings were initiated against the Registry according tp Article 22 1 (b) of Commission Regulation 874/2004.

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	**Mag. Marcus Essl, LL.M., M.E.S.**

DATE OF PANEL DECISION 2006-12-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant had filed an application for the domain name “salzburgerland” and processed an extract from the companies register to the Validation Agent showing the name of the Complainant to be “SALZBURGER LAND TOURISMUS Gesellschaft m.b.H.”.
The Registry rejected the application on the ground that the Complainant did not demonstrate that it was the holder of a prior right to the name “salzburgerland”.
The Panel found the decision in accordance with Article 10 of Commission Regulation 874/2004. The complete name as written in the documentary evidence reads “SALZBURGER LAND TOURISMUS Gesellschaft m.b.H.” or “SALZBURGER LAND TOURISMUS” if the company type is omitted but not “Salzburgerland”.
The Panel also found that the argument of bad faith against the next applicant in the queue could not be heard in the proccedings against the Registry.
In conclusion the Panel denied the Complaint.