Panel Decision for dispute CAC-ADREU-003567

Case number	**CAC-ADREU-003567**
Time of filing	**2006-10-26 11:49:28**
Domain names	**collab.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**COLLAB - Soluções Informáticas de Comunicação e Colaboração, S. A., COLLAB - Soluções Informáticas de Comunicação e Colaboração, S. A.**

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

No other legal proceedings are known to take place in relation to the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the rejection of his application to register the domain name collab.eu.

A. COMPLAINANT

Complainant is a company incorporated and existing in accordance with Portuguese Law with its registered office in Lisbon, Portugal. It carries out its business under the company name COLLAB – Soluções Informáticas de Comunicação e Colaboração, S.A.

The Complainant applied to register collab.eu under the second phase of the Sunrise procedure relying on its company name registration of the above mentioned name. The application was filed 7 February 2006 and on 14 September 2006 EURid notified the Complainant that the application had been rejected since the documentary evidence that was received did not sufficiently prove the right claimed.

The Complainant contests this decision since Section 19.2 of the Sunrise Rules allows an applicant to base its application under the Sunrise procedure on a prior right to a name that is included in a figurative or composite sign if the word element is predominant and can be clearly separated or distinguished from the device element and provided that all alphanumerical characters of the sign are contained in the domain name applied for and in the same order as that in which they appear in the sign.

The Complainant is of the opinion that these criteria are fulfilled in the present case since the word COLLAB can clearly be separated from the other parts of the composite company name.

B. RESPONDENT

Respondent argues that article 10 (2) of Commission Regulation (EC) no. 874/2004 of 28 April 2004 (hereafter the Regulation) states that a domain name applied for during the Sunrise period must consist of the complete name of the prior right and which the application is based.

Respondent argues that Section 19.2 of the Sunrise Rules does not apply to the present case since this provision only applies to figurative or composite signs depicting alphanumerical characters, i.e. cases where the characters are stylised such as in a logo.In the present case the invoked prior right is only composed of alphanumerical characters without any stylised elements.

Respondent points out that the relevant provision to apply in this case is section 19.4 of the Sunrise Rules, according to which the

company type (such as but limited to SA, GmbH, Ltd. and LLP.) may be omitted when deciding whether the criteria set out in article 10(2) of the Regulation are fulfilled. In the present case the invoked prior right is "COLLAB – Soluções Informáticas de Comunicação e Colaboração, S.A." Section 19.4 only allows to disregard the element "S.A." from the company name.

Respondent further notes that the question whether the other word elements contained in the invoked company name are descriptive or not is irrelevant for the purposes of the Sunrise applications, and the Respondent refers to previous decisions that allegedly confirms this view.

DISCUSSION AND FINDINGS

Complainant based its application for the domain name collab.eu on the registered company name "COLLAB – Soluções Informáticas de Comunicação e Colaboração, S.A." As documentary evidence the applicant filed an extract of the Portuguese company's register, which is an acceptable means of proving the existence of a company name.

It is quite evident from the wording of article 10(2) of Commission Regulation (ec) no. 874/2004 of 28 April, 2004 as repeated in Section 19.1 of the Sunrise Rules that the domain names that can be applied for and registered under the Sunrise procedure must be identical to a prior right whether that prior right is a trademark, a company name or any other of the acceptable rights. Section 19 of the Sunrise Rules contains some interpretational guidelines as to how this "identity requirement" shall be understood. These interpretational guidelines came about as a result of discussions with the interested circles prior to the commencement of the Sunrise phases since it was apparent that a strict word-by-word interpretation of the identity requirement would - unintentionally - exclude a number of rightholders from taking advantage of the Sunrise phase.

The Complainant claims that Section 19.2 of the Sunrise Rules appliy in the present case. The panel does, however, agree with the Respondent that Section 19.2 does not apply in the present case. Section 19.2 covers the situation where the invoked right does not solely contain alphanumeric characters in a common typeface but rather contains what is or may be perceived as figurative elements. As explained above the right invoked by the Complainant in the present case is the company name "COLLAB – Soluções Informáticas de Comunicação e Colaboração, S.A." written in a common typeface and containing no figurative elements. The panel further notes that even if the provision would apply it is quite clear that the applied domain name collab.eu does not contain all the alphanumeric characters included in the company name but only parts of it.

Instead, the relevant provision is Section 19.4 of the Sunrise Rules which reads: "For trade names, company names and business identifiers the company type(such as but not limited to SA, GmbH, Ltd. and LLP) may be omitted for the complete name for which the prior rights exists". Applying this rule to the present case only leaves room for disregarding the "S.A." part of the company name but not any other elements of the company name regardless of whether these elements are descriptive or not.

Since the company name of the complainant does not correspond to the applied domain name collab.eu the requirements of Article 10(2) of the Regulation are not met and the Panel therefore dismisses the complaint.

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	**Knud Wallberg**

DATE OF PANEL DECISION 2007-01-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant, who's company name is "COLLAB – Soluções Informáticas de Comunicação e Colaboração, S.A." applied to register the domain name collab.eu under second phase of the Sunrise procedure relying on the registration of the above mentioned name with the Portuguese Company's Register.

The application was rejected by EURid on 14 September 2006 with the reasoning that the documentary evidence that was filed did not prove the right claimed.

Complainant challenged this decision claiming that the identity requirement of Article 10(2) of the Commission Regulation (EC) no. 874/2004 of 28 April 2004 as laid out in Section 19.2 of the Sunrise Rules where fulfilled.

The Panel finds that Section 19.2 is not applicable in our case like this where the application is based on a registration of the company name in plain letters. Rather, it is Section 19.4 of the Sunrise Rules that apply, which states that the only element of a company that you can disregard for the purpose of these proceedings is the designation of the company type which in this case is "S.A."

The Complainant´s registration of its company name does therefore not justify the registration of the domain name collab.eu under the Sunrise phase and the complaint must be denied.