

ADMINISTRATIVE PANEL DECISION

Raisio Oyj v. Ralph Schwab

Case No. DEU2022-0012

1. The Parties

Complainant is Raisio Oyj, Finland, represented by Eversheds Attorneys Ltd., Finland.

Respondent is Ralph Schwab, Germany.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <raisio.eu> (the “Domain Name”) is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the Domain Name is SIA Area IT.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2022. On April 27, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the Domain Name. On April 29, 2022, the Registry transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on May 13, 2022 providing the registrant and contact information disclosed by the Registry, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 19, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified Respondent of the Complaint, and the proceedings commenced on May 30, 2022. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was July 12, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 21, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on July 25, 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 ADR Rules, Paragraph B(5).

4. Factual Background

Complainant is a company established in Finland. It is the owner of, *inter alia*, the European Union trademark registration number 006407209 RAISIO (word), filed on October 31, 2007 and registered on September 10, 2008 for goods and services in international classes 5, 29, 30, 31, 32, and 35. Complainant maintains its website at “www.raisio.com”.

The Domain Name was registered on February 3, 2022 and leads to a website mimicking that of Complainant (the Website).

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all elements required under Article 21(1) of the Commission Regulation (EU) No. 874/2004 (“the Regulation”) and Paragraph B(11)(d)(1) of the ADR Rules for a transfer or revocation of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under Article 21(1) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules, in order for the Complaint to succeed, it is for Complainant to establish:

(i) that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either

(ii) that the disputed domain name has been registered by Respondent without rights or legitimate interest in the name; or

(iii) that the domain name has been registered or is being used in bad faith.

Furthermore Article 22(10) of the Regulation provides that “[f]ailure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty”.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

Complainant has demonstrated rights through registration and use on the RAISIO mark.

The Domain Name incorporates the trademark of Complainant in its entirety.

The country code Top-Level Domain (“ccTLD”) “.eu” is disregarded, as ccTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).¹

¹ Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (the “UDRP”), the Panel will refer to cases decided under both the ADR Rules and the UDRP if relevant to this proceeding.

The Panel finds that the Domain Name is identical to the RAISIO mark of Complainant.

Complainant has established the first element of Article 21(1) of the Regulation and Paragraph B(11)(d)(1)(i) of the ADR Rules.

B. Rights or Legitimate Interests

Under Paragraph B(11)(e) of the ADR Rules, a respondent may demonstrate its rights or legitimate interests to the domain name for purposes of Paragraph B(11)(d)(1)(ii) by showing any of the following circumstances, in particular but without limitation:

(1) prior to any notice of the dispute, the respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or European Union law;

(3) the respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Complainant has established that it has no relation with Respondent and has never authorized Respondent to use the RAISIO trademark in any way and that Respondent is not commonly known by the Domain Name.

Respondent did not demonstrate any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name is used to host the Website mimicking that of Complainant and using Complainant's trademarks and company name without authorization, namely to impersonate Complainant and attempt to mislead Internet users into thinking that the goods and services purportedly offered on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods or services nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

In addition, the nature of the Domain Name, comprising Complainant's trademark in its entirety carries a risk of implied affiliation (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.).

These circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Article 21(1) of the Regulation and Paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

There is no need to separately address bad faith registration or use, in view of Panel's finding that Respondent has no rights or legitimate interests in the Domain Name. However, in this case the Panel

briefly considers that the Domain Name has also been registered and used in bad faith.

Because the RAISIO mark had been used and registered by Complainant at the time of the Domain Name registration, noting the composition of the disputed domain name, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering this Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandio.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search due to Complainant's use of RAISIO mark on the Internet ("www.raisio.com") (*Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, Respondent could have conducted a trademark search and would have found Complainant's prior registrations in respect of RAISIO (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

Lastly, the content of the Website gives the impression that it originates from Complainant, eminently displaying its trademarks and company name. This further supports registration in bad faith reinforcing the likelihood of confusion with Complainant's trademark and business, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4 and 3.2.1).

The above further removes any doubt that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host a Website, which appeared falsely to be that of Complainant.

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established the third element of Article 21(1) of the Regulation and Paragraph B(11)(d)(1)(iii) of the ADR Rules.

7. Complainant's Entitlement to Transfer

Article 22(11) of the Regulation states that "(...) The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002", which provision is reflected in paragraph B(11)(b) of the ADR Rules. Article 4(2)(b) of Regulation (EC) 733/2002 as amended by Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019, provides that the registry shall "register domain names in the .eu TLD (...) requested by (iii) an undertaking that is established in the Union". The Panel notes that Complainant satisfies such general eligibility criteria.

8. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the Domain Name <raisio.eu> be transferred to Complainant².

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: August 11, 2022

² The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.