

## **.EU DOMAIN**

### **SUNRISE PERIOD**

**7 December 2005 – 6 April 2006**

### **DOCUMENTARY EVIDENCE SUMMARY**

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# **1. Documentary Evidence – Documents to read**

.EU Domains registered during the sunrise period must be an exact match of the Prior Right claimed and Documentary Evidence must be supplied to show proof of that Right.

**IMPORTANT:** Not all the rights listed are recognised in each member state. Applicants will be required to provide the legal basis that grants the right in community law or the national law of the member state where the right is held and provide Documentary Evidence which acceptably demonstrates the right under that law.

## **Documents to read regarding Documentary evidence required:**

### **“Prior Rights” – country overview**

A detailed description of Documentary Evidence required for each Prior Right under each Country can be found at:

<http://www.eurid.eu/en/registrant/launch> (Annex 1)

This Document is known as “**Annex 1**” and should in all cases be referred to for information on the Documentary Evidence required for each Prior right for the country in which the application is being made. The “Annex 1” document also makes reference to the “**Sunrise Rules**” (of which most of the information following is summarized).

### **“Sunrise rules”**

The full Sunrise Rules document can be found at:

<http://www.eurid.eu/en/registrant/launch>

## **2. DOCUMENTARY EVIDENCE - GENERAL SUBSTANTIVE REQUIREMENTS**

The following 4 points are general requirements for submission of Documentary Evidence, with more information for each type of Prior Right listed under separate sections following.

1. Unless otherwise indicated under the separate sections for each type of Prior Right following, the Applicant must submit Documentary Evidence containing:
  - (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.
2. It is in any case sufficient to submit a copy of a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states stating that the Applicant has protection for the complete name for which a Prior Right is claimed.
3. If, under the law of the relevant member state, the existence of the Prior Right claimed is subject to certain conditions relating to the name being famous, well known, publicly or generally known, have a certain reputation, goodwill or use, or the like, the Applicant must furthermore submit
  - (i) an affidavit signed by a competent authority, legal practitioner, or professional representative, accompanied by documentation supporting the affidavit or
  - (ii) a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states stating that the name for which a Prior Right is claimed meets the conditions provided for in the law (including relevant court decisions, scholarly works and such conditions as may be mentioned in Annex 1 (if any)) of the relevant member state in relation to the type of Prior Right concerned.
4. Any affidavit submitted in accordance with this Chapter must clearly state or include evidence that the signatory qualifies as a competent authority, legal practitioner or professional representative, as referred to in the foregoing paragraphs of this Section.

# Documentary Evidence Summary – As stated in the Sunrise rules

## **3. REGISTERED TRADE MARKS**

Unless otherwise provided for in Annex 1, it is sufficient to submit the following Documentary Evidence for a registered trade mark:

- (i) a copy of an official document issued by the competent trade mark office indicating that the trade mark is registered (certificate of registration, renewal certificate, official extract from the register, declaration by the trade mark office, publication of the fact of registration in an official journal, etc.);  
or
- (ii) an extract from an official (on-line) database operated and/or managed by the relevant national trade mark office, the Benelux Trade Marks Office, the OHIM or the WIPO. Extracts from commercial databases are not acceptable even if they reproduce exactly the same information as the official extracts.

In the foregoing cases, the Documentary Evidence must clearly evidence that the Applicant is the reported owner of the registered trade mark.

In case the Applicant is a **licensee** or **transferee** of a registered trade mark, the following shall apply:

### ***Licences, Transfers and Changes as regards the Applicant***

#### **1. Licence Declaration for a Registered Trademark**

Can licensees secure their intellectual property rights in .eu?

