Panel Decision for dispute CAC-ADREU-003534

Case number	**CAC-ADREU-003534**
Time of filing	**2006-10-25 11:15:41**
Domain names	**carstenmaschmeyer.eu, carsten-maschmeyer.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Carsten Maschmeyer**

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 which relate to the disputed domain names.

FACTUAL BACKGROUND

1. AWD Holding AG (hereinafter “the Applicant”) applied for the domain names carstenmaschmeyer.eu and carsten-maschmeyer.eu (hereinafter “the Domain Names”) on 7 February 2006, i.e. during the Sunrise Period. The corresponding documentary evidence was received by the validation agent on 15 March 2006, before the 19 March 2006 deadline.

2. According to EURid, the validation agent received for the Domain Names on 15 March 2006 only the following materials as supporting documentary evidence of the Applicant’s prior rights: Affidavit from a German legal practitioner stating that the name “Carsten Maschmeyer” is protected under German law; A copy of the passport of Mr. Carsten Maschmeyer; Printouts from Google search results for the search term “Carsten Maschmeyer”.

3. The validation agent concluded that the Applicant, AWD Holding AG, is not the holder of prior rights to the Domain Names, but instead, Mr. Carsten Maschmeyer. As the Applicant was not the holder of relevant prior rights, the validation agent rejected the applications.

4. ADR proceedings were initiated by Mr. Carsten Maschmeyer (hereinafter “the Complainant”), who is the Chairman of the Board of Directors of AWD Holding AG, to annul the disputed decisions and to attribute the Domain Names to himself.

A. COMPLAINANT

1. The Complainant contends that he has a prior right in the Domain Names by virtue of the fact that the combination of his first and last name is protected under German law.

2. The Complainant further contends that Article 10 of the Regulation (EC) 874/2004 defines family names as a prior right. Also, Sections 17.2 and 12.1 and 12.2 of the Sunrise Rules require an affidavit as well as supplementary documentation in order to prove the existence of such a right. Complainant contends that such an affidavit and supplementary documentation were duly submitted to EURid.

3. The Complainant goes on to contend that the German legislation affords protection to a person’s last name and that a claim of such rights does not require the occurrence of confusion, as the likelihood of such a confusion is already sufficient.

4. The Complainant finally contends that he should be entitled to the registration of the Domain Names during the Sunrise Period based on a prior right in his family name in accordance with Article 10.1 of the Regulation (EC) 874/2004 and Section 12 of the German Civil Code.

5. The Complainant requests that the EURid's decisions to reject the applications for the Domain Names should be cancelled and that the Domain Names be attributed to the Complainant.

B. RESPONDENT

1. The Respondent, EURid, contends that in accordance with Regulation (EC) 874/2004 and the Sunrise Rules, the burden of proof is with the Complainant to demonstrate that it is the holder or the licensee of a prior right. Article 10.1 of the Regulation (EC) 874/2004 states that only holders of prior rights shall be eligible to apply to register domain names during the phased registration. Article 14 of the same Regulation provides that an applicant of an .eu domain name during the phased registration period must submit documentary evidence showing that he or she is the holder of the prior right in question.

2. If in an application for an .eu domain name there is a difference between the name of the applicant and the name of the proprietor of the prior right, the applicant must submit documentation explaining why and how it is entitled to rely on a prior right which belongs to someone else. If the applicant fails to do so, the application must be rejected.

3. If one specifies a company in the application form, as was done in the application for the Domain Names, the actual applicant is the company and not the natural person who submitted the application. The natural person will only be considered as a contact person within the applicant company. In the present case, the cover letter which was annexed to the application to the Domain Names clearly indicates the company name AWD in the "Applicant" field and the name of the Complainant is not mentioned in the cover letter at all.

4. In the present case the documentary evidence provided by the Applicant did not clearly indicate the name of the Applicant (AWD Holding AG) as being a holder of the prior rights claimed nor did the Applicant submit a license declaration establishing that it is licensed by the holder of the prior right, pursuant to Section 20 (1) of the Sunrise Rules. Therefore the decision of validation agent to reject the applications for the Domain Names was correct, as the Applicant failed to meet its burden of proof.

DISCUSSION AND FINDINGS

1. The phased registration of .eu domain names was conducted under strict formal rules to ensure that the immense amount of applications filed within the prescribed time limits were indeed filed by holders of respective prior rights.

2. Section 21.2 of Sunrise Rules states that the validation agent shall examine whether an applicant has a prior right to the name exclusively on the basis of a prima facie review of the documentary evidence it has received. Section 21.3 of the Sunrise Rules gives the validation agent a possibility to conduct further investigations into the circumstances of the application.

3. The connection between the Applicant and the Complainant was not established in the applications for the Domain Names. The said connection was not such a matter which Section 21.3 of the Sunrise Rules would obligate the validation agent to investigate.

4. Section 3.1 of the Sunrise Rules provides that "[…] where no name of a company or organization is specified, the individual requesting registration of the domain name is considered the Applicant; if the name of the company or organization is specified, then the company or organization is considered the Applicant." Section 2.3 of the .eu Domain Name WHOIS Policy reflects the same rule.

5. The applicant for the Domain Names is AWD Holding AG and the owner of prior rights is an individual by the name of Mr. Carsten Maschmeyer. As the name of the Applicant and the name of the holder of prior right are different and no documentation was provided to the validation agent within the prescribed time periods to demonstrate the connection of these two parties and the nature of entitlement of the Applicant to rely on the prior claimed rights, the Panel finds that the decision to reject the Applicant's application for the Domain Names was correct.

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	**Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2007-01-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's applications for the domain names carstenmaschmeyer.eu and carsten-maschmeyer.eu were refused on grounds that the name of the applicant for the Domain Names, AWD Holding AG, was different from the holder of the prior rights in question, Mr. Carsten Maschmeyer. The Applicant did not produce documentary evidence to show that it is the holder of a prior right, and therefore the validation agent refused the applications.

The Complainant contended that he has a prior right in the Domain Names by virtue of the fact that the combination of his first and last name is protected under German law.

The Respondent, EURid, contended that the burden of proof is with the Complainant to demonstrate that it is the holder or the licensee of a prior right. As the Applicant of the Domain Names was not the holder of the prior rights, the decision to reject the applications was correct.

As the name of the applicant and the name of the holder of the prior right were different and no documentation was provided to the validation agent within the prescribed time periods to demonstrate the connection of these two parties and the nature of entitlement of the Applicant to rely on the claimed rights, the Panel finds that the decision to reject the Applicant's application for the Domain Names was correct.