Panel Decision for dispute CAC-ADREU-004293

Case number	**CAC-ADREU-004293**
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Domain names	**kurzy.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**KURZY**

Respondent

Organization / Name	**EURid**

FACTUAL BACKGROUND

The Complainant applied for registration of the domain name kurzy.eu on 6 April 2006 under the phased registration ("Sunrise") period. The Complainant's application relied upon a Prior Right to the name KURZY pursuant to article 10(1) of Commission Regulation EC number 874/2004 (the "Regulation"), specifically a proposal, dated 22 March 2006, for the recording of a company which was to be called KURZY.

The Complainant's application was rejected by the Respondent on the grounds that the documentary evidence provided was insufficient 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

1. THE COMPLAINT

- On 6 April 2006 the Complainant filed with EURid a registration application for the domain name kurzy.eu
- On 25 April 2006 the Complainant provided EURid with the Certificate of the Complainant's Incorporation with the Ministry of the Interior of the Czech Republic, dated 28 March 2006, with the incorporation kept on file, documenting the Complainant's Prior Right to the domain name.
- According to the Certificate provided, on 22 March 2006 the Complainant submitted to the Ministry of the Interior of the Czech Republic an application for the incorporation of KURZY, a trade-union organization, with its registered office at Studentská 1770, Ostrava-Poruba, by virtue of which, 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 on 23 March 2006, i.e. as of the day following the day of the incorporation application being served,
- On 31 October 2006 EURid informed the Complainant by e-mail that the application of 6 April 2006 for the domain name kurzy.eu was rejected, indicating the following reasons: "The documentary evidence we have received does not sufficiently proves the proprietary rights on the basis of which the domain name has been claimed."
- On 6 December 2006 the authorized representative of the Complainant received a 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.
- The Complainant asked EURid to carry out an internal review of the rejection of the application under consideration,
- On 5 January 2007 EURid informed the Complainant by e-mail that the internal review was carried out, upholding the rejection of the application dated 6 April 2006. In addition, EURid advised that the 40-day period for initiating the ADR Proceeding had started.

EURid's decision on the rejection of the Complainant's application for the domain name kurzy.eu was made in contradiction with .eu Sunrise Rules, as the reason indicated by EURid 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 kurzy.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 above-specified 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 "KURZY") – Section 16(1) of .eu Sunrise Rules,
- The above-specified application was filed with EURid duly and in time and included documentary evidence proving the existence of the Prior Right (authenticated copy of the Certificate from the Ministry of the Interior of the Czech Republic proving the Complainant's incorporation, issued on 28 March 2006) – Section 16(4) (iii) of .eu Sunrise Rules,
- Of all the applications for the domain name in question which demonstrated a Prior Right to the domain name, the above-specified application was the first one to arrive ("first come, first served principle") – Section 22(2) of .eu Sunrise Rules.

2. THE NON-STANDARD COMMUNICATION

In a non-standard communication dated 14 May 2007, the Complainant comments on the Response and on the case cited by the Respondent, namely case no. 04281, dotace.eu.

The Complainant notes the citation: "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 28 March 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."

According to the Complainant, the date 28 March 2006 is incorrect; the Panel Decision being cited indicates 7 April 2006. Thus, the document which is referred to was not issued until the application for registration of the DOTACE.EU domain name had been filed, which, according to the Complainant, seems to have had a significant impact on the Panel Decision. In these proceedings, the date of issue of a similar document (28 March 2006) precedes the date of the filing of the application for registration of the KURZY.EU domain name (6 April 2006).

According to the Complainant, the letter from the Czech Ministry of the Interior, dated 28 March 2006, includes two sentences, not only one, as claimed by the Respondent. The second sentence, which the Respondent has omitted, reads as follows: "The recording was made under the file number: #file number#, identification number: #id no#."

This sentence affirms that as of 28 March 2006 the Complainant had already been recorded, i.e. had been incorporated and fully existed as a legal entity. This is what the letter from the Czech Ministry of the Interior really communicates, the letter is not a mere certificate of the application for recording having been filed (i.e. certificate of the application having been received by the Czech Ministry of the Interior), as the Respondent appears to believe.

Moreover, the Complainant had already acquired his full legal capacity as of 23 March 2006, i.e. on the day following the date of the filing of the proposal for recording with the Czech Ministry of the Interior, as accounted for by Section 9a (1) of Act No. 83/1990, Coll., on association of citizens, which states: "§ 9a (1) A trade-union or employer organization shall

become a legal entity on the day following the date on which the competent ministry (Section 7 (1)) has received the proposal for recording of such an organization."

