Panel Decision for dispute CAC-ADREU-003563

Case number	**CAC-ADREU-003563**
Time of filing	**2006-10-23 11:46:33**
Domain names	**enovation.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**E.Novation LifeLine Networks B.V., Drs. Anil Jadoenathmisier**

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 concerning the disputed domain name.

FACTUAL BACKGROUND

LifeLine Networks B.V. (hereinafter “the Applicant”) applied for the domain name "enovation.eu" on 7 February 2006 and submitted the documentary evidence on 3 March 2006. The Applicant relied on a company name protected in the Netherlands as prior right.

The validation agent of EURid found that the Applicant did not demonstrate that it was the holder or the licensee of the prior right on the name ENOVATION, therefore, the Respondent rejected the application for the registration of the domain name "enovation.eu".

The Complainant, E.Novation LifeLine Networks B.V. filed a complaint against the above mentioned decision of EURid, which rejected the application of the Applicant. The disputed decision was issued on 13 September 2006.

The Time of Filing of the Complaint is 23 October 2006.

In response to the Complainant’s request to the Czech Arbitration Court to require EURid, the Respondent to disclose the Documentary Evidence as defined in the Sunrise Rules, the Respondent inter alia disclosed the Documentary Evidence and suspended the disputed domain name.

On 30 October 2006 the ADR Centrum notified the Complainant that the Complaint had deficiencies, consequently the Complaint was re-filed according to the notification of the ADR Centrum.

The formal date of the commencement of the ADR Proceeding is 8 November, 2006.

The Respondent, EURid filed its Response to the Complaint, which was acknowledged by the ADR Centrum on 21 December 2006.

A. COMPLAINANT

The Complainant requested the Panel to annul the Respondent’s decision and the obtainment of the domain name "enovation.eu" to the Complainant.

The Complainant firstly explained that it is entitled to file a complaint against the rejection of the application for the disputed domain name.

In the merits it stated that it has the first right for the registration of the disputed domain name according to the “First come, first served” principle of the Sunrise Rules.

The Complainant is of the opinion that its documentation submitted to evidence its right for the registration of the domain name is complete and sufficient enough, and stated that the exact reason for the rejection of its application was not provided by EURid.

According to its standpoint the rejection was possibly founded on a misunderstanding concerning the company name, since its previous company name, LifeLine Networks B.V. (which was registered in the WHOIS database) was amended to E.Novation LifeLine Networks B.V. two years ago.

The Complainant stated that it already indicated with a letter enclosed to the application that the application was filed on behalf of the E.Novation Group. The Complainant presented that E.Novation Group B.V. is a holding company comprising various limited liability companies, among others the company E.Novation LifeLine Networks B.V.

In order to evidence the above it enclosed two certificates of registration with the Chamber of Commerce in Amsterdam for the companies E.Novation Group B.V. and E.Novation LifeLine Networks B.V.

B. RESPONDENT

The Respondent firstly indicated the grounds on which it rejected the application for the domain name "enovation.eu". It also referred to the relevant provisions of the Commission Regulation No. 874/2004 (hereinafter: “the Regulation”) and of the Sunrise Rules.

Based on the documentary evidence, the validation agent found that the Applicant did not demonstrate that it was the holder or the licensee of a prior right on the name ENOVATION as required in the relevant provisions of the law, therefore the Respondent rejected the Applicant’s application.

The Respondent argues that the Regulation and the Sunrise Rules clearly and certainly provide that the burden of proof was with the Applicant to demonstrate that it is the holder of the claimed prior right.

The Applicant did not clearly and certainly demonstrate that it is the holder of the claimed prior right because:

- the Applicant did not submit any proof of use for the company names;

- the company names do not consist of the complete name of the domain name applied for; and

- the Applicant did not submit official documents explaining the difference between the name of the Applicant and the names of the companies mentioned in the documentary evidence.

The Respondent stated that the documentary evidence (certificate of incorporation) enclosed was insufficient, as the conditions under which prior rights are recognized or established by national law are different, and in the Netherlands the use of the company name in the course of trade must be demonstrated in order to evidence the claimed prior right pursuant to Annex 1 of the Sunrise Rules within the meaning of Section 16 (5) of the Sunrise Rules. However, the Applicant failed to submit any evidence relating to the use of the company name it relied on in the application procedure.

The Respondent also emphasized that – even if the above mentioned requirement would be fulfilled – the application should have been rejected, as the company names do not consist of the complete name of the domain name applied for pursuant to Article 10 (2) of the Regulation and Section 19 (1) of the Sunrise Rules.

