Panel Decision for dispute CAC-ADREU-004281

Case number	CAC-ADREU-004281
Time of filing	2007-02-15 12:20:24
Domain names	dotace.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	DOTACE

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

The Complainant applied for registration of the domain name dotace.eu on 6 April 2006 under the phased registration (“Sunrise”) period. The Complainant’s application relied upon a Prior Right to the name DOTACE pursuant to article 10(1) of Commission Regulation EC number 874/2004 (the “Regulation”), specifically a proposal for the recording of a company which was to be called DOTACE.

The Complainant’s application under the Sunrise period was correctly lodged and, pursuant to Article 14(4) of the Regulation, the Complainant submitted evidence on 21 April 2006 to accompany the application in the form of a certificate from the Czech Ministry of the Interior dated 7 April 2006.

The Complainant’s application was rejected by the Respondent on 31 October 2006 by way of email which stated that the documentary evidence provided was insufficient to prove that the Complainant had proprietary rights in the domain name claimed.

The Complainant sought an internal review by the Respondent of the decision made to reject the application, which the Respondent duly conducted. Following this internal review, the Respondent upheld the previous rejection of the application for the same reasons, namely that the evidence provided was not sufficient to demonstrate that, at the time the Complainant's application was made, the Complainant had been incorporated as a company so as to demonstrate Prior Rights in the domain name in accordance with section 16(4) of the Sunrise Rules .

A. COMPLAINANT

The Complainant contends that the Respondent’s rejection of the Complainant’s application for the domain name was made in contradiction with the .eu Sunrise Rules on the basis that the Complainant submitted sufficient evidence to demonstrate a Prior Right in the domain name. In particular, on 21 April 2006, the Complainant submitted to EURid a Certificate which established that an application for the incorporation of DOTACE had been submitted to the Ministry of the Interior of the Czech Republic

Under the laws of the Czech Republic, the date of incorporation of a company is backdated to the day after which the incorporation application is served. Accordingly, DOTACE was incorporated on 22 March 2006. The Complainant contends that the evidence provided sufficiently demonstrated that the Complainant had been incorporated on 22 March 2007 and therefore had Prior Rights in the domain name dotace.eu.

B. RESPONDENT

The Respondent contends that at the time of making the application, the Complainant had not yet been incorporated as a company in the Czech Republic. The documentary evidence provided pursuant to Article 14(4) on 7 April 2006, merely demonstrated that the Complainant had filed a proposal for the recording (or incorporation) of the Complainant as a company.

Prior Rights are defined in Article 10(1) of the Regulation and in this instance, the Prior Rights claimed by the Complainant are those in the company name. At the time of submitting the application for registration of the domain name, the Complainant had not been fully incorporated as a company with the name DOTACE. The document provided did not clearly demonstrate that the company DOTACE has been duly incorporated on the day of the application for the domain name ie 6th April 2006.

DISCUSSION AND FINDINGS

Article 10(1) of the Regulation provides that Prior Rights under the Sunrise period include company names. Article 10(2) provides that "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." In particular, Article 14 of the Regulation requires all claims for Prior Rights under Article 10(1) and (2) to be "verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists".

Section 11.3 of the Sunrise Rules requires that:-

(i) the Applicant must be the holder of the Prior Right no later than the date on which the Application is received by the Registry (in this case, 6 April 2006); and

(ii) on this date the Prior Right must be valid i.e. in full force and effect.

The documentation submitted by the Complainant, according to the English translation (as provided by the Respondent), is a proposal for the recording of DOTACE as a company. It is dated 7 April 2006 and confirms that a proposal for recording DOTACE as a company was delivered to the Czech Ministry of the Interior on 21 March 2006.

To establish Prior Rights in the domain name dotace.eu, by way of a company name, the Complainant is required to demonstrate that the company of that name was fully incorporated at the date of making the application, i.e. 6 April 2006.

It is apparent that the letter merely confirms that a proposal to incorporate DOTACE was filed on 21 March 2006. This is not sufficient to demonstrate that the Complainant was the holder of a Prior Right (i.e. that DOTACE was fully incorporated) on 6 April 2006, the date on which the application was received by EURid.

The Complainant makes a number of submissions relating to the date on which DOTACE became a legal entity. The Complainant submits that, according to Czech law, DOTACE became a legal entity (and was therefore capable of claiming a Prior Right) on 22 March 2006, before the date on which the application was filed. However, this is not what the certificate submitted to the Respondent says.

The burden of proof is on the Complainant to demonstrate that the Prior Right in the name DOTACE exists, and the Complainant is required to submit documentary evidence showing that it is the holder of such Prior Right. The onus is on the Complainant to demonstrate to the validation agent that it is the holder of a Prior Right which is "in full force and effect".

It was not for the validation agent to carry out further investigations to determine whether a proposal to incorporate a company under the name DOTACE had been approved. Section 21.2 of the Sunrise Rules states that Prior Rights are to be assessed by the validation agents exclusively on the basis of a prima facie review of the first set of documentary evidence received.

On 6 April 2006, the date on which the Complainant made the application for registration of the domain name, the Complainant's proposal for recording of DOTACE remained only a proposal. At this time there was no certainty that DOTACE would be successfully incorporated. Accordingly, the evidence submitted by the Complainant did not demonstrate that DOTACE had been incorporated on 6 April 2006, the date on which the application for dotace.eu was received by the Respondent.

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	**Antony Gold**

DATE OF PANEL DECISION 2007-04-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant in this case did not show that, at the time it made its Sunrise Application, it was the holder of a Prior Right which was in full force and effect. Specifically, the Panel accepted the Respondent's contention that a proposal for the incorporation of the Complainant as a company was insufficient to establish a Prior Right for the purposes of a Sunrise Application.