

## **EXPERT DETERMINATION LEGAL RIGHTS OBJECTION**

I-REGISTRY Ltd v. John Corner LLC

Case No. LRO2013-0015

### **1. The Parties**

The Objector/Complainant is I-REGISTRY Ltd of Berlin, Germany, represented by Bettinger Schneider Schramm of Germany.

The Applicant/Respondent is John Corner LLC, of Bellevue, the United States of America, represented by The IP & Technology Legal Group, P.C., dba New gTLD Disputes of the United States.

### **2. The applied-for gTLD string**

The applied-for gTLD string is <.vip>.

### **3. Procedural History**

The Legal Rights Objection (the "Objection") was filed with the WIPO Arbitration and Mediation Center (the "WIPO Center") on March 13, 2013 pursuant to the New gTLD Dispute Resolution Procedure (the "Procedure").

In accordance with Article 9 of the Procedure, the WIPO Center has completed the review of the Objection on March 21, 2013 and has determined that the Objection complies with the requirements of the Procedure and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (the "WIPO Rules for New gTLD Dispute Resolution").

The WIPO Center received a proposal from the Objector to consolidate this proceeding together with LRO Objections LRO2013-0014, LRO2013-0016, LRO2013-0017 and LRO2013-0018 on April 23, 2013. The Respondent indicated opposition to aspects of the Objector's consolidation proposal. In accordance with Article 12 of the Procedure and Paragraph 7(d) of the WIPO Rules for New gTLD Dispute Resolution, the WIPO Center decided not to consolidate this proceeding and the above listed LRO Objections for purposes of Article 12(b) of the Procedure.

In accordance with Article 11(a) of the Procedure, the WIPO Center formally notified the Respondent of the Objection, and the proceeding commenced on April 16, 2013. In accordance with Article 11(b) and relevant communication provisions of the Procedure, the Response was timely filed with the WIPO Center on May 16, 2013.

The WIPO Center appointed Sebastian Hughes as the Panel in this matter on June 17, 2013. 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 WIPO Center to ensure compliance with Article 13(c) of the Procedure and Paragraph 9 of the WIPO Rules for New gTLD Dispute Resolution.

On June 18, 2013, the Objector sent a request to the WIPO Center for permission to file submissions in reply to the Response, and suggested that the Respondent should also be given the right to file a sur-reply. On June 20, 2013, the Respondent indicated its opposition to the Objector's request. On July 4, 2013, the WIPO Center informed the parties that the Panel had not made a determination on the Objector's request.

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

##### **A. Objector**

The Objector is a company incorporated in Germany and the exclusive licensee of Community Trade Mark registration No. 010437051 for the trade mark "VIP" owned by the Objector's parent company, i-content Ltd, and registered on April 11, 2012 (with a filing date of November 22, 2011) in class 36 in respect of "Organization and management of collections; organization of charitable fundraising; monetary affairs and financial sponsorship and consultancy, exclusively in the field of donations; organization and management of fundraising campaigns; financial consultancy in the field of humanitarian relief operations and projects", in class 41 in respect of "Training and further training consultancy; training and instructional services; organizing, arranging and conducting of conference, seminars, tuition and workshops (training)", in class 44 in respect of "Therapeutic support and medical care; medical, dental, psychological and veterinary services; healthcare; conducting medical, veterinary and clinical studies; hospitals, medical clinics and animal hospitals; hygienic and beauty care; animal grooming; agriculture, horticulture and forestry", and in class 45 in respect of "Personal and social services rendered by others to meet the needs of individuals, in particular within the framework of humanitarian relief operations; consultancy in the field of humanitarian relief operations and projects; connection and management of Internet domains" (the "Objector's Trade Mark").