The company names relied upon as a prior right could only serve as a prior right for the names “E.Novation Lifeline Networks” and "E.Novation Group", which are the complete names for which the company name exists, except for the company type (which could be omitted from the domain name applied for).

The Respondent also answers to the Complainant's contention that various companies of the same group share a common part of their name (E.Novation) with another part which distinguishes the various companies. According to the Respondent, this is not a relevant consideration for the present case. The application for a domain name is made by one applicant, which is responsible to show that it is the holder or a licensee of a prior right. If an applicant uses the name E.Novation with another name which distinguishes it from the other companies of the group, then this applicant may only apply for the domain name consisting of its complete company name (and not just E.Novation). The Applicant did not show that it was the holder of a prior right on the name ENOVATION alone.

Finally, the Respondent refers to the unexplained difference between the name of the Applicant and the names mentioned in the documentary evidence.

The Applicant's name is " LifeLine Networks bv ". The companies mentioned in the documentary evidence are "E.Novation Lifeline Networks B.V." and "E.Novation Group B.V.". When the name of the applicant and the name of the holder of the prior right differ, Article 20 of the Sunrise Rules clearly define the necessary documents that the applicant needs to provide in order to demonstrate how it is entitled to rely upon the claimed prior right.

For any situation where the name of the Applicant is not the same as the name of the owner of the prior right and the Applicant is not a licensee or a transferee of the prior right, 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 pursuant to Section 20 (3) of the Sunrise Rules.

The Respondent stated that in the present case, Applicant failed to submit any official document explaining this difference in the names.

The Respondent referred to a number of ADR decisions in order support its above explained standpoint.

Based on the above according to the Respondent’s standpoint the Complaint must be rejected.

DISCUSSION AND FINDINGS

I. Relevant provisions

The Complaint is based on Section 26 (1) of the Sunrise Rules, which provides that the Domain Name Applicant or any other interested party may initiate an ADR Proceeding against a decision of the Registry within forty calendar days following that decision (“Sunrise Appeal Period”).

Pursuant to Section 26 (2) of the Sunrise Rules the sole object and purpose of an ADR Proceeding against the Registry is to verify whether the relevant decision by the Registry conflicts with the Regulation.

Article 10 (1) the Regulation states that only holders of prior rights which are 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.

Article 10 (2) of the Regulation states that 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.

Section 19 (1) of the Sunrise Rules provide that as stated in Article 10(2) of the Public Policy Rules, registration of a Domain Name on the basis of a Prior Right consists in the registration of the complete name for which the Prior Right exists, as manifested by the Documentary Evidence. It is not possible for an Applicant to obtain registration of a Domain Name comprising part of the complete name for which the Prior Right exists.

Section 19 (4) of the Sunrise Rules provides for a clarification to this rule, by providing 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".

Article 14 of the Regulation states that "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.(…) If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall 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 second, third and fourth paragraphs".

As far as company name protection in the Netherlands is concerned, 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 explains that " use of the company name in the course of trade must be demonstrated (cf trade names)".

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); (…)".

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 Applicant as being the holder of the Prior Right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a de iure transfer, etc.), the Applicant 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".

II. EURid's decision rejecting the application of the Applicant

According to the WHOIS database records the Applicant, LifeLine Networks B.V. applied for the domain name ENOVATION on 7 February 2006, with reference to its company name as a prior right for the disputed domain name.

The Applicant also submitted documentary evidence: certificates of registration with the Chamber of Commerce in Amsterdam for the companies E.Novation Lifeline Networks B.V. and E.Novation Group B.V. and a letter, according to the contents of which the domain name was applied by E.Novation Lifeline Networks B.V. – as a member of the E.Novation Group – for the whole E.Novation Group.

After examining the documentary evidence the Registry rejected the application, as the validation agent found that the documentary evidence were insufficient to demonstrate that the Applicant was the holder or the licensee of a prior right on the name ENOVATION.

III. Examination of the grounds on which the application was rejected

At first, the Panelist has to mention that for the sake of completeness it would deal with all the legal grounds cited by the Respondent regarding the rejection of the application, notwithstanding the fact that accepting even one of the reasons explained below is sufficient to reject to the application for the domain name "enovation.eu" and to reject the Complaint.

Furthermore, the Panelist states at the onset that the burden of proof was with the Applicant to demonstrate that it is the holder of the claimed prior right.

