

## **ADMINISTRATIVE PANEL DECISION**

Rivilė, UAB v. mahmoud nemah

Case No. D2022-3589

### **1. The Parties**

The Complainant is Rivilė, UAB, Lithuania, represented by METIDA Law Firm Zaboliene and Partners, Lithuania.

The Respondent is mahmoud nemah, Egypt.

### **2. The Domain Names and Registrar**

The disputed domain names <rivile.com> and <rivile.net> are registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on October 7, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2022. On October 13, 2022, the Center received an informal email communication from the Respondent. The Respondent did not submit any formal response. The Center notified the commencement of Panel appointment process on October 31, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 11, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), “to employ reasonably available means calculated to achieve actual notice to Respondent”. Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Rivilė, UAB, a Lithuanian company incorporated in 1992, operating in the field of information technology applied to accounting and financial services and owning the following trademark registrations for RIVILE:

- Lithuanian Trademark Registration No. 82183 for RIVILE and design, registered on January 30, 2020;
- European Union Trademark Registration No. 018681572 for RIVILE and design, registered on August 3, 2022;
- European Union Trademark Registration No. 018681573 for RIVILE, registered on August 9, 2022.

The Complainant operates on the Internet at the website “www.rivile.lt”, the corresponding domain name having been registered on October 16, 2000.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name <rivile.com> was registered on August 14, 2018, and the disputed domain name <rivile.net> was registered on January 17, 2021. When the Complaint was filed, the disputed domain name <rivile.com> resolved to an inactive website, while the disputed domain name <rivile.net> resolved to an “under construction” website, showing the wording “RIVILE for information technology”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain names are identical to its trademark RIVILE.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names since it has not been authorized by the Complainant to register the disputed domain names or to use its trademark within the disputed domain names, it is not commonly known by the disputed domain names and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names.

The Complainant submits that the Respondent has registered the disputed domain names in bad faith, since the Complainant's trademark RIVILE is distinctive and known in the information technology field since the incorporation of the Complainant in 1992. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain names and the Complainant contends that the passive holding of the disputed domain names qualifies as bad faith registration and use.

## **B. Respondent**

The Respondent has made no formal reply to the Complainant's contentions.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International PLC v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

In this case, the Respondent submitted an informal email communication on October 13, 2022, stating the following:

"Dear Wipo Sirs this is Eng.Mahmoud Nemah the renter of Domains ( Rivile.com , Rivile.net ) Please accept my apologies, as What does the complaint against me refer to??? Concerned to the owned Above Domains, I used Them From year 2018 After Searching And renting them From Godaddy With full Payment. without Caring About Any other Company Used Names like them.i inform you That I was not even aware of the existence of a company using a domain similar to mine until the date you informed me of the complaint submitted against me. that is not my responsibility. at past, i searched alot about other name called (revil) but it was rented from others so i found these names available andSimilar in pronunciation to (revil) so i rented them. sirs, i searched in another county with Non-competitive activity In addition to the fact that I did not know about them in the past because they are not famous in our country, how can I compete with those whom I do not know and how can you hold me accountable and ask me to expropriate the domains? Four years, did they suddenly discover the competition, and if so, how can I be a competitor that is not visible and unknown within the limits of their work places? As a summary, i can not accept capturing my rights With a general logic, it may apply to any person, before that you can stipulate that you do not purchase any extension of the same domain except for the same person or company. Why is it offered for rent in the first place? i think this company complaint is Cheap ploy to grab others rights for free. i thought my phone, email and address are available to everyone. I trust in your justice and fairness in my grievances I would also like to inform you that I have no objection to waiting for a call or an email from the complaining company to negotiate the transfer of domain ownership to them at an acceptable price and in an acceptable and elegant manner that guarantees everyone their rights Best Regards, Eng. Mahmoud Nemah Owner Of Rivile.com,Rivile.net".

The Center sent a possible settlement email to the parties, but the Complainant did not reply to it.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

## **A. Identical or Confusingly Similar**

The Panel finds that the Complainant is the owner of the registered trademark RIVILE and that the disputed domain names are identical to the trademark RIVILE.

Regarding the disputed domain name <rivile.com>, registered by the Respondent prior to the date of registration of the Complainant's trademark, this is irrelevant to Policy paragraph 4(a)(i), which encompasses both registered and unregistered trademarks and only requires that the Complainant has rights as of the filing date of the Complaint. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.1.1 and 1.1.3.

It is also well accepted that a generic Top-Level Domain ("gTLD"), in this case ".com" and ".net", is typically ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain names are identical to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

The Respondent has failed to file a formal response in accordance with the Rules, paragraph 5.

The Complainant in its Complaint and as set out above has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain names for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that he has rights or legitimate interests in the disputed domain names. However, while the Respondent has sent an email he has not presented any evidence of any rights or legitimate interests he may have in the disputed domain names, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain names carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that "[...] for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the Respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

(iii) that [the Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] website or location".

Regarding the registration in bad faith of the disputed domain names, the reputation of the Complainant's trademark RIVILE in the field of information technology applied to accounting and financial services is clearly established and the Panel finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain names in bad faith.

While the disputed domain name <rivile.com> was registered before the Complainant's trademark, the Complainant has provided evidence that its company Rivile was established before the domain name registration in 1992, and that the sign RIVILE had been extensively used. In addition, the Panel notes that the Respondent registered a second domain name that has been used in connection with a construction website, showing the wording "RIVILE for information technology".

As regards the use in bad faith of the disputed domain names, which resolve one to an inactive website and the other one to an "under construction" website, the Panel considers that bad faith may exist even in cases of so-called "passive holding", as found in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the circumstances of this case, the Panel finds that such passive holding does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3.

Finally, the Panel considers that the nature of the disputed domain names, which are identical to the Complainant's trademark, further support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <rivile.com> and <rivile.net> be transferred to the Complainant.

/Edoardo Fano/

**Edoardo Fano**

Sole Panelist

Date: November 16, 2022