Panel Decision for dispute CAC-ADREU-004289

Case number	**CAC-ADREU-004289**
Time of filing	**2007-04-16 12:29:43**
Domain names	**akcie.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**AKCIE**

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 proceedings which are pending, or have been decided, and which relate to the disputed Domain Name.

FACTUAL BACKGROUND

The Complainant applied for the domain AKCIE on April 6, 2006. The Complainant submitted documentary evidence on April 21, 2006, which is before the May 16, 2006 deadline.

Based on the documentary evidence received within the deadline, the validation found that the complainant did not sufficiently demonstrate that it was the holder of a prior right on the dame AKCIE.

Based on these findings, the Respondent rejected the Complainants application. The Respondent informed the Complainant about the rejection on October 31, 2006.

A. COMPLAINANT

The Complainant contends that it provided the Respondent with sufficient documentary evidence.

The Complainant further contends that the Respondent decision to reject the Complainant's application for the domain name akcie.eu was made in contradiction with .eu Sunrise Rules, as the reasons indicated by the Respondent – "The documentary evidence we have received does not sufficiently proves the proprietary rights on the basis of which the domain name has been claimed." ("Písemní důkaz který jsme obdrželi dostatečně nepotvrzuje vlastnická práva na základě kterých je žádáno doménové jméno") – is totally inconsistent with .eu Sunrise Rules, as well as with the body of laws of the Czech Republic governing the establishment, incorporation and existence of the legal entity/Complainant. In addition, there exist no grounds for the domain name akcie.eu not being registered in the Complainant's name on the basis of the above-specified application:

- According to the Czech Republic's legislation, at the time of the application being filed the Complainant was a legal entity with full legal capacity,

- The application for the domain name was filed during the Sunrise Period when, on the basis of a Prior Right, applications could also be filed by the applicants whose names correspond to the domain names they are applying for (the Complainant's name is "AKCIE") – Section 16(1) of .eu Sunrise Rules,

- The application was filed to the Respondent duly and in time and included documentary evidence proving the existence of the Prior

Right.

- The application was first in the line. - Section 22(2) of .eu Sunrise Rules.

The Complainant in it further communication disputed relevance of ADR 04281 as precedence for this case.

B. RESPONDENT

The Respondent contends that burden of proof was with the Complainant to demonstrate that it is the holder of the claimed prior right

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

Pursuant to article 14 of the Regulation, the applicant must to 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.

It is therefore of crucial importance that the Respondent is provided with all the documentary evidence necessary for it to assess if the applicant is indeed the holder of a prior right.

The burden of proof was on the Complainant to substantiate that it was the holder of a valid prior right at the time of the application.

The documentary evidence received did not demonstrate that the Complainant was the holder of a valid prior right at the time of the application

As already mentioned, 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 article 14 of the Regulation places the burden of proving such prior rights on the applicant.

The applicant is clearly required, pursuant to section 11.3. of the Sunrise Rules, to demonstrate that its claimed prior right is valid at the time of the application, which means that it must be “in full force and effect".

It is also reminded that section 21.2 of the Sunrise Rules states that “the Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing Agent (including the Documentary Evidence received electronically, where applicable) and in accordance with the provisions of these Sunrise Rules”.

Consequently, the Respondent decided to reject the Complainant's application.

The Respondent also refers, by analogy, to the numerous highly relevant ADR decisions.

The Respondent further informed the Panel, that the Complainant’s authorized representative filed identical ADR complaints on behalf of other similar Czech entities which applied for the registration of .eu domain names consisted of generic words in Czech language, based on similar documentary evidence and for which the application was rejected by the Respondent based on the same grounds as in the present proceeding.

One of these other ADR proceedings have already been decided (ADR 04281 DOTACE, which is a generic word meaning “subsidies” in the Czech language.

Nine other cases are currently pending.

For these reasons, the Respondent's decision to reject the Complainant's applications does not conflict with the Regulation and the complaint should be denied.

DISCUSSION AND FINDINGS

Article 10 (1) of the Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that: "Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names

during a period of phased registration before general registration of .eu domain starts. Prior rights shall be understood to include, inter alia, registered national and community trademarks (…)".

Section 11.3 of the Sunrise Rules states that “the Applicant must be the holder (or licensee, where applicable) of the Prior Right claimed no later than the date on which the Application is received by the Registry, on which date the Prior Right must be valid, which means that it must be in full force and effect.”

Pursuant to article 14 of the Regulation, "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". This provision further states 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. (…)The relevant validation agent shall examine whether the applicant that is first in line to be assessed for a domain name and that has submitted the documentary evidence before the deadline has prior rights on the name. If the documentary evidence has not been received in time or if the validation agent finds that the documentary evidence does not substantiate a prior right, he shall notify the Registry of this. (…) 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 (…)".

