Panel Decision for dispute CAC-ADREU-003945

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Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	LA COMPAGNIE FINANCIERE EDMOND DE ROTHSCHILD BANQUE, Fabien TANGUY

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

There are no other legal proceedings.

FACTUAL BACKGROUND

Within the Phased Registration Period (“Sunrise Period”), the Complainant applied for the registration of a domain name in the .eu space namely, "lcfr.eu", on 7th of February 2006. Together with the necessary application forms, the Complainant submitted a copy of the extracts of the French Official Register ("Extrait K-bis-Registre du Commerce et des Societes - RCS") which mention LCFR as a trade name of the Complainant ("nom commercial"). This extract of the Official Register proves that the trade name LCFR is used by the Complainant since 1985. Based on the fact that the Complainant is the proprietor of the name LCFR, the Complainant contends that the Respondent's refusal to register the domain name to the Complainant is questionable and, therefore, the domain name should be awarded to the Complainant.

The Complaint was filed on 1st of December, 2006 in English, which is the official language of the proceedings, along with the relevant annexes, which were in French. On 5th of December, 2006, according to paragraph B1 (d) of the .eu Dispute Resolution Rules (the ADR Rules), the Czech Arbitration Court acknowledged receipt of the Complaint. On 18th of December, 2006, the Centre contacted the Complainant to inform them for some deficiencies in their Complaint and on 27th of December, 2006, the proceedings officially commenced.

The Respondent filed their response on 8th February 2007, and the Czech Arbitration Court acknowledged receipt of the Response on the next day. On 12th of February, 2007, the Provider appointed the selected Panellist and on the same day the Provider received his Statement of Acceptance and Declaration of Impartiality and Independence.

A. COMPLAINANT

LA COMPAGNIE FINANCIERE EDMOND DE ROTHSCHILD BANQUE is a French Company. On 7th February 2006, and during the Sunrise Period, the Complainant requested the registration of the domain name "lcfr.eu" from EURID, a request that was refused; instead, the Respondent decided to attribute the disputed domain name to another French company.

The Complainant contends that the decision of EURID to refuse to attribute the domain name to the Complainant, is questionable for the following reasons.

First, according to the Complainant, they satisfy all the registration requirements as outlined in the European Union Reggulations (EC Regulation 733/2002). Indeed, the Complainant has a registered office in France.

Moreover, the Complainant asserts that they have been the first to request the registration of the concerned domain name during the Sunrise period. Based on that as well as the fact that the Complainant has prior rights on the term "LCFR", the Complainant believes that EURID should have attributed the domain name to them. The Complainant is of the opinion that EURID failed to take into consideration these prior rights.

The Complainant refers to article 16(2), which provides that trade names are protected in all Member States of the European Union and argues that the name 'LCFR' is their trade name since 1985. To support their assertion, the Complainant submits an extract of the French Official Register ("Extrait K-bis-Registre du Commerce et des Societes - RCS"), which mentions LCFR as a trade name of the Complainant ('nom commercial"). According to the Complainant, this extract of the Official Register proves that the trade name LCFR is used by the Complainant since 1985.

Furthermore and in order to prove public use of the trade name "LCFR", the Complainant asserts that the name "LCFR" has been used for a long time and to prove this, the Complainant submits various press releases and web searches as attached annexes. Moreover, the Complainant argues that they are the proprietor of various other domain names: 'lcfr.frl' (registered in 1996, cf: http://www.afnic.fr/outils/whois/lcfr.fr); 'lcfr.it' (registered in 2000, cf: http://www.whois.net/whois_new.cgi?d=lcfr&tld=it); 'lcfr.co.uk (registered in 2000, cf: http://www.europeregistry.com/cgi-bin/whois/step1.cgi?domain=lcfr.co.uk&lookup=OK&root_allowed=1&raw=1&Submit=Check+Domain). All these domain names identify the Complainant in the opinion of the public.

The Complainant contends that they have prior rights on the term "LCFR" according to Art. 11(3) of the Sunrise Rules.

Therefore, the Complainant is of the opinion that EURID should have attributed the disputed domain name to the Complainant. Based on these assertions, the Complainant requests that the decision of EURID, which had refused the registration of the domain name to the Complainant, to be overturned.