On June 13, 2012, the Objector's new gTLD application for the <.vip> string was posted by ICANN under Application ID: 1-1003-40726. The mission/purpose of the Objector's proposed new gTLD<sup>1</sup> is as follows:

"The .VIP TLD has the mission to serve the needs of very important people (abbreviated: VIP) worldwide, their representatives and service providers for the VIP in terms of privacy, communication, publicity, promotion and exceptional services. VIP people are defined as people of great influence or prestige, like politicians, artists, actors, musicians, athletes, aristocrats and wealthy people. As of today VIPs do not have an own namespace on the Internet, although according to statistics more than 11 Mio Individuals belong to the defined group according to the criteria mentioned above. Like other linguistic (.CAT), language (.ASIA), communications-related (.TEL, .MOBI) or industry-related (.MUSEUM, .JOBS) communities they deserve an own namespace on the Internet.

The PURPOSE of the .VIP space is to cater to the unique needs and interests of important people and public figures worldwide, such as politicians, artists, actors, musicians, athletes, aristocrats and wealthy individuals, as well as their representatives and service providers.

With each domain registration the registrant supports the concept of I-REGISTRY, the ICANN New gTLD Registry operator of .VIP, to donate parts of the proceeds to charitable causes. Donating to the needy is integral part among the VIPs in many cultures around the world. The purpose of .VIP is to incorporate this spirit and extend it to the Internet. Registrants of .VIP have the opportunity and are

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<sup>1</sup> s18(a) of the posted application.

expected to participate in the allocation of donations. In doing so, .VIP will support bringing more attention to the needy and activating further donations.

The .VIP TLD and its domains names shall provide a unique digital identity, facilitate the exchange among the VIPs on the one side and on the other side facilitate communication between the VIPs, their representatives, service providers to VIPs, fans and Internet users in general more intuitively. .VIP shall contribute to more quality and reliability in communication among very important people, their representatives, relevant service providers, their fans and Internet users in general.”

Although the Objector’s posted application states that the Objector’s proposed new gTLD shall be accessible to “everybody of the VIP peer group”<sup>2</sup>, the Objector has in fact proposed an open registration policy<sup>3</sup>:

“The .VIP space will operate following an unrestricted registration model, meaning that no eligibility criteria or registration restrictions will be imposed upon prospective registrants in the space. The use of Privacy and/or Proxy registration services shall be permitted within this space.”

The Objector is also the owner of the domain name <vip-registry.com> which is currently resolved to a website promoting the Objector’s proposed new gTLD (the “Objector’s Website”).

## **B. Respondent**

The Respondent is a company incorporated in the State of Delaware in the United States of America with its principal place of business in the State of Washington in the United States.

On June 13, 2012, the Respondent’s new gTLD application for the <.vip> string was posted by ICANN under Application ID: 1-1532-71538. The mission/purpose of the Respondent’s proposed new gTLD<sup>4</sup> is as follows:

“This TLD is attractive and useful to end-users as it better facilitates search, self-expression, information sharing and the provision of legitimate goods and services. Along with the other TLDs in the Donuts family, this TLD will provide Internet users with opportunities for online identities and expression that do not currently exist. In doing so, the TLD will introduce significant consumer choice and competition to the Internet namespace – the very purpose of ICANN’s new TLD program.

This TLD is a generic term and its second level names will be attractive to a variety of Internet users. Making this TLD available to a broad audience of registrants is consistent with the competition goals of the New TLD expansion program, and consistent with ICANN’s objective of maximizing Internet participation.

Donuts believes in an open Internet and, accordingly, we will encourage inclusiveness in the registration policies for this TLD. In order to avoid harm to legitimate registrants, Donuts will not artificially deny access, on the basis of identity alone (without legal cause), to a TLD that represents a generic form of activity and expression.

### **DONUTS’ APPROACH TO PROTECTIONS**

No entity, or group of entities, has exclusive rights to own or register second level names in this TLD. There are superior ways to minimize the potential abuse of second level names, and in this application Donuts will describe and commit to an extensive array of protections against abuse, including protections against the abuse of trademark rights...

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<sup>2</sup> s18(b) of the Objector’s posted application.

<sup>3</sup> *Ibid.*

<sup>4</sup> s18(a) of the Respondent’s posted application. The Respondent refers to itself as “Donuts” in the posted application.

## DONUTS' INTENTION FOR THIS TLD

As a senior government authority has recently said, "a successful applicant is entrusted with operating a critical piece of global Internet infrastructure." Donuts' plan and intent is for this TLD to serve the international community by bringing new users online through opportunities for economic growth, increased productivity, the exchange of ideas and information and greater self-expression."