As a specific legal entity established according to Section 9a of Act No. 83/1990, Coll., on association of citizens, the Complainant is not to be incorporated into the business register or any such registers. These specific entities (a trade-union or employer organization) are exclusively kept on file with the Czech Ministry of the Interior, which also issues certificates of the establishment thereof, namely in the form of the document which has been submitted to the Respondent. The Complainant did ask the Ministry of the Interior to execute a letter of confirmation thereof – see Annex 3 attached to the Complaint (a copy of the notification of the Ministry of the Interior of the Czech Republic concerning the Legal Capacity of Trade-Union and Employer Organizations); the English translation of the document is attached hereto. The Complainant could not provide the Respondent with any other certificate of incorporation, as there neither is nor can be another. The cited Annex 3 is a letter of 6 December 2006 which states, in pertinent part: "Pursuant to the stipulations of Section 9a of Act No. 83/1990, Coll., on association of citizens, as amended by Act 300/1990, Coll., a trade-union organization and an employer organization become legal entities as of the day following the day on which the competent ministry had received the application for its incorporation."

The Respondent erred by obviously failing to examine the wording of the above-specified law, despite Article 14 of the Commission Regulation EC number 874/2004 requiring that all claims for Prior Rights under Article 10(1) and (2) be "verifiable by documentary evidence which demonstrates the right under the law by virtue of which it exists". If the Respondent had examined the stipulations of the law on the basis of which the Complainant obtained his company name, and which is explicitly referred to in the letter of confirmation from the Czech Ministry of the Interior as provided, it would have understood the confirmation provided.

In the Panel Decision no. 04281 dotace.eu, the Panelist himself claims that Article 14 of the Commission Regulation EC number 874/2004 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". Yet, he makes no reference whatsoever to the law of the Czech Republic No. 83/1990, Coll., on association of citizens, and he does not seem to have even read it.

The Panel Decision states that: "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."

This is false. Even the Respondent views it as a letter of confirmation from the Czech Ministry of the Interior documenting that the ministry was served the proposal for recording of the Complainant. However, the second sentence in the letter of confirmation from the Czech Ministry of the Interior stipulates that the recording procedure was carried out and that the Complainant came into existence.

The Panel Decision further states that: "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 second sentence of this assertion is false. The certificate was issued on the basis of the Czech law No. 83/1990, Coll., on association of citizens, which is explicitly indicated in the certificate, and the content thereof must be considered in consistence with this law. Therefore, if the certificate states that "proposal for recording DOTACE as a company was delivered to the Czech Ministry of the Interior on 21 March 2006", and the stipulation of Section 9a (1) of the Czech law No. 83/1990, Coll. on association of citizens, provides that "A trade-union or employer organization shall become a legal entity on the day following the date on which the competent ministry (Section 7 (1)) received the proposal for recording of such an organization", the certificate says, in fact, that the Complainant became a legal entity on 22 March 2006.

In addition, the Panel Decision states that: „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."

This statement is false. The fact of the proposal for the Complainant's incorporation having been approved is explicitly

stated in the certificate provided, namely: “The recording was made under the file number: #file number#, identification number: #id no#.“

The Panel Decision states that: „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.“

This statement is false, as it has been supported by no evidence. On the contrary, evidence was provided to demonstrate that DOTACE came into existence on 22 March 2006.

B. RESPONDENT

1. GROUNDS ON WHICH THE RESPONDENT REJECTED THE APPLICATION FOR THE DOMAIN NAME KURZY BY KURZY

Article 10 (1) of the Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that: "[h]olders of prior rights recognised 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, "[a]ll 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 "[e]very 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 Complainant applied for the domain KURZY on 6 April 2006. KURZY is a generic word meaning “courses” in the Czech language.

The processing agent received the documentary evidence on time. The documentary evidence submitted by the Complainant consisted of a letter from the Czech Ministry of the Interior showing that the Complainant delivered to the Ministry of the Interior a proposal for recording of a company that would be called “KURZY”.

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 name KURZY, which was in full force and effect on the date of the application.

Based on these findings, the Respondent rejected the Complainant's application.

2. COMPLAINANT'S CONTENTIONS

The Complainant agrees that it applied for the incorporation of KURZY on 22 March 2006.