B. RESPONDENT

The Respondent provides the grounds on which they refused the application by LA COMPAGNIE FINANCIERE EDMOND DE ROTHSCHILD BANQUE for the domain name "LCFR".

Responding to the Complainant's allegations, the Respondent counterclaims that the Regulation and the Sunrise Rules clearly and certainly provide that the burden of proof was with the Complainant tot demonstrate that the claimed prior right is protected under the law of the Member State where protection is claimed.

Secondly, the Respondent argues that the Respondent and the validation agent may consider as documentary evidence only the documents that are received by the validation agent within 40 days from the submission of the application.

The Respondent contends that it is of crucial importance that they are provided with all the documentary evidence necessary for them to assess if the applicant is indeed the holder of a prior right and, therefore, the burden of proof lies with the Complainant to substantiate that they are the holder or the licensee of a prior right (e.g. ADR Decisions: 127 (BPW), 219 (ISL), 294 (COLT), 551 (VIVENDI), 984 (ISABELLA), etc.). The Respondent quotes ADR Case 1886 (GBG), where it was stated: "According to the Procedure laid out in the Regulation the relevant question is thus not whether the Complainant is the holder of a prior right, but whether the Complainant demonstrated to the validation agent that it is the holder of a prior right. If an applicant fails to submit all documents which show that it is the owner of a prior right the application must be rejected".

The Respondent states that their decision must be evaluated only on the basis of the documentary evidence received within the deadline set froth by the Regulation. Pursuant to 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 this case, the 40 days period ended on the 19th March 2006, as established by the WHOIS database.

The documents that the Respondent received on the 22nd February 2006, which the Respondent attaches in the form of a non-standard communication (18th December 2006), consisted of (i) an abstract from the company register of the Commercial Court of Paris stating that the company "La Compagnie Financiere Edmond de Rothschild Banque" registered, amongst other trade names, the trade name "LCFR"; (ii) a printout of a website 'www.lcf-rothschild.fr'. . The Complainant attached new documents to its complaint and were filed on the 1st of December 2006. According to the Respondent, these last set of documents may not serve as documentary evidence, since those were submitted after the end of the 40-day period set forth by the Regulation. For the Respondent, accepting these documents or any other documents received after the deadline as documentary evidence would clearly violate the Regulation. Therefore, the validation agent and the Respondent only considered the set of documents received on the 16th March 2006, within the deadline.

Furthermore, the Respondent asserts that only the documentary evidence submitted within the given deadline should be evaluated by the Panel in conformity with article 22 (1) of the Regulation (e.g. case ADR 294 (COLT), 954 (GMP), 1549 (EPAGES), etc).

The new documents attached to the present complaint were not received by the validation agent during the 40 days period, which means that the Respondent could not use this information when reaching their decision. Therefore, this 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. To prove this point the Respondent quotes ADR decisions: ADR 2881 (MRLODGE), 1627 (PLANETINTERNET), 551 (VIVENDI), 810 (AHOLD), etc.).

Moreover, the Respondent argues that the documentary evidence received by the validation agent was not sufficient to establish a company name protected in France. As established by the WHOIS database, the Complainant claimed a prior right in the form of a trade name protected in France. Therefore, the Complainant carries the burden of proof for submitting documentary evidence that shows that it is the holder of this claimed prior right, pursuant to article 14 of the Regulation. If the Complainant fails to provide adequate documentary evidence, its application must be rejected.

According to the Respondent, the Complainant contends that they provided sufficient documentary evidence to establish the claimed prior right. The Complainant correctly provided an extract from the official register mentioning LCFR as a trade name. However, the Complainant in this case failed to submit any proof of public use of the trade name prior to the date of the application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name of business identifier is mentioned etc., proving public use of the name in the relevant number state). The only document included in the documentary evidence received within the deadline is a printout of a website www.lcf-rotschild.fr, which does not even mention the name LCFR. Therefore, this document does not establish public use of the trade name 'LCFR' to identify the Complainant. This printout of the website clearly shows that the name used to identify the website is the company name of the Complainant "LA COMPAGNIE FINANCIERE EDMOND DE ROTHSCHILD BANQUE" and not LCFR. Therefore, the validation agent correctly found that the Complainant did not meet its burden of proof pursuant to article 14 of the Regulation and the Respondent correctly rejected the Complainant's application. (ADR 3563-ENOVATION)

Based on all the abovementioned, the Respondent rejected the Complainant's application.