### **5. Parties' Contentions**

#### **A. Objector**

The Objector made submissions in the Objection as follows.

The expression "VIP" is not a term of art within the domain name industry and has no inherent connection to the Internet space generally or to the registration or licence of specific domain names. Accordingly, and by virtue of the Objector's Trade Mark registration in particular under class 45 in respect of "connection and management of Internet domains", the word VIP can, and does, have an important source-identifying function in relation to such services.

The Objector has already taken steps to build its brand, and to secure protection through registering the Objector's Trade Mark, and was making preparations for its business venture well in advance of the Respondent's application for the applied-for gTLD string.

The Objector's Website contains descriptions of the various products and services the Objector intends to offer in connection with the new gTLD, as well as domain name management services more generally.

Notwithstanding the commonly accepted position that TLDs are not source-identifying and do not therefore function as trademarks, with the introduction of new gTLDs, Internet users will understand that the use of a gTLD in connection with a second-level domain represents more than a device they must use as part of a URL. The gTLD itself will take on an important source-identifying function as by definition domain names in any particular gTLD can emanate from only one domain registry source.

The Respondent does not enjoy any trade mark rights in respect of the term "VIP", and the Objector has been unable to locate any use by the Respondent of the term in trade or commerce. The Objector's Trade Mark registration has, however, been a matter of public record since its date of filing, and the Respondent must therefore have been aware of the Objector's Trade Mark in conducting due diligence prior to filing its application for the applied-for gTLD string.

The Respondent's proposed use of the applied-for gTLD in connection with domain name registry services will dramatically dilute and unjustifiably impair the distinctive character of the Objector's Trade Mark, and result in Internet user confusion.

#### **B. Respondent**

The Respondent made submissions in the Response as follows.

The Respondent is a new company specifically created to market generic TLDs online. Its family of companies has applied for nearly 307 new gTLD strings. On top of the over USD 55 million in filing fees the Respondent has paid to ICANN in respect of such applications, the Respondent has invested substantial time, money and other resources in planning to use the applied-for gTLD and its other applied-for strings, including anti-abuse and rights protection mechanisms that exceed those required by ICANN.

The Respondent does not rely on any trade mark rights in respect of the applied-for gTLD string. The Respondent intends to operate the registry for the applied-for gTLD string on an open basis and does not

intend to use the applied-for gTLD string as a trade mark.

The Objector has applied for the Objector's Trade Mark in order to take advantage of ICANN's new gTLD programme. The trade mark rights claimed by the Objector are weak. "VIP" is a generic expression found in the dictionary meaning "very important person". Accordingly, the Objector's Trade Mark possesses very little inherent distinctiveness.

The Objector has failed to establish that the Respondent's proposed use of the applied-for gTLD string will amount to infringement of the Objector's Trade Mark. In order to establish trade mark infringement, the Objector must show the Respondent intended to deceive or confuse others, not just to compete with the mark holder. The Respondent had no knowledge of the Objector prior to receiving the Objection and, in any event, it was under no obligation to search trade mark and domain name records (which would have revealed thousands of uses of the term "VIP" as a claimed trade mark) prior to applying for the applied-for gTLD string, being a generic gTLD string.

The Respondent's intention to make the applied-for gTLD string available for all legitimate registrations demonstrates it does not have the requisite intent to deceive or confuse others in order to establish trade mark infringement.

The Objector's Trade Mark is not a famous or well-known trade mark. To date, there has only been limited use of the Objector's Trade Mark on the Objector's Website, which promotes the intended use of the mark if the Objector's application for the new gTLD is successful. The first two criteria under Section 3.5.2 of the ICANN gTLD Applicant Guidebook (the "Guidebook") are based on the concept of dilution, which cannot apply in the present proceeding as the Objector's Trade Mark is not well-known. The third limb, the requirement to show an impermissible likelihood of confusion, has also not been made out.

## **6. Discussion and Findings**

### **A. Unsolicited Supplemental Filings**

Section 3.4.5 of the Guidebook provides as follows:

"The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence."