*example:* registered trade mark held by Japanese parent company with subsidiary in Spain

Yes – according to Article 12(2) of the European Commission's Public Policy Rules:

- licensees of a registered trade mark can apply for the corresponding domain name
- only during Phase 1, **not** during Phase 2

If an Applicant has obtained a licence for a registered trade mark referred to above in respect of which it claims a Prior Right, it must enclose with the Documentary Evidence an acknowledgement and declaration form, a template of which can be found at

<http://www.eurid.eu/en/registrant/launch> (Annex 2), duly completed and signed by both the licensor of the relevant registered trade mark and the Applicant (as licensee). If the Applicant is a sublicensee, it must enclose a second acknowledgement and declaration duly completed and signed by the ultimate owner of the registered trade mark concerned and the latter's licensee.

**Note that licensees of registered trade marks are only permitted to make Sunrise applications during Phase 1 – they shall not be accepted during Phase 2.**

#### **2. Declaration of a Transfer of a Prior Right**

If an Applicant is the transferee of a Prior Right and the Documentary Evidence submitted does not clearly indicate that the Prior Right claimed has been transferred to the Applicant, it shall submit an acknowledgement and declaration form, a template of which can be found at

<http://www.eurid.eu/en/registrant/launch> (Annex 3), duly completed and signed by both the transferor of the relevant Prior Right and the Applicant (as transferee).

3. If, for any reasons other than as are referred to in 1 and 2 above, the Documentary Evidence provided does not clearly indicate the name of the Applicant as being the holder of the Prior Right claimed (e.g. because the Applicant has become subject to a name change, a merger, the Prior Right has become subject to a *de iure* transfer, etc.), the Applicant must submit official documents substantiating that it is the same person as or the legal successor to the person indicated in the Documentary Evidence as being the holder of the Prior Right.

## **4. PUBLIC BODIES**

The Documentary Evidence that a UK Public Body should submit is given in a template at [http://www.cabinetoffice.gov.uk/e-government/docs/resources/pdf/eu\\_domain\\_annex\\_a.pdf](http://www.cabinetoffice.gov.uk/e-government/docs/resources/pdf/eu_domain_annex_a.pdf)

This should be submitted with the cover sheet to the address printed on the cover sheet.

## **5. GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN**

Protection of geographical indications and designations of origin is primarily set out in law for the purpose of ensuring that only products genuinely originating in that region are allowed. These laws protect the names of wines, cheeses, hams, sausages, olives, beers, and even regional breads, fruits, and vegetables. As such, foods such as Gorgonzola, Parmigiano Reggiano, and Champagne can only be labelled as such if they come from the designated region.

A link to the protection offered under EU Law can be found at:

[http://www.eu.int/comm/agriculture/qual/en/1bbab\\_en.htm](http://www.eu.int/comm/agriculture/qual/en/1bbab_en.htm)

### **Documentary Evidence:**

Unless otherwise provided in Annex 1, it is sufficient to submit the following Documentary Evidence for a geographical indication or designation of origin:

- (i) a copy of an act, decree or decision of a competent official authority conferring protection on a particular name as a geographical indication or designation of origin; or
- (ii) a copy of the official publication of an act, decree or decision referred to in (i) above; or
- (iii) an extract from the relevant register (if available).

Such Documentary Evidence must clearly indicate that the name for which the Prior Right is claimed is a geographical indication or designation of origin of which the Applicant is the holder.

## **6. UNREGISTERED TRADEMARKS**

Unregistered Trademarks are NOT recognized in the following countries: **Czech Republic, France, Italy and Portugal**

**For all other EU countries:**

Unless otherwise provided in Annex 1, it is sufficient to submit the following Documentary Evidence as follows:

If an Applicant claims a Prior Right to a name on the basis of

- (i) a well-known unregistered trade mark as provided for in Article 6*bis* of the Paris Convention on the Protection of Industrial Property (as amended),  
or
- (ii) an unregistered trade mark other than one falling under (i) above that is protected under the law of one of the member states referred to in Annex 1 as being a member state protecting unregistered trade marks

it is sufficient to prove the existence of such Prior Right in accordance as below without there being an obligation to provide the documentary evidence in point 1 of the “**General substantive Requirements**”:

**1.** It is in any case sufficient to submit a copy of a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states stating that the Applicant has protection for the complete name for which a Prior Right is claimed.

