Panel Decision for dispute CAC-ADREU-003724

Case number	**CAC-ADREU-003724**
Time of filing	**2006-11-13 09:56:11**
Domain names	**rhomberg.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Rhomberg Bau GmbH, Peter Eichhübl**

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 pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant applied for registration of the domain name rhomberg.eu on 7 February 2006, within phase II of the sunrise period. Complainant claimed a prior right in the name Rhomberg Bau GmbH. The type of prior right claimed was a company name/trade name/business name under Austrian law.

The documentary evidence of the prior right of Complainant was received by the validation agent on 17 February 2006. This was within the term of section 8.5 of the Sunrise Rules.

The documentary evidence consisted of an extract of the Austrian commercial register (annex 1 to the non-standard communication by Respondent of 16 November 2006).

Eurid rejected the application on 4 October 2006 on the ground that the evidence produced by the Complainant did not sufficiently substantiate the claimed prior right.

A. COMPLAINANT

Complainant contents that is the owner of the name/trademark RHOMBERG in Austria for a company doing business in the construction industry since 1938. According to the company its trademark RHOMBERG is a well-known trademark in the sence of article 16.2 of the TRIPs Agreement in conjunction with article 6bis of the Paris Convention and also a trademark with a reputation within the meaning of article 5(2) of the Trademark Directive.

Complainant contents that the documentary evidence that it supplied, shows that Rhomberg Bau GmbH was incorporated in 1979 and is the central company of a group of related companies, that all use the name Rhomberg.

Complainant states that industry magazines illustrate that the name Rhomberg is used to indicate this group of related companies and that the name Rhomberg is used in the device trademark used by this group. Eurid could have seen this from the documentary evidence provided and the website.

Complainant states that the submitted evidence is sufficient proof, as required under section 15 of the Sunrise Rules, of its wellknown trademark.

Complainant further contents that Eurid's acceptance of the application for the domainname rhomberg.eu by Elfi Rhomberg, is open to revocation pursuant to article 21 of the Regulation as it has been registered without rights or legitimate interests and/or in bad faith.

On these grounds the Complainant requests the Panel to annul the decision of Respondent to reject the application and to grant the domainname rhomberg.eu to Complainant.

B. RESPONDENT

The Respondent states that the documentary evidence it received consisted of a company report for the company Rhomberg Bau GmbH. The domainname applied for did therefore not consist of the complete name of the company as written in the documentary evidence. Consequently the Respondent rejected the appplication correctly pursuant to article 10.2 of the Regulaton and 19.1 of the Sunrise Rules.

Regarding the complaint that the application by Elfi Rhomberg has to be revoced, the Respondent states that an ADR complaint can only be directed against one decision by the Respondent at a time and a complaint based on article 21 of the Regulation has to be directed to the holder of the domain name.

DISCUSSION AND FINDINGS

In its application for the domainname rhomberg.eu Complainant claimed a prior right in the name Rhomberg Bau GmbH. This is shown on the cover letter of the documentary evidence of 7 February 2006. The Complainant has answered in the box 'Name, fur den ein fruheres Recht geltend gemacht wird': 'Rhomberg Bau GmbH'.

The type of prior right claimed was a Company name/trade name/business identifier. Rhomberg did not clearly identify in its application which of these three prior rights it claimed, or whether it claimed all three kinds of prior rights.

The evidence required to substantiate the claimed prior rights is listed in section 16(4) and (5) of the Sunrise Rules. The documentary evidence supplied by Complainant consisted of an extract from the company register. According to section 16(4) of the Sunrise Rules such an extract is sufficient evidence to show a prior right in a company name. The extract provided by Complainant showed the company name Rhomberg Bau GmbH. Complainants evidence did therefore substantiate a prior right in that company name.

Complainant also claimed a prior right in a trade name and/or business identifier in its application. To claim a prior right in a trade name or business identifier, section 16(5) of the Sunrise Rules require evidence consisting of either an extract of the trade register and additional proof of actual use of the trade name or business identifier (in case it is obligatory or possible to register the trade name or business identifier), or an affidavit or court judgement as described in section 12(3) of the Sunrise Rules (in case there is no registration in an official register). The evidence supplied by Complainant to the validation agent did not include the required evidence to assert a prior right in a trade name or business identifier Rhomberg or Rhomberg Bau.