The preface to the Procedure reads as follows:

"These Procedures were designed with an eye toward timely and efficient dispute resolution."

Article 17(a) of the Procedure provides as follows:

"The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions."

Article 18 of the Procedure provides as follows:

"In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence."

The above provisions clearly establish that:

1. The over-arching goal of the Procedure is timely and efficient dispute resolution;
2. The Panel has complete discretion whether to request further written submissions and the onus is on the Panel (not on the parties) to request further written submissions; and
3. Only in exceptional cases will the Panel request additional evidence.

The Objector's request was as follows:

"Upon receipt of the Respondent's reply in the matter, my client was surprised by a number of the arguments raised therein, and would kindly request an opportunity to reply to those new or unforeseen arguments. While I fully recognize that there is no automatic right of reply provided for under ICANN's New gTLD Dispute Resolution Procedure or the WIPO supplemental rules, I do note the Panel's discretion to request or admit additional materials or filings under Article 17 of the New gTLD Dispute Resolution policy as outlined in the Guidebook.

Accordingly, my client would kindly request a brief window (perhaps three days) in which to prepare a short reply to the arguments and evidence raised in the Response. Naturally, the Objector understands that the Respondent may be provided with a similar opportunity to reply, in the interest of procedural fairness."

The Respondent's response to the Objector's request was as follows:

"[The Respondent] respectfully requests that WIPO reject [the Objector's] request to start another round of pleadings in this matter. Such a proposal is inconsistent with the letter and spirit of (the Guidebook, the Procedure and the WIPO Rules for New gTLD Dispute Resolution). The WIPO guidelines state that '[w]hile the panel has discretion to order or admit additional written statements, the ICANN dispute resolution procedure typically contemplates a single round of pleadings.'

Moreover, ICANN is clear in Articles 17 and 18 of the Procedure that while the Panel has discretion to 'decide' whether or not any additional submissions by the parties are necessary, ICANN's goal is to resolve 'disputes over new gTLDs rapidly and at reasonable cost.'

Objector has failed to show why additional pleadings are necessary to overcome its burden of proof. Objector's failure to anticipate Applicant's arguments – that it had the better part of a year to consider – should not be sufficient to warrant additional submissions.

The objection process was 'designed with an eye toward timely and efficient dispute resolution.' ... Consistent with this objective, the Procedure provides solely for one mandatory filing from each side... Further, Objector also requests to not only submit additional 'arguments' (i.e. a 'written statement' under Procedure Art. 17) but also additional 'evidence,' which according to the Procedure should only be provided in 'exceptional cases' in order to keep costs manageable...

The parties have exercised the full extent of the rights provided them under the AGB, the Procedure and the WIPO Rules. Applicant submits that to hold otherwise simply because one party claims to have been 'surprised' by a counter-argument would render the limitations of the Procedure essentially meaningless, and would be contrary to ICANN's stated goals of preserving cost-effectiveness and expediency. Any objector could simply claim it failed to anticipate certain evidence and arguments made in a response to garner another 'bite at the apple.' This would establish a troubling precedent both for the instant case and other proceedings. We therefore respectfully urge the Panel to deny Objector's request to submit reply papers."

The Procedure does not allow for submissions in reply. The Panel takes the view that, for this reason, and

given the underlying rationale behind the Procedure of resolving disputes rapidly and at reasonable cost, only in exceptional circumstances should parties be entitled to file submissions in reply. The crucial issue for consideration in this regard is whether sufficient evidence has been adduced in the Objection and in the Response to enable the Panel to reach a fair decision, without the need for additional submissions or evidence.

In the present proceeding, the Panel determines the parties have included sufficient submissions and evidence in the Objection and in the Response to enable the Panel to make a determination under the Procedure, without the need for supplemental filings.

Accordingly, the Panel determines, in all the circumstances, to reject the Objector's request to file supplemental submissions in reply.