1. The difference between the name of the Applicant and the company names of the documentary evidence

As mentioned above the Application was submitted by LifeLine Networks B.V. for the domain name "enovation.eu".

With reference to the fact that the prior right on which the domain name was requested is a company name, and the company name of the Applicant ("LifeLine Networks") and the name of the holder of the right indicated in the documentary evidence differ, the Applicant should have submitted official documents evidencing 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 pursuant to Section 20 (3) of the Sunrise Rules.

According to the standpoint of the Panelist the above mentioned documents (the letter and the certificates of registration) submitted by the Applicant are insufficient to prove that LifeLine Networks B.V. is the same person as or the legal successor to the persons indicated in the certificates of registration with the Chamber of Commerce in Amsterdam, E.Novation Lifeline Networks B.V. and E.Novation Group B.V.

In connection with the above the Complainant states in the Complaint that the Applicant, LifeLine Networks B.V. was renamed to E.Novation Lifeline Networks B.V., and referred to the letter stating that the domain name was applied by E.Novation Lifeline Networks B.V. for the whole E.Novation Group.

Considering that the Complainant did not present any official document as evidence supporting its statement, the Panelist confirms that the Respondent was let with legitimate doubts as to whether the Applicant was entitled to rely on the company names as prior rights

concerning the application for the domain name "enovation.eu".

2. The use of the company name must be demonstrated

The Applicant claimed a prior right for the disputed domain name in the form company name /trade name protected in the Netherlands therefore it has the obligation to prove that it is the holder of such prior right.

Nevertheless, based on the above mentioned Annex 1 to the Sunrise Rules, which provides that concerning company names of certain countries – as company names of the Netherlands - the use of the company name in the course of trade prior to the date of Application must be demonstrated as well, as required by Section 16 (5) of the Sunrise Rules.

Section 16 (5) b) contains a number of documents which are appropriate to evidence the use of the company name in the course of trade, such as, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned. Neither the Applicant nor the Complainant submitted such documents or any other documents demonstrating the use of the company name in the course of trade prior to the date of Application within the meaning of Section 16 (5) of the Sunrise Rules.

As a consequence of the above, according to the standpoint of the Panelist the Respondent acted correctly when it rejected the application, since the Applicant did not fulfill its obligation concerning the evidencing of the use of the invoked prior right in the course of trade.

3. The company names do not consist of the complete name of the domain name applied for

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, as written in the documentation which proves that such a right exists.

The Applicant submitted documentary evidence proving that the company names relied upon as prior rights are "E.Novation Lifeline Networks B.V." and "E.Novation Group B.V."

The part of the company names, consisting of "B.V.", refers to the company type and could therefore be omitted from the domain name applied for pursuant to Section 19 (4) of the Sunrise Rules.

However, the parts consisting of "Lifeline Networks" and "Group" could not be omitted and should have been included in the domain name applied for, since the domain name applied for has to contain all alphanumeric characters of the prior right (except for the company type).

Therefore, the company names relied upon as a prior right could only serve as a prior right for the names “E.Novation Lifeline Networks” and "E.Novation Group", which are the complete names for which the company names exists, except for the company type.

Therefore – according to the standpoint of the Panelist - the Respondent correctly rejected the Applicant's application, pursuant to article 10.2 of the Regulation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12(b) and (c) of the ADR Rules, the Panel orders that Complaint is denied.

PANELISTS

Name	**Katalin Szamosi**

DATE OF PANEL DECISION 2007-01-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

LifeLine Networks B.V. Applicant filed a Sunrise II application for the domain name "enovation.eu" based on the Dutch company name registrations "E.Novation Lifeline Networks B.V." and "E.Novation Group B.V."

The Applicant was not the holder of the prior rights claimed and did not submit evidence, official documents that it was the same person

as or the legal successor to the persons indicated in the documentary evidence as being the holder of the prior rights pursuant to Section 20 (3) of the Sunrise Rules.

According to Annex 1 of the Sunrise Rules, a Dutch company name is a right within the meaning of Section 16(5) of the Sunrise Rules, which means that in addition to the mere registration, also evidence of use of the company name in the course of trade must be filed to support the prior right. The Complainant had not filed such evidence.

The prior rights relied upon were not "Enovation" but "E.Novation Lifeline Networks B.V." and "E.Novation Group B.V." Accordingly, the Panel found that the domain name applied for was not the complete name of the prior right as required by Article 10(2) of the Regulation and Section 19 (1) of the Sunrise Rules.