Panel Decision for dispute CAC-ADREU-003948

Case number	CAC-ADREU-003948
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Domain names	fanucrobotics.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	FANUC Robotics Europe S.A.

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 of which the Panel is aware which are pending or decided with relation to the disputed domain name.

FACTUAL BACKGROUND

The Complainant applied for the domain name FANUCROBOTISC on March 23, 2006. In its application, the Complainant claimed to be the holder of a prior right in the form of a company name “FANUC ROBOTICS EUROPE S.A.” protected in Luxembourg.

The processing agent received the documentary evidence on 23 March 2006, which was before the 2 May 2006 deadline.

The Complainant submitted the documentary evidence consisting of a certificate of registration from the Commercial Register in Luxembourg for the company "FANUC ROBOTICS EUROPE S.A. ".

Based on the documentary evidence, the validation agent found that the Complainant did not demonstrate that it was the holder of a prior right on the name FANUCROBOTICS and the Respondent rejected the Complainant's application.

A. COMPLAINANT

The Complainant contends that,
EURid took the decision on October 26, 2006 to reject the registration of "fanucrobotics.eu" as domain name under the "Sunrise Rules".

Fanuc Robotics is the company and trade name of the Complainant and as such protected by article 25 of the Luxembourg law on commercial companies dated August 10, 1915 (see Annex 1 extract of the Luxembourg register of trade and companies; and Annex 2 the use of the trade name Fanuc Robotics). Furthermore, Fanuc Robotics possesses the domain name "fanucrobotics" in several Member States of the European Union (see Annex 3). The domain name "fanucrobotics" has been registered as a trade mark in the European Union with the Office for Harmonization in the Internal Market (Annex 4). By rejecting the domain name "fanucrobotics.eu", EURid violated article 4.2b) of EC Regulation n° 733/2002 and article 10.1 of EC Regulation n°874/2004.

Therefore, the Complainant requests the Panel to annul the Respondent's decision to reject the Complainant’s application and to grant the domain name FANUCROBOTICS to the Complainant.

B. RESPONDENT

The Respondent contends that the burden of proof was with the Complainant to demonstrate that it is the holder of the claimed prior right and only evidence submitted by the Complainant within 40 days from the submission of the application for the relevant domain

names can be accepted in order to validate the Complainant’s prior rights.

As established by the WHOIS database, the Complainant claimed a prior right in the form of a company name protected in Luxembourg.

Therefore, the Complainant bears the burden of 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.

The company name does not consist of the complete name of the domain name applied for

Pursuant to article 10 (2) of the Regulation, a domain name applied for during the Sunrise Period must consist of the complete name of the prior right on which the application is based, as written in the documentation which proves that such a right exists.

Section 19.1 of the Sunrise Rules further explains 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”.

Section 19.4 of the Sunrise Rules provides for a clarification to this rule, by providing 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".

The Complainant submitted documentary evidence substantiating that the company name relied upon as a prior right is „FANUC ROBOTICS EUROPE S.A. ".

The part of the company names, consisting of „S.A.", refers to the company type and could therefore be omitted from the domain name applied for.

However, the part consisting of „EUROPE " could not be omitted and should have been included in the domain name applied for pursuant to article 10.2 of the Regulation and section 19 of the Sunrise Rules.

Therefore, the company name relied upon as a prior right could only serve as a prior right for the name “FANUCROBOTICS EUROPE”, which is the complete name for which the company name exists “as written in the documentary evidence”, except for the company type.

Therefore, the Respondent correctly rejected the Complainant's application, pursuant to article 10.2 of the Regulation.
The Respondent’s decision must be evaluated only on the basis of the documentary evidence received within the deadline set forth by the Regulation

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 2 May 2006, as established by the WHOIS database.

The documents received on 23 March 2006 by the validation consisted of a certificate of registration from the Commercial Register in Luxembourg for the company "FANUC ROBOTICS EUROPE S.A.".

For the complete information of this Panel, the Respondent attaches this set of documentary evidence to the present response.