In reaching this conclusion, the Panel is fortified by the decision in *I-Registry Ltd v. Vipospace Enterprises LLC*, WIPO Case No. LRO2013-0014, a case involving the same objector as the current proceeding. In *I-Registry Ltd v. Vipospace Enterprises LLC*, the objector, expressing surprise at some of the arguments made by the respondent in the response (as it has done so in the present proceeding), made apparently the same or similar submissions as in the present proceeding in support of its request to file submissions in reply. The panel granted the objector's request, but, having read the further submissions of both parties, concluded that there was nothing therein that was not already apparent from the objection and response, and that the one new topic raised by the respondent was irrelevant:

"On June 19, 2013, the Objector filed its further submission, a Sur-Reply. The Panel has read it, but it contains nothing that was not already evident to the Panel from the Objection and the Response and the Panel finds it difficult to accept that the points raised were not in fact foreseen by the Objector at the time of the Objection. The Objector's reason for not having accepted the Respondent's offer of mediation (there being six applicants for the <.vip> gTLD, mediation with only one of the applicants would have served no useful purpose) seems to the Panel to have been a reasonable one. That is disputed by the Respondent in its response to the Objector's Sur-Reply dated June 21, 2013, but the Panel does not need to resolve that issue in the context of this dispute. One new topic that was raised in the further submissions and giving rise to dispute was as to the criteria that ICANN will regard as important when deciding upon the grant of the new gTLDs and whether or not the parties have met those criteria. This debate has nothing to do with the Legal Rights Objection and the Panel does not need to address it."

## **B. Decision**

In order to prevail, the Objector must establish (under Section 3.5.2 of the Guidebook) that the potential use of the applied-for gTLD by the Respondent:

1. takes unfair advantage of the distinctive character or the reputation of the Objector's registered or unregistered trademark or service mark ("mark"); and/or
2. unjustifiably impairs the distinctive character or the reputation of the Objector's mark; and/or
3. otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the Objector's mark.

In addition to the above broad criteria, Section 3.5.2 of the Guidebook lists eight non-exclusive factors to be taken into consideration by the Panel in deciding a Legal Rights Objection based on trade mark rights, each of which will be addressed below.

**(i) Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the Objector's existing mark.**

There can be no doubt that the applied-for gTLD string is identical to the Objector's Trade Mark.

**(ii) Whether the Objector's acquisition and use of rights in the mark has been *bona fide*.**

The Panel concludes that the Objector's acquisition and use of the Objector's Trade Mark has been *bona fide*. In particular, there is nothing to suggest that the acquisition of such rights in order to support the Objector's application for registration of the <.vip> gTLD has not been *bona fide*.

**(iii) Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the Objector, of the Respondent or of a third party.**

The evidence suggests there is very little, if any, recognition amongst the public of the applied-for gTLD string as the mark of either party, or of a third party. The registration of the Objector's Trade Mark and the use of the Objector's Website are more consistent with preparations to use the applied-for gTLD string than with actual use sufficient to establish the requisite level of public recognition.

The Panel does not agree with the Objector's assertion that, notwithstanding the long-established position that gTLDs do not function as indicators of trade source, new gTLDs will have trade mark significance, simply by virtue of the fact they emanate from only one domain name registry source. Many existing gTLD and ccTLD strings are operated exclusively by one registry, or by a limited number of registries.

Moreover, the Panel notes this question is framed in terms of the current recognition of the Objector's Trade Mark amongst the public, as opposed to any future trade mark recognition that may be generated through future use.

**(iv) Respondent's intent in applying for the gTLD, including whether the Respondent, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the Respondent has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.**

There appears to be a typographical error in the Response, which contains the following assertion:

"Indeed, Respondent can categorically state that the first time that Applicant ever heard of an Academy sporting goods store was when it received this objection. An applicant has no obligation to search trademark or domain name records to determine other uses of the term it proposes to use as, by definition, a generic top level domain. Indeed, had Applicant done so here, it would have discovered thousands of other uses as a claimed mark in the United States alone, and the use of the identical term with a host of other TLDs. This would be true for most, if not all, common dictionary terms or expressions such as "VIP"."

