Panel Decision for dispute CAC-ADREU-004588

Case number	CAC-ADREU-004588
Time of filing	2007-06-27 09:06:11
Domain names	rieke.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Rieke Corporation and Rieke Packaging Systems Limited

Respondent

Organization / Name	World Online Endeavours, Ltd

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainants are Rieke Corporation (the First Complainant) and Rieke Packaging Systems Limited (the Second Complainant). The First Complainant is a US Corporation incorporated in the State of Indiana. The Second Complainant is a limited company registered in the United Kingdom.

2. The First Complainant claims to be the parent company of an international group which has been designing, manufacturing and dispensing equipment, packaging and containers under the name “RIEKE” for over 50 years.

3. The First Complainant has provided evidence that it owns worldwide trade marks for “RIEKE” including a Community Trade Mark No. 001084342 dated 22 February 1999 in class 6, 11, 17 and 20, an Italian Trade Mark No. 00844500 dated 1 September 1998 in classes 6 and 11, a French Trade Mark No. 1454123 dated March 1998 in classes 6, 11 and 17, and a Spanish Trade Mark No. 568661 dated 1 March 1999 in class 6.

4. The Complainants contend that the Second Complainant is a UK limited company and was acquired by the Rieke Group in 1996. It changed its name to “Rieke Packaging Systems Limited” in 2000, and has traded in the UK under the name “RIEKE” as well as variations such as “RIEKE PACKAGING SYSTEMS” and “RIEKE DISPENSING”.

5. The Respondent is World Online Endeavours Limited, who registered the Domain ‘rieke.eu’ on 7 April 2006, the first day of the Land Rush period.

6. On 27 June 2007, the Complainants issued their complaint in these ADR proceedings. The Respondent did not submit a response to the complainants by the required deadline, or at all. The Czech Arbitration Court issued a notification of the Respondent’s default on 5 September 2007.

A. COMPLAINANT

The Complainants contend as follows:

(a) The First Complainant owns worldwide trade marks for “RIEKE” including a Community Trade Mark No. 001084342 (word) dated 22 February 1999 in class 6, 11, 17 and 20, an Italian Trade Mark No. 00844500 (word) dated 1 September 1998 in classes 6 and 11, a

French Trade Mark No. 1,454,123 (stylized word) dated 11 March 1988 in classes 6, 11 and 17, and a Spanish Trade Mark No. 568661 (stylized word) dated 1 March 1999 in class 6.

(b) The Complainants contend that the Second Complainant was acquired by the Rieke Group in 1996. They contend that it changed its name to "Rieke Packaging Systems Limited" in 2000, since when it has traded in the UK under the name "RIEKE" as well as variations such as "RIEKE PACKAGING SYSTEMS" and "RIEKE DISPENSING".

(c) The Second Complainant contends that their marketing activities included advertising, exhibitions, PR and telemarketing. The Second Complainant also contends that it exhibits regularly at two major European packaging trade shows: Salon De L'Emballage (France) bi-annually and Interpack (Germany) tri-annually. It also exhibits at ad-hoc UK packaging shows.

(d) The Complainants have provided evidence that the Respondent registered the Domain on 7 April 2006.

(e) The Complainants have provided evidence that, according to the European Registry of Internet Domain Names, the Respondent is "World Online Endeavours, Ltd". Its address is stated to be in Farmdo, Sweden and Swedish phone and fax numbers are given. The email address is "edelman@worldonlineendeavours.com".

(f) The Complainants contend that as of 24 July 2006, there was no website at the Domain.

(g) The Complainants contend that the Complainants' solicitor sent a cease and desist communication by recorded delivery on 11 December 2006 to the address shown for the Respondent in a 'EURid whois' search result, to which no response was received.

(h) The Complainants contend that as of 30 March 2007, there was a website available at the Domain comprising a directory of general affiliate links. The home page stated prominently at the top "Welcome to rieke.eu". The term "rieke.eu" also appeared in the metatitle.

(i) The Complainants contend that the Respondent is in fact a UK registered company "Worldwide Online Endeavours Limited", incorporated on 21 March 2006. The address is 46 Peel Street, Hull, East Yorkshire, HU3 1QR. The company secretary is Jay Westerdal of 12806 SE 22nd PL Bellevue, WA 98005 USA. The company director is Raymond King of 2884 NW Cumberland Road, Portland, OR 97210 USA.

(j) The Complainants contend and provide evidence that Jay Westerdal is also the company secretary and Raymond King is also the director of each of the following UK companies (the "Affiliated Companies"): Aphrodite Ventures Ltd, Lehigh Basin Ltd., Lexin Media Ltd, Fienna Ltd, Hanoki Ltd, Vinitsia Ltd, and the Name Battery Ltd. All of the Affiliated Companies were incorporated on the same day as the Respondent – 21 March 2006. The registered office of each of the Affiliated Companies is 46 Peel Street Hull, East Yorkshire HU3 1QR.

