Panel Decision for dispute CAC-ADREU-004005

Case number	CAC-ADREU-004005
Time of filing	2006-12-07 15:37:45
Domain names	dieselpower.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Diesel Power Ltd., Mr. Victor von Dewitz

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 procedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the decision of EURid not to register the domain name DIESELPOWER as applied for by the Complainant during the Sunrise period. The Complainant is an UK-based company named Diesel Power Ltd. which applied for the above domain name based on prior rights on 7 February 2006 and supplied documentary evidence before the relevant deadline. The Complainant did, however, not provide an affidavit or relevant judgement stating that rights in passing off exits in the Complainants company name, wherefore the application was rejected by the validation agent.

A. COMPLAINANT

The Complainant argues that the Complainant should have been awarded the domain name DIESELPOWER as it was the first to apply and as it has submitted the requested documentation.Consequently the decision made by the Respondent not to register the domain name should be reversed.

B. RESPONDENT

The Respondent maintains that the decision to reject the application by the Complainant pertaining to the domain name DIESELPOWER was correct as the Complainant did not sufficiantly demonstrate that the Complainant was a holder of a prior right on the name DIESELPOWER. For this purpose the Respondent relys upon the provisions in Article 14 of Commission Regulation (EC) No. 874/2004 and Section 12.3 of the Sunrise Rules and Annex 1 hereto, according to which a company name protected under the law of the United Kingdom may only be relied upon as a prior right to the extent that rights of passing off exist, which must be demonstrated by either 1) an affidavit or 2) a relevant final judgement. As the Complainant provided neither of those documents, the application was rightfully rejected. The Respondent further refers to the decisions in ADR 3226 (CARAVANCLUB), ADR 3146 (ESTHETYS) and ADR 3548 (COSTACRUISE, COSTACRUISES, COSTACROISIERES) and the practice established by these decisions.

DISCUSSION AND FINDINGS

According to Annex 1 of the Sunrise Rules protection for a company name is only acknowleged in the United Kingdom to the extent that rights in passing off exist. Such rights may be documented by either an affidavit or 2) a relevant final judgement, cf. Section 12.3, cf. Section 16.4, cf. Section 16.1, last paragraph, of the Sunrise Rules. This also clearly follows from the decisions cited by the Respondent (ADR 3226 (CARAVANCLUB), ADR 3146 (ESTHETYS) and ADR 3548 (COSTACRUISE, COSTACRUISES, COSTACROISIERES)). Since no such documentation has been provided, the decision of the respondent is reaffirmed and the complaint 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	**Kim G. Hansen**

DATE OF PANEL DECISION 2007-02-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, a company incorporated in United Kingdom, applied for the domain name DIESELPOWER in the sunrise period based on a prior right, i.e. its company name.

The Respondent rejected the domain name application on the grounds that the Complainant did not provide sufficient documentation that it was the holder of the claimed prior right.

The Panel reaffirmed the Respondents decision and held that the Complainant failed to provide the required documentation.