Panel Decision for dispute CAC-ADREU-003704

Case number	**CAC-ADREU-003704**
Time of filing	**2006-11-08 13:24:40**
Domain names	**connectsystems.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Connectsystems, Luc Roeckx**

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 pending legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant applied for the domain name connectsystems.eu on February 7, 2006. The application, according to the Complainant, was based on the Complainant's company name.

A. COMPLAINANT

The Complainant contends that the application was filed on February 7, during the second phase of the Sunrise period, and was based on its company name.

The Complainant points out that the domain name requested by the Complainant consists in the strictly identical complete name for which the prior right exists, as manifested in the Documentary Evidence pursuant to Article 10-2 of the Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") and Article 19 of the Sunrise Rules.

The Complainant also states that the documents clearly established that the company name was CONNECTSYSTEMS and that it was entitled to request for the corresponding domain name.

The Complainant concludes that the Respondent did not make a correct application of the Rules by rejecting the application.

B. RESPONDENT

The Respondent states that the disputed domain name was applied for on February 7, 2006 and based on a company name protected in Belgium.

With reference to the rejection of the application, the Respondent highlights the following grounds:
Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") stating 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 stating 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.

Article 14 of the Regulation stating 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".

The Respondent points out that the processing agent received the documentary evidence on 13 February 2006, which was before the 19 March 2006 deadline. The Complainant submitted documentary evidence consisting of: an abstract of the Belgian Official Gazette establishing the registration of the company "CONNECTSYSTEMS INTERNATIONAL", a limited liability company (Naamloze vennootschap) registered under the number BE 0455.467.755 and a document dated 10 February 2006, signed by the manager of Connectsystems International NV and granting the authorization to Luc Roeckx to apply for and manage domain names. Based on the documentary evidence, the validation agent found that the name of the applicant was different from the company mentioned in the documentary evidence and the domain name applied for does not constitute the complete name of the prior right as written in the documentary evidence. Therefore, the Respondent rejected the Complainant's application.

The Respondent also states that the documents attached to the complaint are not the documents that were received by the validation and which the validation agent and the Respondent examined to take their decision. Pursuant to the Regulation 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 19 March 2006.

The Complainant filed its complaint on 3 November 2006 and submitted these new documents with its complaint. Therefore, the Respondent could not use this information in taking its decision and this new information may not be taken into consideration to evaluate whether the Respondent's decision conflicts with the Regulation, which is the only purpose of the present ADR proceedings.

DISCUSSION AND FINDINGS

The article 10.1 of the Regulation 874/2004 (hereinafter "the Regulation") states that "holders of prior rights recognised or established by national law (…) shall be eligible to register domain names during a period of phased registration before general registration of .eu domain starts.

"Prior rights" shall be understood to include, inter alia, (…) as far as they are protected under national law in the Member-State where they are held (…) company names".

The domain name "connectsystems.eu" was applied for on February 7, during the second phase of the Sunrise period, by "CONNECT SYSTEMS". The application was based on the company name "CONNECT SYSTEMS INTERNATIONAL".

With reference to the application date, the Panel finds the Complainant was entitled to apply for a domain name during the second phase of the Sunrise period according to article 10-2 of the Regulation and Section 11-2 of the Sunrise Rules.

Article 14-1 provides that "All claims for prior rights under Article 10(1) and (2) must be verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists."
Article 14-4 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. The documentary evidence shall be submitted to a validation agent indicated by the Registry. The applicant shall submit the evidence in such a way that it shall be received by the validation agent within forty days from the submission of the application for the domain name. If the documentary evidence has not been received by this deadline, the application for the domain name shall be rejected."

The Complainant applied for the contested domain name on February 7, 2006 and documentary evidence was submitted to the Respondent on 13 February 2006. The Complainant submitted new documents together with the complaint on November 3, 2006. The Panel finds that, pursuant to article 14 of the Regulation, only the documentary evidence submitted on February 13, 2006 should be considered (see inter alia cases ADR 294 (COLT), 954 (GMP), 1549 (EPAGES), 1674 (EBAGS), 2124 (EXPOSIUM). 551 (VIVENDI), 810 (AHOLD), 127 (BPW), 219 (ISL), 843 (STARFISH)).

Along these lines, ADR 3548 (COSTACRUISE, COSTACRUISES, COSTACROISIERES) "It clearly stems from the above provisions that all evidence which is to be taken into account during registration proceedings must be provided by the applicant within the prescribed period of 40 days from application filing. Any evidence submitted thereafter is not to be taken into account (art. 14 par. 4 of Regulation No 874/2004). For that reason, the Panel did not take into consideration any of the documents submitted by the Complainant in the course of these ADR proceedings".

Moreover, “it is not for the Panel to perform the task of the validation agent retrospectively and examine new evidence relating to prior rights. In the Panel's opinion to allow a Panel to do this would in effect be giving a Respondent a second bite at the cherry, contrary to Article 14 of the Regulation" ADR 1262 (NATIONALBANK).

The “first” documentary evidence consisted of an abstract of the Belgian Official Gazette establishing the registration of the company “CONNECTSYSTEMS INTERNATIONAL”, a limited liability company (Naamloze vennootschap) registered under the number BE 0455.467.755; and a document dated 10 February 2006, signed by the manager of Connectsystems International NV and granting the authorization to Luc Roeckx to apply for and manage domain names.