The Complainant includes new information and new documents in its complaint filed on 1 December 2006. In particular, the Complainant now argues that it used the name “FANUC ROBOTICS” as its trade name, which it registered this name as a domain name in several extensions and that it is registered this name as a Community trademark.

These documents may not serve as documentary evidence, since those documents are submitted after the end of 40 days period set forth by the Regulation.

Accepting these documents or any other documents received after the deadline as documentary evidence would clearly violate the

Regulation. Therefore, only considered the set of documents received on 23 March 2006 must be considered.

Furthermore, article 22 (1) b of the Regulation states that a decision taken by the Respondent may only be annulled when it conflicts with the Regulation.

Therefore, only the documentary evidence which the Respondent was authorized to examine at the time of validation of the application should be considered by the Panel to assess the validity of the Respondent's decision.

For the sake of completeness, the Respondent notes that the trademark registration attached to the Complainant's complaint could not have been provided to the validation agent within the deadline because it was only filed on 30 November 2006, more than 8 months after the Complainant's application for the domain name.

Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to register domain names during the period of phased registration and defines prior rights as including registered trademarks. The applicant is clearly required, pursuant to section 11.3. of the Sunrise Rules, to show a valid prior right, "which means that it must be in full force and effect". At the time of the application for the domain name, the trademark was not yet registered (and not even applied for) and could therefore not serve as a prior right (see ADR 2316 (MEDTRONIC), 1518 (VANHOUTEN), 1612 (ACER), etc.).

Since the Respondent correctly decided to reject the Complainant's application, pursuant to the Regulation, Respondent's decision may not be annulled and the domain name FANUCROBOTICS may not be granted to the Complainant. Indeed, a domain name may only be attributed to the Complainant by this Panel, when the Panel finds that the Respondent's decision conflicts with the Regulation (article 11 of the ADR Rules).

Therefore the complaint should be denied.

DISCUSSION AND FINDINGS

The Complainant applied for the domain name and supported its application by the documentary evidence within the deadline set forth by the Regulation. The documentary evidence received on March 23, 2006 by the validation agent consisted of a certificate of registration from the Commercial Register in Luxembourg for the company "FANUC ROBOTICS EUROPE S.A."
There was no other documentary evidence submitted to the validation agent within the 40 days period ended on May 2, 2006 except of the above mentioned certificate.

Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration.

According 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 burden of proof was therefore with the Complainant to demonstrate that it is the holder of the claimed prior right.
The Respondent should be provided with all documentary evidence necessary for assessment if the applicant is the holder of a prior right at the time of submission.

"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". (ADR 1886 GBG)

Complainant included new information and documents in its Complaint filed on December 1, 2006. Complainant argues that it uses the name "FANUC ROBOTIC" as its trade name, that it registered this name as a domain name in several extensions and that it registered this name as a Community trademark.
Whereas those documents were submitted after the end of 40 days period set forth by the Regulation, these documents may not serve as documentary evidence. Therefore only documents of March 23, 2006 can be considered.

Only the documentary evidence which can be examined by the Respondent at the time of validation of the application can be considered by the Panel to assess the validity of the Respondents decision.

Should the Complainant have submitted those documents with its application within the deadline set forth by the Regulation, there is high possibility that the application could be sufficient for registration of the domain name under the Sunrise Rules. However the ADR decision cannot correct Complainant's mistakes in submitting sufficient documentary evidence.
Therefore the Respondent correctly decided to reject the Complainant's application, pursuant to the Regulation.
Taking in consideration all the foregoing reasons, the Panel orders that the Complaint is denied.

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	**Premysl Libal**

DATE OF PANEL DECISION 2007-03-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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Article 10 (1) of the Regulation states that only the holders of prior rights shall be eligible to apply to register domain names during the period of phased registration.

According 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 burden of proof was therefore with the Complainant to demonstrate that it is the holder of the claimed prior right.
The Respondent should be provided with all documentary evidence necessary for assessment if the applicant is the holder of a prior right at the time of submission.

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