(k) The Complainants contend that at least 13 successful .eu ADR complaints have been filed in relation to domain names registered by the Respondent and Affiliated Companies. The cases involving the Respondent are Cases 04008 (SIRENA) and 04037 (AOLIRELAND).

(l) The Complainants contend and provide evidence that the Respondent also owns the domain name "sinnfein.eu". "Sinn Fein" is the name of a well-known political party in Ireland.

(m) The First Complainant relies on its registered trade mark(s) for "RIEKE" referred to in paragraph (a) above.

(n) The Second Complainant relies on common law rights. By virtue of its extensive trading and marketing activities mentioned above, the Second Complainant has acquired substantial reputation and goodwill in the names "RIEKE", "RIEKE PACKAGING SYSTEMS" and "RIEKE DISPENSING" in the UK such that they have become distinctive of the Second Complainant's business.

(o) The Complainants contend that the Domain has been registered by its holder without rights or legitimate interests in the name.

(p) The Complainants draw attention to another Panel decision, case 2035 (WAREMA) where in relation to demonstrating a right or legitimate interest in the Domain Name according to Art. 21(2)(a) and (b) of the Regulation EC/874/2004 the decision stated: "Furthermore, the Panel holds that although the burden of proof lies with the Complainants, the existence of a right or legitimate interest is difficult to prove since the relevant facts lie mostly in the sphere of the holder. Hence, the Panel holds that it is sufficient that the Complainants contend that the obvious facts do not demonstrate a right or legitimate interest of the Respondent in the Domain Name. The onus then shifts to the Respondent to produce factual evidence for a right or legitimate interest".

(q) The Complainants have no association with the Respondent and have never authorised or licensed the Respondent to use its trade

marks.

(r) The Complainants contend that, with respect to Article 21(2)a there is no evidence that the holder of the Domain has used, or made demonstrable preparations to use, the Domain or a name corresponding to the Domain in connection with any offering of goods and services prior to the Complainants' letter of 11 December 2006 giving notice of the proposed ADR Procedure.

(s) The Complainants contend that the only use of which the Complainants are aware following that date is a directory of general affiliate links as mentioned above. The term "RIEKE" has no logical connection with the content of the site. See, e.g., Case 2123 (UNIBAIL) where the Panel held that there were no rights or legitimate interests in use of the term "UNIBAIL" in connection with a website consisting of a page of general affiliate links.

(t) The Complainants contend that as to Article 21(2)(b), there is no evidence that the holder of the Domain has been commonly known by the name "RIEKE". The Complainants submit that it is clear from the evidence above that it is not known by that name.

(u) As to Article 21(2)(c), the Complainants contend there is no evidence of any legitimate and non-commercial or fair use of the Domain. The Complainants contend that it is clear that the Respondent was out for commercial gain, and also rely upon their submission below in relation to "bad faith".

(v) In addition, the Complainants contend that the Respondent has not denied this assertion in the Complainants' letter of 11 December 2006.

The Complainants contend that the Respondent has given a Swedish address to appear on the 'EURid whois' search although the Complainants believe from the suffix "Ltd" that it is in fact the UK limited company, whose details are given above. "Ltd" is the abbreviation for the English term "Limited" denoting a limited company. The Complainants contend that the Respondent appears reluctant to disclose its true location / identity on registering the disputed domain name.

The Complainants contend that it is clear from the facts outlined above that the Respondent is under common control with the other Affiliated Companies, all of which were incorporated on 21 March 2006, some two weeks before the .eu landrush started on 7 April 2006. The Complainants contend that all of the companies also share the same address, directors and secretaries and none has an active website referable to its own name. It appears that they are all shell companies incorporated purely for the purpose of registering .eu domains. The Complainants contend that the Respondent and other Affiliated Companies have been found in at lease 13 ADR cases to have registered .eu domains which were speculative and abusive. In ten of those cases the respondents were found to lack rights or legitimate interests and in five they were found to have acted in bad faith.

(w) The Complainants also contend that the Domain has been registered or used in bad faith. In this respect the Complainants rely on the matters specified above in relation to lack of rights and legitimate interests.

(x) The Complainants further assert that the Respondent intended to prevent the First Complainant from reflecting its trade mark in the Domain which corresponds to that trade mark in accordance with Article 21(3)(b)(i). The ADR decisions mentioned above concerning the Respondent and the Affiliated Companies constitute a pattern of such conduct.

(y) The Complainants contend that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the First Complainant's mark in accordance with Article 21(3)(d).