The Complainant also agrees that the letter from the Czech Ministry of the Interior (dated 28 March 2006) shows that the Complainant delivered to the Ministry of the Interior a PROPOSAL FOR RECORDING of a company that would be called “KURZY” (or as translated by the Complainant in its Complaint “an application for the incorporation of KURZY”).

However, the Complainant argues that it was already a legal entity at the time of the application for the domain name KURZY (on 6 April 2007), because, according to the Complainant, the legal personality of the company dates back to the day following the day of the proposal for recording (or the application for incorporation, according to the Complainant's translation), that is back to 23 March 2006.

3. RESPONSE
3.1 Preliminary remark

For the complete information of this Panel, the Respondent notes that the Complainant's authorized representative (Mr Jan Hřebíček) filed identical ADR complaints on behalf of other similar Czech entities which applied for the registration of .eu domain names 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 has already been decided (ADR 04281 DOTACE, which is a generic word meaning "subsidies" in the Czech language). The Respondent refers to this decision in its totality as a highly relevant precedent, since it is based on an identical complaint, on similar facts and on similar documentary evidence.

Nine other cases are currently pending.

3.2 The 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 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 (see for example cases 127 (BPW), 219 (ISL), 294 (COLT), 551 (VIVENDI), 984 (ISABELLA), 843 (STARFISH), 1931 (DIEHL, DIEHLCONTROLS)).

As the panel clearly summed up in case ADR 1886 (GBG), "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".

3.3 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".

The documentary evidence submitted by the Complainant consisted of a letter from the Czech Ministry of the Interior (dated 28 March 2006) stating that the Complainant delivered to the Ministry of the Interior a proposal for recording of a company that would be called "KURZY" (or as translated by the Complainant in its Complaint "an application for the incorporation of KURZY").

From this document, the Panel will see that :
this document is not a certificate of incorporation,
a prima facie review of this document only demonstrates that the Ministry received an application for the registration of the company KURZY,
such prima facie review does not clearly demonstrate that the company KURZY was duly incorporated on the day of the application for the domain name by the Complainant (ie 6 April 2006).

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

The Respondent refers to the ADR decision 04281 (DOTACE), which, as already explained, constitutes a highly relevant precedent for this proceeding.

The Panel in this case decided that :

"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 28 March 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".

In addition, the Respondent refers, by analogy, to the numerous decisions dealing with trademarks applications which were not yet registered at the time of the application.

For example, in ADR 1518 (VANHOUTEN), the Panel decided that: "The documentary evidence, which the Complainant sent to the Respondent, did only consist of a trademark application, and a license agreement regarding the rights to this application. This evidence does not meet the requirements in the Regulation, and is therefore not sufficient evidence to prove a prior right to the domain name. The fact that the trademark is now registered does not change the Panel's view hereof".

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

PROCEDURAL ISSUES

Pursuant to 26.1 of the Sunrise Rules, an ADR proceeding against the Registry may be initiated within 40 days of a decision by the Registry. In the present case the contested decision was made on 5 January 2007 and the Complaint was submitted on 14 February 2007. The Complaint was therefore submitted within the deadline and is admissible.

Pursuant to 8 of the ADR Rules, the Panel chooses to admit the Complainant's Rebuttal, submitted as a non-standard communication. For the reasons set out below, the Panel holds that it need not admit a Sur-rebuttal from the Respondent, since a Sur-rebuttal is not required to ensure the equality of treatment of 7(b) of the ADR Rules.

SUBSTANTIVE ISSUES

The Panel agrees with the analysis and conclusions of the Respondent, EURid, and with the analysis of the Panel in the very similar case no. 04281 (DOTACE), and this despite the Complainant's criticism of that decision. This Panel can do no better than to paraphrase the Panel's statements in the cited case.

The documentation submitted by the Complainant is a proposal for the recording of KURZY as a company. It is dated 28 March 2006 and confirms that a proposal for recording KURZY as a company was delivered to the Czech Ministry of the Interior on 22 March 2006.

According to the Complainant, under Czech law, the company was therefore legally in existence as of 23 March 2006, and no further proof of its legal existence can be produced. Further, according to the Complainant, the Validation Agent, the Respondent, and this Panel, should be aware of that provision of Czech law.

But the Complainant misunderstands who bears the burden of proving, when submitting an application, that rights exist. The Complainant correctly cites Article 14 of the Commission Regulation EC number 874/2004 which 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".