**2.** If, under the law of the relevant member state, the existence of the Prior Right claimed is subject to certain conditions relating to the name being famous, well known, publicly or generally known, have a certain reputation, goodwill or use, or the like, the Applicant must furthermore submit:

- (i) an affidavit signed by a competent authority, legal practitioner, or professional representative, accompanied by documentation supporting the affidavit or
- (ii) a relevant final judgment by a court or an arbitration decision of an official alternative dispute resolution entity competent in at least one of the member states

stating that the name for which a Prior Right is claimed meets the conditions provided for in the law (including relevant court decisions, scholarly works and such conditions as may be mentioned in Annex 1 (if any)) of the relevant member state in relation to the type of Prior Right concerned.

### **Special Cases:**

**United Kingdom & Ireland** – Documentary Evidence allowed as in point 2 above only.

**Lithuania** – Documentary Evidence as in point 2 above is excluded.

**Sweden** – Documentary Evidence as in point 2 (i) above is excluded.

## **7. COMPANY NAMES**

A company name is an official name of a company, i.e. the name under which the company is incorporated or under which the company is registered. In member states where no company-name protection exists, the name of the company may still be protected as a trade name or a business identifier.

If an Applicant claims a Prior Right to a name on the basis of a company name protected under the law of one of the member states mentioned in Annex 1 as being a member state protecting company names, it is sufficient to prove the existence of such Prior Right in accordance below:

Unless otherwise provided in Annex 1 hereto, it shall be sufficient to submit the following Documentary Evidence for company names:

- (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.

Such Documentary Evidence must clearly indicate that the name for which the Prior Right is claimed is the official company name, or one of the official company names of the Applicant.

### **Special Cases:**

**United Kingdom & Ireland** – Documentary Evidence required as in point 2 of the “Unregistered Trademark” section only (not the “Company Names” documentation requirement referred to above).

**Protection is only acknowledged to the extent that rights in passing off exist**

**Netherlands** – Documentary evidence required as in the Section “Trade Names and Business Identifiers” only (not the “Company Names” documentation requirement referred to above).

**Use of the company name in the course of trade must be demonstrated (cf trade names)**

**Poland** – Documentary Evidence as referred to in (i) and (ii) above only.

**Sweden** - Documentary Evidence as referred to in (i) above only.

## **8. TRADE NAMES AND BUSINESS IDENTIFIERS**

Business Identifiers are NOT recognized in **Cyprus** and **Slovenia**

Since trade names are protected in all member states of the European Union, it is sufficient to provide the Validation Agent with the Documentary Evidence referred to below.

If an Applicant claims a Prior Right to a name on the basis of a business identifier protected under the law of one of the member states mentioned in Annex 1 as being a member state protecting such business identifier, it is sufficient to prove the existence of such Prior Right in accordance with the following:

Unless otherwise provided in Annex 1, it is sufficient to submit the following Documentary Evidence for trade names and business identifiers:

- (i) where it is obligatory and/or possible to register the relevant trade name or business identifier in an official register (where such a register exists in the member state where the business is located):
  - a. an extract from that official register, mentioning the date on which the trade name was registered; and
  - b. proof of public use of the trade name or business identifier prior to the date of Application (such as, but not limited to, proof of sales volumes, copies of advertising or promotional materials, invoices on which the trade name or business identifier is mentioned etc., proving public use of the name in the relevant member state);
- (ii) where registration is not obligatory, the Documentary Evidence referred to in point 3 of the “**General Substantive Requirements**” mentioned above:

The Documentary Evidence for a trade name or a business identifier must clearly indicate that the name for which the Prior Right is claimed is the trade name or business identifier of the Applicant.