(z) The Complainants contend that is clear from the Complainants' reputation in the mark (explained above), and from the Respondent's failure to deny the Complainants' assertions, that the Respondent had the Complainants and their business in mind when registering and using the Domain. The Complainants contend that the use of the Domain which comprises the Complainants' trade mark is intended by the Respondent to create a likelihood of confusion in the minds of the public as to an association between the Respondent and the Complainants.

(aa) The Complainants contend and provide evidence that the name of the Domain appears prominently on the top of the home page, thereby adding to likely confusion on the part of Internet users. The Domain was also used in the metatext of the website designed to attract engines.

(ab) The Complainants contend that the likelihood of confusion is not diminished by the possibility that at some point users arriving at the Respondent's site might realize that the site is not connected with the Complainants. Article 21(3)(d) is concerned with the intentional attraction of Internet users. The Complainants contend that the Respondent used the disputed domain name to create "initial

interest confusion" on the part of Internet users seeking the Complainants and in order to profit from at lest some of the traffic. The Complainants draw attention to the following UDRP cases which they believe are relevant in this context: National Football League Properties, Inc, and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118 and Jardine Motors Group Holdings Limited v. Zung Fu Kuen, WIPO Case No. D2004-0168.

(ac) The Complainants contend that the Respondent was intent upon commercial gain by means of affiliate / sponsored links and advertising. They contend that it is difficult to conceive that the Respondent would engage in a scheme such as this for a non-commercial purpose. They contend that it is well known that directory websites generate revenue by directing traffic to other websites.

(ad) The Complainants also rely on the fact that the Respondent has not responded to, let alone denied, the assertions of bad faith in the pre-action communication from the Complainants.

(ae) The Second Complainant seeks the transfer of the Domain to it in accordance with Article 22(11) of Regulation (EC) 874/2004.

(af) The Second Complainant contends that it satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002.

(ag) The Second Complainant has provided evidence that its registered office is in London and therefore within the Community.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

1. The Respondent has not responded to the Complaint. Article 22.10 of Commission Regulation (EC) No 874/2004 and Paragraph B10 (a) of the ADR Rules are clear that, in a situation where the Respondent does not respond to the Complaint, this may be considered by the Panel as grounds to accept the claims of the Complainant.

2. This does not mean a Complaint should be upheld whenever a respondent fails to respond. In order to succeed on its complaint the Complainant is still required to demonstrate that the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11 (d)(1) of the ADR Rules are satisfied.

3. The Complainant must, in accordance with Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11 (d)(1) of the ADR Rules demonstrate that the RIEKE domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by national and/or Community law and either: (A) the Respondent has registered the domain name without rights or legitimate interests in the name; or (B) the domain name has been registered or is being used in bad faith.

4. The First Complainant is a US Corporation incorporated in the State of Indiana. It is the parent company of an international group which has been designing, manufacturing and dispensing equipment packaging and containers under the name "RIEKE" for 50 years, operating in 65 countries.

5. The First Complainant owns worldwide trade marks for "RIEKE" including a Community Trade Mark No. 001084342 (word) dated 22 February 1999 in class 6, 11, 17 and 20, an Italian Trade Mark No. 00844500 (word) dated 1 September 1998 in classes 6 and 11, a French Trade Mark No. 1,454,123 (stylized word) dated 11 March 1988 in classes 6, 11 and 17, and a Spanish Trade Mark No. 568661 (stylized word) dated 1 March 1999 in class 6.

6. The existence of the trade marks for the name "RIEKE" detailed in paragraph 5 above means that the domain name is identical to the name in which the First Complainant has rights. As a result the First Complainant is not required to demonstrate confusion.

7. The Second Complainant relies on common law rights. No details were provided by the Complainants in respect of any sort of licence provided by the First Complainant to the Second Complainant to use the First Complainant's trade marks. The definition of 'prior rights' as referred to in Article 21 of Commission Regulation (EC) No 874/2004 is defined more particularly in Article 10 (1) of Commission Regulation (EC) No 874/2004 and includes unregistered trade marks, trade names, business identifiers and company names in as far as they are protected under national law in the Member-State where they are held.

The Second Complainant has provided significant evidence and claims that as a result of marketing and advertising activity it has acquired a substantial reputation and goodwill in the names "RIEKE", "RIEKE PACKAGING SYSTEMS" and "RIEKE DISPENSING" in the UK,

such that they have become distinctive of the Second Complainant's business. The Panel is satisfied that the Second Complainant has established common law rights in the form of significant unregistered rights (e.g. goodwill in the UK) and a reputation in the names "RIEKE", "RIEKE PACKAGING SYSTEMS" and "RIEKE DISPENSING", on the basis of the evidence provided and in the absence of a Response from the Respondent.

