Panel Decision for dispute CAC-ADREU-003882

Case number	**CAC-ADREU-003882**
Time of filing	**2006-12-01 12:34:27**
Domain names	**rusmedia.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Rusmedia RR GmbH, Alexander Wernitz**

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

None

FACTUAL BACKGROUND

On 14 February 2006, an application for registration of the domain name "rusmedia.eu" (the "Domain Name") was filed on behalf of an entity called "Rusmedia RR GmbH" (the "Complainant").

On 27 February 2006, documentary evidence in support of the Application was submitted. The evidence consisted of a Certificate by the German Commercial Registry showing that the Complainant is a German company duly incorporated and trading under the company name "Rusmedia RR GmbH".

On 26 October 2006, EURid, acting as registry (the "Registry") in accordance with Article 14 of the Regulation, analysed the Application and rejected it (the "Decision").

On 30 November 2006, before the expiration of the forty-day period provided for in Section 22(1) of the .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (the "Sunrise Rules"), the Complainant filed a Complaint (the "Complaint") before the ADR Centre for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "ADR Centre"). The Complaint was addressed against EURid's Decision.

On 7 December 2006, EURid provided the registration information requested by the ADR Centre.

The proceedings were terminated on 22 December 2006, due to formal defects in the Complaint which were not remedied by the Complainant in due time. On 27 December 2006, the Complainant challenged the ADR Centre's decision to terminate the proceedings. On 2 January 2007, the challenge was accepted by the ADR Centre, due to the exceptional circumstances that prevented the Complainant from filing an Amended Complaint, and the Complainant was granted an additional seven-day period to submit an Amended Complaint.

On 3 January 2007, the Complainant filed an Amended Complaint.

The ADR Centre issued a notice of commencement of proceedings on 8 January 2007.

EURid filed its response to the Complaint on 13 February 2007 within the time limit provided for.

A. COMPLAINANT

The Complaint requests the annulment of EURid's decision not to assign the Domain Name to them and requests that the Domain Name be attributed to them.

The Complainant alleges that it is a German company acting under the company name "Rusmedia RR GbmH" since 14 January 2003; that it registered the trademark "Rusmedia" before the German Patent and Trademark office on 6 June 2006 (although its application was filed on 8 December 2005); and that it commonly uses the trademark "Rusmedia" in the market since the creation of the company. Therefore, the Complainant considers that EURid's decision is incorrect, since they are the legal holders of prior rights on the name "rusmedia" in different ways, as early as from 14 January 2003.

B. RESPONDENT

EURid's response contends that, in accordance with Article 14 of the Regulation, their task when evaluating an application made during the period of phased registration before general registration of .eu domain starts ("Sunrise Period") is to decide on the application received only on the grounds of the documentary evidence submitted by the applicants. In the present case, the documentary evidence submitted by the applicant showed that the name applied for did not consist of the complete name of the prior right on which the application is based, in accordance with Article 10(2) of the Regulation, and that, for that reason, the application was duly rejected.

DISCUSSION AND FINDINGS

Article 22(11) of the Regulation provides that "In the case of a procedure against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002". Therefore, the scope of this panel's ruling is not to decide whether the Complainant is or not entitled to register the Domain Name on the basis of being the holder of a prior right as defined in Article 10(1) of the Regulation, but to decide whether the decision taken by the Registry is correct, on the basis of the documentary evidence submitted by the applicant. When ADR proceedings are held against the decision taken by the Registry, the panel must limit its analysis to the documentary evidence made available by the applicant to the Registry. If the applicant failed to submit any evidence in support of his prior rights, then the applicant must bear the consequences of having its application rejected on the basis of the insufficiency of the documentary evidence submitted. The Regulation and Regulation (EC) No 733/2002 do not impose any burden on the Registry to research for any additional information, besides the documentary evidence submitted by the applicant, to support the rights relied on by the applicant.

This conclusion is supported by Article 10(2) of the Regulation, which 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"; and by Article 14 of the Regulation, whose first paragraph 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"; whose fourth paragraph provides 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"; and whose last paragraph provides that "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".

In the case before this panel, the only documentary evidence submitted by the Claimant to the Registry on 27 February 2006 was a Certificate by the German Commercial Registry showing the Complainant's prior right on the company name "Rusmedia RR GmbH". As a consequence, the additional evidence now submitted by the Complainant with the Complaint (i.e., Certificate regarding the registration of the German trademark "Rusmedia" and original and copy of the media data catalogue "Rusmedia") cannot be used to evaluate the correctness of the decision of the Registry, in accordance with the Regulation.

Therefore, the decision of the Registry must be revised solely on the basis of the only documentary evidence that the Registry was provided for: the Certificate by the German Commercial Registry.

This conclusion leads us to a discussion which is common in .eu domain name cases: whether a discrepancy between the prior right sustained by the documentary evidence submitted by the applicant and the domain name whose registration is applied for should lead to rejection of the application for registration.

In the present case, the Complainant showed by means of the documentary evidence that they are the holders of prior rights on the company name "Rusmedia RR GmbH", while they applied for the Domain Name ("rusmedia.eu"). An obvious discrepancy exists in the fact that the company name includes the characters "RR GmbH", which are absent in the Domain Name.

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 exists". The words "…complete name…" initially call for an identity between both terms of the comparison: the prior right asserted, as documented and the domain name. Likewise, Section 19(1) of the Sunrise Rules provides 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".

By way of exception, Section 19(4) of the Sunrise Rules provides 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". This Section therefore allows the exclusion of the identifier "GmbH" from domain name applied for.

However, nothing in the Regulation or in the Sunrise Rules permits the omission of the letters "RR". As a consequence, the Domain Name does not reflect the complete company name on which the Complainant holds a prior right. The letters "RR" are contained in the company name, but are omitted in the Domain Name. As a consequence, only the domain name "rusmediarr.eu" could have been applied for, on the basis of the documentary evidence submitted by the Complainant.

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	**Alejandro López Ortiz**

DATE OF PANEL DECISION 2007-03-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a Complaint against EURid, in respect of EURid's decision not to grant the domain name "rusmedia.eu" to it.

The Panel decided to dismiss the Complaint.

The scope of an ADR decision in the case of a procedure against the Registry is only to decide whether the decision taken by the Registry is correct, on the basis of the documentary evidence submitted by the applicant. Any additional evidence submitted with the complainant in the ADR proceedings, but not submitted as documentary evidence to the Registry by the applicant, cannot be used to evaluate the correctness of the decision of the Registry.

The domain name applied for must consist of the complete name for which the prior right exists, as supported in the documentary evidence submitted by applicant. Only specific signs, such as business identifiers (i.e., GmbH) may be omitted from the domain name applied for.

In the case, the documentary evidence submitted by the Complainant proved the Complainant's prior right on the company name "Rusmedia RR GmbH", while the domain name applied for was "rusmedia.eu". Although the Complainant filed with his complaint a number of additional evidences relating to its interest on the name "Rusmedia", only the documentary evidence submitted to the Registry has to be considered. Although the business sign "GmbH" may be omitted from the domain name applied for, there is no justification for the omission of the letters "RR". For these reasons, the complaint must be rejected.