It would appear the Respondent may have engaged the same legal representatives as the respondent in the pending *Academy, Ltd., d/b/a Academy Sports + Outdoors v. Half Oaks, LLC* [WIPO Case No. LRO2013-0003] involving the gTLD string <.academy>. Notwithstanding this somewhat unfortunate mistake, it seems evident from the direct assertions contained in the rest of the relevant section of the Response, including the assertions that (1) the Respondent did not conduct trade mark searches to check whether the Objector (or any other persons) possessed relevant trade mark rights before filing its application for the applied-for gTLD string; and (2) it was under no obligation to do so, that the Respondent intended to assert that, prior to receiving the Objection, it was not aware of the Objector. The Respondent contends, for example, that, *had* it searched the USPTO database, it would have discovered over 1,400 marks and applications in the USPTO database that incorporate some form of the expression "VIP". The Respondent also notes that a search for "VIP" using the Yahoo search engine generates over 140 million hits.



Even if the Panel's interpretation is incorrect, in all the circumstances, the Panel notes, for the record, that it would likely have reached the same conclusion in this proceeding even if the record suggested the Respondent was aware of the Objector, and the registration of the Objector's Trade Mark, prior to filing its application for the applied-for gTLD string.

The Panel rejects the Respondent's contention that, in order to establish trade mark infringement, it must be shown that the alleged infringer intended to deceive or confuse others, not merely to compete with the owner of the trade mark.

The Panel finds force in the Respondent's assertions that, in cases such as this, where the applied-for gTLD string consists of a common generic expression, it is not unreasonable for the Respondent to have been unaware of the Objector's Trade Mark when it filed its application for the applied-for gTLD string.

The evidence on the record does not support a finding that the Respondent has engaged in a pattern of conduct of applying for, registering or operating gTLDs which are identical or confusingly similar to the marks of others.

**(v) Whether and to what extent the Respondent has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a *bona fide* offering of goods or services or a *bona fide* provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.**

The Panel concludes that the Respondent's proposed use for the applied-for gTLD string amounts to a *bona fide* use.

**(vi) Whether the Respondent has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been *bona fide*, and whether the purported or likely use of the gTLD by the Respondent is consistent with such acquisition or use.**

The Respondent has no such marks or other intellectual property rights.

**(vii) Whether and to what extent the Respondent has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the Respondent is consistent therewith and *bona fide*.**

The Respondent has not been commonly known by the sign corresponding to the applied-for gTLD string.

**(viii) Whether the Respondent's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.**

The use to date of the Objector's Trade Mark has been limited. The Objector's Website promotes the intended use of the mark, if the Objector's application for registration of the applied-for gTLD string is successful. The Panel is unable to conclude, in all the circumstances of this proceeding, that such contingent use gives rise to a likelihood of confusion.

## **Conclusion**

Both parties, if their applications are successful, intend to operate the <.vip> gTLD string under an open model, without restriction as to who shall be entitled to apply for registration of domain names under the applied-for gTLD string.

In order to prevail in respect of the first two criteria under Section 3.5.2 of the Guidebook, the Objector must show (1) that the Objector's Mark possesses distinctive character or reputation; and (2) that the

Respondent's proposed use of the applied-for gTLD string will either take unfair advantage of, or unjustifiably impair, the distinctive character or reputation of the Objector's Trade Mark. The Panel concludes that the Objector has failed to establish the requisite level of distinctive character or reputation in the Objector's Trade Mark.

The third limb requires more than just a finding of a likelihood of confusion, there must be an *impermissible* likelihood of confusion. The Panel has determined, under item 8 above, that there is no likelihood of confusion, let alone an impermissible likelihood of confusion.

It has been suggested that all three criteria require a finding of something untoward on the part of the Respondent. See, for example, *Defender Security Company v. Lifestyle Domain Holdings, Inc.*, WIPO Case No. LRO2013-0035. The Panel is unable to conclude, in all the circumstances, that the conduct of the Respondent has been in any relevant way untoward.

The Panel therefore concludes, on the evidence, none of the broad criterion set out in Section 3.5.2 of the Guidebook has been made out.

## **7. Decision**

For the above reasons, the Objection is rejected.

[signed]

**Hughes, Sebastian M W**

Panelist

Date: August 8, 2013