8. The existence of unregistered rights in the business name and the trade name "RIEKE" detailed in paragraph 7 above means that the domain name is identical to the name in which the Second Complainant has rights. As a result the Second Complainant is not required to demonstrate confusion.

9. The Complainants have provided evidence that their solicitor wrote to the Respondent and did not receive a response to that letter. The Complainants assert that the Respondent does not have any rights or legitimate interests in the name and present several convincing arguments in support of their case. In the absence of a response from the Respondent either to the Complainants' solicitor's earlier letter or the Complaint, the Panel finds that the Respondent accepts the Complainants' assertion that the Respondent does not have rights or legitimate interests in the name "RIEKE".

10. The above finding that the Respondent does not have rights or legitimate interests in the domain name is enough to satisfy the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11 (d)(1) of the ADR Rules. However for completeness it is necessary to consider whether the domain name was registered or is being used in bad faith.

11. The Complainants have provided evidence and assert that the domain name has been registered or is being used in bad faith. In particular the complainants submit, amongst other things, that the Respondent intended to prevent the Complainants from reflecting their trade mark in the Domain which corresponds to that trade mark and that the Claimant can demonstrate a pattern of such conduct by the Respondent in accordance with Article 21(3)(b)(1) of Commission Regulation (EC) No 874/2004 and Paragraph B 11 (f)(2)(i) of the ADR Rules, and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark in accordance with Article 21(3)(d) of Commission Regulation (EC) No 874/2004 and Paragraph B 11 (f)(4) of the ADR Rules. In the absence of a response from the Respondent the Panel again finds that the Respondent has accepted the Complainant's assertion that the domain was registered in bad faith.

12. The Complainants have satisfied the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11 (d)(1) of the ADR Rules. The Second Complainant has requested the transfer of the domain name. The Second Complainant is a UK registered company and is based in the UK and therefore satisfies the criteria set out in article 4.2 (b) of the Regulation (EC) No 733/2002. It is therefore entitled to the transfer of the domain name to it.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name RIEKE be transferred to the Second Complainant.

PANELISTS

Name	**Isabel Davies**

DATE OF PANEL DECISION 2007-10-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainants are Rieke Corporation (the First Complainant) and Rieke Packaging Systems Limited (the Second Complainant). The First Complainant is a US Corporation incorporated in the State of Indiana. The Second Complainant is a private company registered in the United Kingdom.

The First Complainant is the parent company of an international group which has been designing, manufacturing and dispensing equipment, packaging and containers under the name "RIEKE" for over 50 years.

The First Complainant owns worldwide trade marks for "RIEKE" including a Community Trade Mark No. 001084342 (word) dated 22 February 1999 in class 6, 11, 17 and 20, an Italian Trade Mark No. 00844500 (word) dated 1 September 1998 in classes 6 and 11, a French Trade Mark No. 1,454,123 (stylized word) dated 11 March 1988 in classes 6, 11 and 17, and a Spanish Trade Mark No. 568661 (stylized word) dated 1 March 1999 in class 6.

The Second Complainant is a private UK limited company and was acquired by the Rieke Group in 1996. It changed its name to “Rieke Packaging Systems Limited” in 2000, and claims to have traded in the UK under the name “RIEKE” as well as variations such as “RIEKE PACKAGING SYSTEMS” and “RIEKE DISPENSING”.

The Respondent is World Online Endeavours Limited, who registered the Domain ‘rieke.eu’ on 7 April 2006, the first day of the Land Rush period.

On 27 June 2007 the Complainants issued their complaint in these ADR proceedings. The Respondent did not submit a response to the complainant by the required deadline, or at all. The Czech Arbitration Court issued a notification of the Respondent’s default on 5 September 2007.

The Panel Held

(1) The existence of trade marks for the name “RIEKE” means that the domain name is identical to the name in which the First Complainant has rights. As a result the First Complainant is not required to demonstrate confusion.

(2) The existence of unregistered rights in the business name and the trade name “RIEKE” means that the domain name is identical to the name in which the Second Complainant has rights. As a result the Second Complainant is not required to demonstrate confusion.

(3) The Respondent does not have a right or legitimate interest in the name RIEKE. The Complainants asserted this was the case in the Complaint and the Respondent has not responded to the Complaint or to an earlier letter.

(4) The Respondent registered the domain name RIEKE in bad faith. The Complainants asserted this was the case in the Complaint and the Respondent has not responded to the Complaint or to an earlier letter.

(5) The Complainants have satisfied the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11 (d)(1) of the ADR Rules. The Second Complainant requested the transfer of the domain name. The Second Complainant is a UK registered company and therefore satisfied the criteria set out in Article 4.2 (b) of Regulation (EC) No 733/2002. It is therefore entitled to the transfer of the domain name to it.

Accordingly the Panel ordered the transfer of the domain name RIEKE to the Second Complainant.