Panel Decision for dispute CAC-ADREU-003828

Case number	**CAC-ADREU-003828**
Time of filing	**2006-11-28 13:08:56**
Domain names	**parishotels.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**DPP Dominique Planche Publicité**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

The Complainant is DPP Dominique Planche Publicité, a company created in 1998 for advertising and communication services. The Complainant is known under the trade name “Paris Hotels”.
The Complainant developed a website dedicated to tourism in France. This website, accessible from “parishotels.com”, offers a selection of hotels, restaurants, city guides and other attractions.
Services are offered in both French and English and are recommended by the best newspapers and magazines.
On 7 February 2006, during the Sunrise Period, the Complainant applied for the two domain names “parishotels.eu” and “paris-hotels.eu”. Both applications were identical and included the same documentary evidence related to trade name right, consisting of:
- French companies register excerpt dated 29 August 2005 and reproducing “Paris Hotels” as a registered trade name;
- Parishotels.com website excerpts dated 23 January 2006 and reproducing “Paris Hotels” as a trade name from its creation to 2006.
EURid validated the “paris-hotels.eu” application as well as the right on the name. Consequently, the “paris-hotels.eu” domain name application was accepted on 3 October 2006.
However, on 12 October 2006 EURid rejected the “parishotels.eu” domain name application, considering that the documentary evidence received by EURid was not sufficient to prove the right claimed by the applicant.

A. COMPLAINANT

The Complainant asks for the annulment of EURid’s decision dated 12 October 2006 rejecting the “parishotels.eu” application, insofar as this decision infringes Paragraphs 10 and 11 of Commission Regulation (EC) n°874/2004 of 28 April 2004 and Paragraph 4(1) of Commission Regulation (EC) n°733/2002 of 22 April 2002 and the general principle of equality of treatment.
The Complainant also asks the Panel to order that the “parishotels.eu” domain name be transferred to the name of the Complainant.
According to the Complainant, the prior right requested for the assignment of a .eu domain name during the Sunrise Period was proved by the documentary evidence submitted to the Registry within the time limit, i.e. the same documentary evidence that the Registry considered sufficient for assigning the paris-hotels.eu domain name.

Although the two domain name applications “paris-hotels.eu” and “parishotels.eu” were identical, the Registry gave them a different issue without any justification.
The complainant believes that the rejection of the application for parishotels.eu infringes the obligation of the Registry to observe transparent and non-discriminatory procedures. It also constitutes an infringement of the general principle of equality of treatment from which the Registry cannot depart.

B. RESPONDENT

The Respondent admits that the Complainant submitted documentary evidence consisting of:
- an abstract from the company register of the Commercial Court of Paris stating that the company D P P Dominique Planche Publicité registered the trade name “parishotels”;
- a printout of the website “www.parishotels.com”.
Based on the above documentary evidence, the validation agent found that the Complainant did not demonstrate that the claimed prior right is established and protected in France, because no relevant proof of public use of the trade name “parishotels” was provided.
Therefore, the Respondent rejected the Complainant's application.
The Respondent first points out that the Regulation and the Sunrise Rules provide that the burden of proof was with the Complainant to demonstrate that the claimed prior right is protected under the law of the Member State where protection is claimed.
In the present case, the Respondent argues that in order to demonstrate the protection of its trade name in France, the Complainant should have provided evidence of use of the trade name in the course of trade.
The Respondent also argues that the legality of the Respondent's decisions may not be assessed on the basis of previous applications dealt with by the validation agent and/or the Respondent.

DISCUSSION AND FINDINGS

The Parties do not dispute the fact that the Complainant filed both the application for the domain names paris-hotels.eu and parishotels.eu on the same day, together with the same documentary evidence relating to the trade name right, consisting of:
- French companies register excerpt dated 29 August 2005 stating that the company DPP Dominique Planche Publicité registered the trade name “PARIS HOTELS”
- parishotels.com website excerpts dated 23 January 2006 and reproducing “Paris Hotels” as a trade name.
This documentary evidence was considered sufficient by the Registry to prove the prior right for the domain name paris-hotels.eu, which was assigned to the Complainant on 3 October 2006.
The same documentary evidence was considered insufficient for the domain name parishotels.eu, the application for which was rejected on 3 October 2006.
According to the Respondent, the Complainant did not fulfill its obligation for the rejected domain name concerning evidence of the use of the invoked prior right in the course of trade.
However, the Registry does not explain why the Validation Agent considered that the same documentary evidence was sufficient for the paris-hotels.eu application, whereas it considers that this were insufficient for the parishotels.eu application.
The Panelist considers that the documentation produced by the Applicant was of itself sufficient to prove the existence in its favour of the Prior Right required for the registration of .eu domains in the Sunrise Period. So, in any case, the registry should also have accepted the application for the domain name parishotels.eu.
As the two domain name applications “paris-hotels.eu” and “parishotels.eu” were identical, the Registry should have accepted both applications. Instead, it gave them a different issue without any justification.
The rejection of application for parishotels.eu infringes the obligation of the Registry to observe transparent and non-discriminatory procedures (Paragraph 4(2)(b) of Commission Regulation (EC) n°733/2002). It also constitutes an infringement to general principle of equality of treatment from which the Registry cannot depart.
In the circumstances the decision of the Respondent should be annulled and the Complainant's requests granted.

DECISION

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

- the EURID's decision be annulled
- the domain name PARISHOTELS be transferred to the Complainant

PANELISTS

Name	**Enzo Fogliani**

DATE OF PANEL DECISION 2007-02-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant challenged the rejection of its domain name application by the Registry.
The Complainant applied for the two domain names “paris-hotels.eu” and “parishotels.eu”. Both applications were identical and included the same documentary evidence related to trade name right.
The registry accepted one domain name application but rejected the other,considering that the documentary evidence received was not sufficient to prove the right claimed by the applicant.
The Panelist considered that the documentation produced by the Applicant was of itself sufficient to prove the existence in its favour of the Prior Right required for the registration of .eu domains in the Sunrise Period.
The Panelist also considered that the rejection of application for parishotels.eu infringed the obligation of the Registry to observe transparent and non-discriminatory procedures (Paragraph 4(2)(b) of Commission Regulation (EC) n°733/2002). It also constituted an infringement to general principle of equality of treatment from which the Registry cannot depart.
The Panelist therefore annulled the Registry’s decision, as the proof of Prior Right was valid, produced in good time and is sufficient for an applicant to become the holder of a .eu domain name. The Panelist therefore ordered the granting of the domain name parishotels.eu to the Complainant and the activation of the domain name parishotels.eu.