The Panel notes that the name of the applicant does not match with the prior right holder name. Indeed the name of the Complainant is “CONNECT SYSTEMS” while the company name, on which the application was based, is “CONNECT SYSTEMS INTERNATIONAL”.

According to Section 20.2 and 20.3 of the Sunrise Rules, “If an Applicant is the transferee of a Prior Right and the Documentary Evidence submitted does not clearly indicate that the Prior Right claimed has been transferred to the Applicant, it shall submit an acknowledgement and declaration form, a template of which is contained in Annex 3 hereto, duly completed and signed by both the transferor of the relevant Prior Right and the Applicant (as transferee). 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.”

In the present case, the Complainant did not provide the Respondent with evidence showing that it was entitled to base its application on the company name “CONNECT SYSTEMS INTERNATIONAL”. Therefore the Panel holds the view that the Respondent correctly rejected the application (see i.a ADR 2881 (MRLODGE), ADR 2350 (PUBLICARE), ADR 2268 (EBSOFT), ADR 810 (AHOLD), ADR 1627 (PLANETINTERNET), ADR 1625 (TELEDRIVE)).

Moreover, article 10.2 of the Regulation provides 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 exist.”

The Complainant based its application on the company name "CONNECTSYSTEMS INTERNATIONAL NV". Pursuant to section 19 of the Sunrise Rules, company type may be omitted from the complete name for which the Prior Right exists. Therefore, the complete name of the prior right is “CONNECT SYSTEMS INTERNATIONAL” and the corresponding domain name should be “connectsystemsinternational.eu”. (see i.a ADR 2061 (MODLINE), 02093 (MAZUR), 3032 (SEGHORN), 02494 (BPSC), 02047 (UNI-C)).

In ADR 2471 (TAIYO-YUDEN), the Panel decided that "In the case of the Complainant the complete name shown in the companies register is “Taiyo Yuden Europe GmbH”. If the company type “GmbH” would be omitted the complete name reads “Taiyo Yuden Europe“. Therefore the company name of the Complainant would qualify as priority right for the registration of “taiyo-yuden-europe.eu” but not for “taiyo-yuden.eu”. The Panel disagrees with the Complainant´s argument that the word “Europe” in “Taiyo Yuden Europe“ is descriptive and should be disregarded. There is no EU Regulation or Sunrise Rule concerning the implementation of the .eu Top Level Domain that supports this opinion brought forward by the Complainant. In this context also German Trade Mark Law cannot support the Complainant ´s argument as it is a company name, not a trade mark, that has been the basis for the Complainant´s application. ".

As stated in ADR 2499 (PSYTECH), “The non mandatory use of the added denomination does not constitute in the opinion of the Panel a sufficient reason for considering that it does not form part of the registered trade name. Moreover, the fact that the added terms "Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren" would not be a valid prior right to be evoked in a trade mark matter -due to the absence of distinctive character as exposed by the complainant- would not again be sufficient to conclude that it does not form part of the full trade name. Hence, even if Psytech GmbH is known under the shorten denomination Psytech or Psytech Gmbh in the course of trade, it is incorporated as "Psytech GmbH Psychologische Technik-Entwicklung und Anwendung wissenschaftlicher Verfahren". For the sake of good administration and considering the clear wording of Article 10 (2), the denomination to be taken into consideration is the full name of the Complainant as registered and appearing on the German trade register.”

The Panel concurs also with the view of ADR 2297 (FENRISULVEN) where it was decided “As the official name of the company in this case is “FenrisUlven Holding ApS” the Applicant could therefore have successfully applied for a domain name of either fenrisulvenholdingaps.eu or fenrisulvenholdings.eu. The documentary evidence provided does not comply with these requirements. It does not demonstrate a prior right to the name “Fenrisulven” alone but only to the full corporate name of “FenrisUlven Holding Aps”.

The Panel therefore notices that the domain name applied for was “connectsystems.eu” (and not connectsystemsinternational.eu) and

concludes that, even if the Complainant had proved it was the right holder of prior rights on “CONNECTSYSTEMS INTERNATIONAL”, the application for the domain name “connectsystems.eu” alone should have been rejected, as decided by the validation agent.

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	Luca Barbero

DATE OF PANEL DECISION 2007-02-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contends that the application was based on its company name, consists in the strictly identical complete name for which the prior right exists and the documents clearly established that the company name was CONNECTSYSTEMS.

The Respondent states that the disputed domain name shall consist of the registration of the complete name for which the prior right exists.The validation agent found that the name of the applicant was different from the company mentioned in the documentary evidence and the domain name applied for does not constitute the complete name of the prior right as written in the documentary evidence. The Respondent also states that the documents attached to the complaint are not the documents that were received by the validation and which the validation agent and the Respondent examined to take their decision.

The Panel finds that, pursuant to article 14 of the Regulation, only the documentary evidence submitted on February 13, 2006 should be considered.

The Panel notes that the name of the applicant does not match with the prior right holder name. Therefore the Panel holds the view that the Respondent correctly rejected the application.

The Complainant based its application on the company name "CONNECTSYSTEMS INTERNATIONAL NV". The Panel notices that the domain name applied for was “connectsystems.eu” (and not connectsystemsinternational.eu) and concludes that, even if the Complainant had proved it was the right holder of prior rights on “CONNECTSYSTEMS INTERNATIONAL”, the application for the domain name “connectsystems.eu” alone should have been anyway rejected, as decided by the validation agent.

The Panel orders that the Complaint is denied.