DISCUSSION AND FINDINGS

The Complainant’s application is made pursuant to article 22 (1) (b) of EC Regulation 874/2004, which provides that an ADR procedure may be initiated by any party where a decision taken by the Registry conflicts with EC Regulation 733/2002. Pursuant to article 22 (11) of EC Regulation 874/2004, the sole purpose of these proceedings is accordingly to determine whether the decision taken by the Respondent was in accordance with EC Regulation 874/2004 and EC Regulation 733/2002.

The Complainant argues that they sufficiently demonstrated their prior rights on a protected trade name because they submitted an extract from the official register as well as proof of public use of the trade name. The Complainant attaches new documents to their complaint. The Complainant requests the Panel to annul the Respondent's decision and to grant the domain name LCFR to the Complainant.

The Respondent counterclaims that, based on the documentary evidence within the deadline, the validation agent found that the Complainant failed to demonstrate that the claimed prior right is established and protected in France because no proof of public use of the trade name 'LCFR' was provided. Therefore, the Respondent rejected the Complainant's application.

The burden of proof is with the Complainant to demonstrate the protection of the claimed right. Article 10 (1) of the Regulation states that only holders of prior rights recognised or established by national and/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.

Pursuant to article 14 of the Regulation, the applicant must submit documentary evidence showing that he or she is the holder of the prior right claimed on the name in question. Based on this documentary evidence, the validation agent shall examine whether the applicant has prior rights on the name.

The WHOIS database shows that the Complainant had until the 19th March 2006 to submit all the documentary evidence that would be subject to the evaluation by the validation agent. A set of documents was received on 22nd February 2006, withtin the deadline and consisted of:
- an abstract from the company register of the Commercial Court of Paris stating that the company "La Compagnie Financiere Edmond

de Rothschild Banque" registered, amongst other trade names, the trade name LCFR;
- a print-out of a website "www.lcf-rothschild.fr".

The Complainant attached new documentary evidence attached to this Complaint on 1st December 2006. First, these documents, which were submitted as an attachment to the Complaint, were in French. The official language of this proceeding is English and, therefore, these documents should have been translated. Secondly, the Panels feels that these documents cannot serve as documentary evidence for the reason that they were submitted after the 40 day period that the Regulation sets as a reequirement. Accepting these documents would be a clear violation of the Regulation. For all the abovementioned reasons, the Panel decides that these documentary evidence should not be taken into account at this stage of the proceedings.

Moreover, section 16 (5) of the Sunrise Rules states that: "Unless otherwise provided in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers referred to in Section 16 (2) respectively 16 (3):
(i) where it is obligatory and/or possible to register the relevant trade name or business identifier in an offical register (where such a register exists in the member state where the business is located):
a. an extract from that official register, mentioning the date on which the trade name was registered; and,
b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state);
c. (...)."

The Respondent contends that the Complainant failed to meet this requirement and provide sufficient evidence to prove use of prior right in France. Indeed, the documentary evidence that were submitted to the Respondent were not enough at the time to prove use of the right in France according to article 16 of the Sunrise Rules. The Complainant did not submit any of the Documents stated in article 16 (5) b of the Sunrise Rules or any other Documents demonstrating the use of the company name in the course of trade prior to the date of Application within the meaning of article 16(5) b of the Sunrise Rules. Therefore, the Panel feels that the Complainant did not fulfil their obligation concerning the submission of proof of the use of the invoked prior right in the course of trade.

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	**Konstantinos Komaitis**

DATE OF PANEL DECISION 2007-02-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

LA COMPAGNIE FINANCIERE EDMOND DE ROTHSCHILD BANQUE is a French Company. On 7th February 2006, and during the Sunrise Period, the Complainant requested the registration of the domain name "lcfr.eu" from EURID, the Respondent, a request that was refused; instead, the Respondent decided to attribute the domain name to another French Company.

The Respondent claims that the Complainant failed to meet their burden of proof and show that they hold prior rights on the name in question. The Respondent also contests the documentatry evidence submitted by the Complainant as part of their Complaint, arguing that these fall outside the deadline as set forth by the EC Regulation 874/2004.

The Panel found that the Complainant failed to meet their burden of proof in respect to establishing prior rights in the disputed name. Based on this fact, the Panel denied the Complaint.