The documentary evidence submitted by the Complainant consisted of confirmation letter from the Ministry of Interior of the Czech Republic, that the Complainant delivered to the Ministry of the Interior a proposal for recording of AKCIE with its seat at Hasičská 49, 0strava, pursuant to Section 9a of the Act No. 83/1990 Coll. as amended. The date of submission is March 31, 2006.

No other documentary evidence was submitted before the deadline.

The Complainant contends in the Complaint that, pursuant to Section 9a of Act No. 83/1990, Coll., on association of citizens, as amended, the Complainant became a legal entity with full legal capacity as of the day following the day of the application submission. In this case April 1, 2006.

Unfortunately, this is not what the confirmation, submitted as documentary evidence explicitly says without further research.

As judicated many times, the burden of proof to demonstrate that the Complainant is the holder of claimed prior right was with the Complainant.
During the Sunrise Rules, the first applicant in the line does not have an unconditional right to the domain name, but only has an opportunity to try to clearly demonstrate that it is the holder of a prior right.

According to Section 21.2 of the Sunrise Rules, the Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing.

Taking in consideration the wording of only submitted documentary evidence the validation agent were not able to conclude (with no doubt) that this document should be, or should serve as, certificate of incorporation. Prima facie review of this document demonstrates that the Ministry of Interior received an application for recording of AKCIE and does not clearly demonstrates that AKCIE was duly incorporated on the day of the application for the said domain name.

It is true that the submitted document contains also the reference to Section 9a of the Act. No. 83/1990 Coll. However the Validation Agent is not obliged to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced except of “PRIMA FACIE” review.

The Section 9a of the Act. No. 83/1990 Coll. As amended, states that the Trade union and employers organization is established as legal entity as of the day following the delivery of application to respective ministry. Which in this case were on April 1, 2006. Therefore there is no doubt that the Complainant was fully incorporated and has full legal capacity at the date of submission of the application for said domain name.

"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)

The Complainant submitted together with the Complaint additional documentation. The Complainant submitted notification from the Ministry of the Interior of the Czech Republic concerning the Legal Capacity of Trade-Union and Employer Organizations. This notification specifies the conditions under which trade-union organizations and employer organizations become legal entities and what

are the certificates the Ministry of the Interior issues to demonstrate this. This document is dated December 6, 2006.

However this, or any other, explanation was not submitted before the deadline and therefore could not be taken into consideration for the decision if the Respondents decision was in line with applicable regulation.

Taking in consideration all above mentioned the Panel finds that the Respondent correctly and in line with all applicable regulation decided to reject the Complainants application.

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 2007-05-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant asked to annul Respondent's decision on the rejection of the Complainant's application for the domain name akcie.eu, and order that Respondent grant this application to the Complainant.

After careful evaluation of all submitted documents and contentions of the Complainant and Respondent the Panel finds that:

As judicated many times in many cases, the burden of proof to demonstrate that the Complainant is the holder of claimed prior right was with the Complainant.

The documentary evidence submitted by the Complainant consisted of confirmation letter from the Ministry of Interior of the Czech Republic, that the Complainant delivered to the Ministry of the Interior a proposal for recording of AKCIE, pursuant to Section 9a of the Act No. 83/1990 Coll. as amended. The date of submission is March 31, 2006. No other documentary evidence was submitted before the deadline.
During the Sunrise Rules, the first applicant in the line does not have an unconditional right to the domain name, but only has an opportunity to try to clearly demonstrate that it is the holder of a prior right.

According to Section 21.2 of the Sunrise Rules, the Validation Agent examines whether the Applicant has a Prior Right to the name exclusively on the basis of a prima facie review of the first set of Documentary Evidence received and scanned by the Processing.

Taking in consideration the wording of only submitted documentary evidence the validation agent were not able to conclude (with no doubt) that this document should be, or should serve as, certificate of incorporation. Prima facie review of this document demonstrates that the Ministry of Interior received an application for recording of AKCIE and does not clearly demonstrates that AKCIE was duly incorporated on the day of the application for the said domain name.

The Validation Agent is not obliged to conduct its own investigations into the circumstances of the Application, the Prior Right claimed and the Documentary Evidence produced except of "PRIMA FACIE" review.

The Section 9a of the Act. No. 83/1990 Coll. As amended, states that the Trade union and employers organization is established as legal entity as of the day following the delivery of application to respective ministry. Which in this case were on April 1, 2006. Therefore there is no doubt that the Complainant was fully incorporated and has full legal capacity at the date of submission of the application for said domain name.

However "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)

Taking in consideration all above mentioned the Panel finds that the Respondent correctly and in line with all applicable regulation

decided to reject the Complainants application.