### **Special Cases:**

**Belgium** - Documentary Evidence as above required Business identifiers which are trade names but for Business identifiers which are company names, please see “Company Names” section.

**A business identifier is only protected if it qualifies as a trade name or company name**

**Cyprus** – Documentary Evidence as in (i) above or a copy of the publication of the trade name in the Government Gazette.

**Greece** – documentary Evidence for trade names as above, but for Business Identifiers, see point 3 of the “**General substantive Requirements**”

**UK & Ireland** – Documentary evidence for both Trade names and Business Identifiers as in point 3 of the “**General Substantive Requirements**” only and NOT the requirements under this section.

**Sweden** - Documentary Evidence as in (i) above only.

## **9. DISTINCTIVE TITLES OF PROTECTED LITERARY AND ARTISTIC WORKS**

If an Applicant claims a Prior Right to a name on the basis of a distinctive title of a protected literary and artistic work protected under the law of one of the member states listed in Annex 1 as being a member state protecting distinctive titles of protected literary and artistic works, it is sufficient to prove the existence of such Prior Right in accordance with the following:

Unless otherwise provided for in Annex 1 hereto, it is sufficient to submit the following Documentary Evidence for a distinctive title of a literary and artistic work:

- (i) a copy of the cover or image of the literary and artistic work containing the title concerned (together with a brief description of (a) the work, or (b) the content of the work, a photograph of the work, etc.), and
- (ii) an affidavit signed by a competent authority, legal practitioner or professional representative stating that the Applicant holds the claimed rights in respect of the said title on the date of the Application, that the work in question has lawfully been made public and that the title is distinctive whereby such Documentary Evidence must clearly indicate that the Applicant is holder of the distinctive title of the literary and artistic work.

### **Special Cases:**

**Cyprus** – For Artistic Works:  
As above

For Literary works:

- i) Certificate (receipt) issued by the public Information Office or
- ii) Documentary Evidence as referred to above

**United Kingdom & Ireland** - Documentary evidence as in point 3 of the “**General Substantive Requirements**” only and NOT the requirements under this section

## **10. OTHER - FAMILY NAMES**

If an Applicant claims a Prior Right to a name on the basis of a trade name, business identifier or company name that corresponds with a family name, it must select the “trade name, business identifier or company name” type of Prior Right in its Application and prove the existence of such Prior Right as mentioned above under those sections.

If an Applicant claims a Prior Right to a name on the basis of his family name, in as far as it is protected in the member state of which he is a resident of, he must select the “other” type of Prior Right in his Application and it must prove the existence of such Prior Right in accordance with points 1 and 2 of the “**General Substantive Requirements**” mentioned above.

## **OTHER - OTHER**

For types of right that can be proven according to a national law of a member state and do not fall within one of the categories above, i.e. the above list is of the most commonly recognised rights, but each country may recognise other Prior Rights not mentioned here, these can be applied for under the “Other” Prior Rights section.

## **11. DOCUMENTARY EVIDENCE - IMPORTANT POINTS**

### **Submission of documents and time period considerations**

When the domain application is submitted by the Registrar, the application is time-stamped and a period of **40 days** counts down for the submission and subsequent receipt of Documentary Evidence to support the application.

Depending on when the registration application was received, will affect which day the Documentary Evidence needs to be submitted to the Validation Agent. In all cases this will be 40 days after the application date, however an important point to note is that it is possible that the final day for submission (40<sup>th</sup> day) may fall on a Saturday, Sunday or Public Holiday in Belgium.

**Documentary Evidence not received on the last general business day prior to a Saturday, Sunday or Public Holiday in Belgium will be considered not received by the expiry date.**

E.g. if the 40<sup>th</sup> day falls on a Sunday, then the documents should arrive on the Friday prior to that (as long as the Friday is not a public holiday in Belgium). If the 40<sup>th</sup> day falls on a Monday which is a public holiday, then the documents should also be sent on the Friday prior to that (as long as the Friday is not a public holiday in Belgium) etc.