But he fails to understand the implications of that language. The burden was on the Complainant to provide ALL the required evidence. Section 16.4 of the Sunrise Rules provides that the documentary evidence for company names should be "(i) an extract from the relevant companies or commercial register; (ii) a certificate of incorporation or copy of a published notice of the incorporation or change of name of the company in the official journal or government gazette; or iii) a signed declaration (e.g. a certificate of good standing) from an official companies or commercial register, a competent public authority or a notary public." Annex 1 of the Sunrise Rules does not provide for a specific exception to the above rule.

The Complainant provided none of the above, and states that it was not possible to provide any of the above. In that case,

the general provisions found in section 12.1 of the Sunrise Rules apply, and the Complainant should have provided “(i) an affidavit signed by a competent authority, legal practitioner or professional representative declaring that the type of Prior Right claimed by the Applicant is protected under the laws of the relevant member state, including (a) references to the relevant legal provisions, scholarly works and court decisions and (b) the conditions required for such protection; and (ii) proof that the complete name for which a Prior Right is claimed meets all of the conditions set forth in such laws, including the relevant scholarly works and court decisions, and that such name is protected by the relevant Prior Right claimed.” Annex 1 of the Sunrise Rules does not provide for a specific exception to the above general rule.

In other words, the Complainant should have included with the application, at a minimum, the letter of 6 December 2006 from the Czech Ministry of the Interior (which letter was attached to the Complaint and to the non-standard communication, but not to the original application), evidence that the Complainant is a “trade-union organization” or an “employer organization” (which appears to be a requirement under the cited law) and a legal opinion supporting the Complainant’s interpretation of the Czech law.

Neither the Validation Agent, nor EURid, have any obligation to research national legislation in order to interpret documentary evidence. 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.

If the documentary evidence is not prima-facie crystal-clear, which is the case here, then the Complainant must suffer the consequences of not having provided sufficiently clear documentary evidence.

As the panel correctly said in case ADR 1886 (GBG): "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".

Prima facie, and even taking into account the second sentence cited by the Complainant in his non-standard communication, the documentary evidence submitted with the application merely confirms that a proposal to incorporate KURZY was filed and registered on 22 March 2006.

It was not for the validation agent to carry out further investigations to determine whether a proposal to incorporate a company under the name KURZY had been approved or was, in and of itself, sufficient. It was the Complainant’s duty to provide sufficient documentation to make it obvious, prima facie, that the proposal was sufficient.

But he did not do this. On 6 April 2006, the date on which the Complainant made the application for registration of the domain name, the Complainant submitted only evidence that he had submitted a proposal for recording of KURZY, and that that proposal had been duly received and registered. There was no way for the Validation Agent or, subsequently, EURid to know that KURZY already had been or would be successfully incorporated. That is, the documentary evidence submitted by the Complainant did not demonstrate, on its face and without requiring investigation into Czech law, that KURZY had been incorporated on 6 April 2006, the date on which the application for kurzy.eu was received by the Respondent.

That is, the application did not comply with Section 12.1 of the Sunrise Rules.

Therefore, EURid acted correctly and the Complaint must be dismissed.

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	**Dr. Richard Hill**

DATE OF PANEL DECISION 2007-05-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contends that the EURid's rejection of the Complainant's application for the domain name kurzy.eu was incorrect because it has submitted to EURid a Certificate which established that an application for the incorporation of KURZY as a company had been submitted to the Ministry of the Interior of the Czech Republic prior to the application for the domain name, that such application was the only evidence that could be provided under Czech law, and that, under Czech law, the application was automatically accepted and in force on the day following the application.

However, when reviewing the application, the Validation Agent, and, subsequently, EURid, had no evidence showing that the Complainant had been incorporated as a company in the Czech Republic. The documentary evidence provided with the application for the domain name showed, prima facie, only that the Complainant had filed a proposal for the recording (or incorporation) of the company and that that proposal had been duly registered. The application did not include any affidavits, citations from legal works, or proof that all conditions stated in the relevant law had been met; such material should have been included pursuant to section 12.1 of the Sunrise Rules. .

Thus, the Complainant in this case had not satisfy its burden of providing sufficient documentary evidence, in accordance with sections 12.1 and 16.4 of the Sunrise Rules, to 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.

Therefore the Panel dismissed the Complaint.