Attached to the Complaint Complainant has supplied additional evidence of its prior rights in the name Rhomberg (without the addition Bau). This evidence cannot be taken into consideration, as it was not presented to the Respondent at the time of the application. Article 14 of the Regulation provides: "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" and "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 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. This is further substantiated in section 21(2) of the Sunrise Rules: the validator examines on the basis of a prima facie review of the documentary evidence.This means that the evidence of a prior right submitted within 40 days of the application, has to be sufficient to support the claim of a prior right and a prior right cannot be substantiated merely on the evidence submitted with the complaint in the ADR proceedings.

Therefore the Panel will merely assess whether the prior right of Complainant in the company name Rhomberg Bau GmbH, should have led to registration of the domain name rhomberg.eu in the name of Complainant.

Article 10(2) of the Regulation and Section 19(1) of the Sunrise Rules provide that registration on the basis of a prior right in the Sunrise Period is not possible for a domain name comprising only part of the complete name for which the prior right exists. For tradenames, company names and business identifiers, the company type, such as GmbH, may be omitted, according to section 19(4) of the Sunrise Rules.

Pursuant to these provisions, a prior right in the company name Rhomberg Bau GmbH did not entitle Complainant to apply for the

domainname rhomberg.eu, as this was only part of its company name. As the company type may be deleted, Complainant was entitled to the domainname rhombergbau.eu on the basis of its prior right.

The fact that BAU is descriptive of the business of Complainant does not change this. There is no rule that descriptive parts of company names can be omitted in the domain name for which a prior right is claimed. The Panel is aware of the fact that other Panels have decided likewise in earlier decisions under the .eu ADR, uncluding cases 470 (O2), 2093 (Mazur) and 2061 (Modline).

Complainant is basing its Complaint on section 15 of the Sunrise Rules. This section concerns unregistered trademarks. Complainant also contents that it is the owner of a famous trademark and/or a trademark with a reputation. As the prior right claimed by the Complainant at the time of application was a prior right in a company name/trade name/business identifier, the currently claimed prior rights in a (registered or unregistered) trademark cannot affect the decision of the Respondent regarding the application by Complainant.

Complainant also claims that the registration of the domainname rhomberg.eu in the name of Elfi Rhomberg was contrary to article 21 of the Regulation. Such a complaint has to be directed not towards the current Respondent, Eurid, but towards the domainname holder, Elfi Rhomberg. Therefore this claim is inadmissable in the current ADR proceeding.

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	**Freyke Bus**

DATE OF PANEL DECISION 2007-02-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant claims that it has a prior right in the company name / trade name / business identifier Rhomberg as this is the name used by a group of related companies of which Complainant, Rhomberg Bau GmbH, is the central company. It also claims that the name Rhomberg is a famous trademark of the company. Therefore the Respondent should not have denied Complainant the registration in its name of the domain name rhomberg.eu. The complainant requests the Panel to annul the decision of Respondent and to grant the domain name to Complainant

The Panel reviewed the Documentary Evidence supplied to Respondent. This consisted only of evidence of a prior right in the company name Rhomberg Bau GmbH. Therefore the claims based on the trade name and business identifier were denied. On the basis of Article 10(2) of the Regulation and section 19 of the Sunrise Rules, the Panel decided that a prior right in that company name did not entitle Complainant to the registration of the domain name rhomberg.eu during the Sunrise Period, as this domain name consisted of only a part of the company name.

The complaint based on the famous trademark of Complainant was rejected on the basis that Complainant's application was not based on a prior right in a trademark.

The complaint by Complainant that a later application by a third party for the same domainname should have been rejected by Respondent as it was done without legitimate interest or in bad faith, was rejected because that complaint should have been directed towards the holder of the domain name.

The complaint was denied.