The Validation Agent's office in Belgium closes at 17:00 and this is therefore the latest time that documents can be received on the final (40<sup>th</sup>) day.

### **Cover Page**

An email will be sent to the Applicant and Registrar with a hyperlink to a web page allowing the print out of the Documentary Evidence Cover Page. This page will be generated in .pdf format and should be printed and must be submitted with the Documentary Evidence, otherwise the application will not be processed. The cover page will include a barcode used by the Validation Agent to quickly scan in the documents, and assign to the correct domain application for validation.

The Cover Page will include at least the following information:

- (i) the name and address of the Processing Agent;
- (ii) the following information, extracted from the Sunrise WHOIS Database:
  - (a) the Domain Name applied for;
  - (b) the full name of the Applicant;
  - (c) the relevant contact information for the Applicant;
  - (d) the type of Prior Right claimed by the Applicant;
  - (e) the country in which the Prior Right claimed is protected;
  - (f) the complete name for which a Prior Right is claimed by the Applicant;
  - (g) the language in which the Documentary Evidence to be provided to the Validation Agent will be couched;
  - (h) the date of receipt of the Application by the Registry;
  - (i) a unique bar code.

Applicant must sign the Cover page (or Registrar if handling on behalf of client).

**IMPORTANT:** This page must not be altered in any way once printed out.

## **12. DOCUMENTARY EVIDENCE - IMPORTANT POINTS (cont.)**

A few important points on submission of Documentary Evidence to note are:

- On the hyperlinked web-page to access the Document cover page, it is a requirement for the applicant to inform Registry of the number of pages that the Documentary Evidence amounts to.
- Each page must be initialled.
- Each page must be consecutively numbered, starting with page no.1, not including the Cover Letter.
- The duly signed Cover Letter and the Documentary Evidence enclosed therewith must be sent to the address indicated in the Cover Letter. Documents sent to any address other than the address indicated in the Cover Letter will not be considered.
- Documentation must be sent by regular mail, registered or recorded mail or courier (fax or email is not permitted). Exception is when Registrar is authorised to handle the documents for the client and can send Documentary Evidence electronically to the Validation Agent.
- Multiple Documentary evidence - If there are more than one set of documents to be submitted for separate domain applications, it is important that each of these are submitted in separate envelopes and not in one package.
- Paper Size – It is important that the size of the sheets of paper submitted as documentary evidence must be DIN A4 (29.7 cm x 21 cm) or Letter (27.94 cm x 21.59 cm) format.
- Must be printed on opaque white paper.
- Must be printed on one side only.
- Must be humanly readable when scanned.
- Must not be retouched or otherwise altered.
- Sheets of paper may not be folded, stapled, glued or in any other way attached to each other.
- Must be in the language chosen in the application or indicated on the Cover Page, if not then they will not be considered. If the documents are sent in a language not indicated in the application or Cover Page, then it must be accompanied by a translation made by a certified translator in the language selected in the application or Cover Page.

**Please Note:** The Validation Agent is not obliged to process or consider any information or documentation received that does not meet all of the above requirements. The Registry and the Processing Agent are not obliged to inform the Applicant of whether the Documentary Evidence has or has not met any or all of the requirements stated above. No communication or acknowledgement from the Validation Agent and/or the Registry that Documentary Evidence has been received may be construed as implying that the information provided by (or on behalf of) the Applicant meets the conditions set out above.

### **Processing of Documentary Evidence**

The Registry and the Processing Agent are entitled, at their sole discretion, not to consider any information or documentation received where the Processing Agent has already received a set of Documentary Evidence relating to the same Application; however, the Processing Agent may, via the Registry, request the Applicant to submit a new set of Documentary Evidence if the original Documentary Evidence received is accidentally damaged or destroyed during or after transmission thereof.

It is not possible for the Applicant to inspect the Documentary Evidence after the Processing Agent has received it.