

ADMINISTRATIVE PANEL DECISION

Rocketship AB v. ATTN Domain Inquiries, World Media Group
Case No. D2024-0698

1. The Parties

Complainant is Rocketship AB, Sweden, represented by AWA Sweden AB, Sweden.

Respondent is ATTN Domain Inquiries, World Media Group, United States of America (“United States”), represented by ESQwire.com PC, United States.

2. The Domain Name and Registrar

The disputed domain name <rocketship.com> is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2024. On February 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 20, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on March 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2024. The Response was filed with the Center on March 28, 2024.

The Center appointed Stephanie G. Hartung, Jeffrey Neuman, and Petter Rindforth as the Administrative Panel in this matter on May 2, 2024. 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.

On May 7, 2024, the Panel issued Administrative Panel Procedural Order No. 1, granting Complainant's request and affording Complainant until May 10, 2024, to submit its comments on Respondent's assertions included in the Response and to submit such comments to the Center, moreover, allowing Respondent, in turn, to respond to Complainant's supplemental filing until May 14, 2024. Complainant submitted a supplemental filing to the Response on May 8, 2024, and Respondent, in turn, submitted a supplemental filing thereto on May 14, 2024.

4. Factual Background

Complainant is a company organized under the laws of Sweden that is active since 2018 in the web development, app development, and managed hosting services industry.

Complainant has provided evidence that it is the owner of the Swedish company name "Rocketship AB", registered with the Swedish Companies Registration Office under organization no. 556977-6767 on October 11, 2018.

Moreover, Complainant has demonstrated to own the domain names <rocketship.cloud>, <rocketship.nu> as well as <rocketship.se>, with the latter being since 2018 the main channel for Complainant to market its services in the web and app development industry under its official website at "www.rocketship.se", set up in the Swedish language.

Respondent is a company organized under the laws of the United States that is engaged in the domain name investment business with an emphasis on generic domain names. The disputed domain name was first registered in 1996 by Respondent's owner and CEO Gerald Gorman, who also is the founder and former chairman of Mail.com, Inc., a web-based email company that offers users personalized email addresses at their choice of hundreds of domains names, all of which Mr. Gorman registered. The disputed domain name is one of those domain names which was to be used to offer email addresses. Through a series of corporate transactions, Mr. Gorman retained the disputed domain name. In 2007, Respondent ultimately changed its name to World Wide Media Group, LLC, which is reflected in the current Whois for the disputed domain name. At the time of the rendering of this Decision, the disputed domain name resolves to a landing website with varying content, e.g., generic pay-per-click ("PPC") links entitled "Space", "Outerspace", "Travel", and "Science". It is, however, undisputed between the Parties that at some point before the filing of the Complaint, the disputed domain name resolved to a PPC website with hyperlinks under headings such as "App Development" as well as "Accounting Courses" or "Finance Jobs".

On April 5, 2024, Complainant informed the Center that the Swedish Police had started investigations in relation to the suspected sender of fraudulent emails under the disputed domain name and expressed that it wished – taking into account that the disputed domain had meanwhile ceased to direct visitors to Complainant's competitors – to withdraw the Complaint, to which Respondent did not agree.

Complainant, therefore, requests that the disputed domain name be transferred to Complainant, while Respondent requests to deny the Complaint and to find for a case of Reverse Domain Name Hijacking ("RDNH").

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that:

- a Swedish registered trade name can according to national trademark law constitute a hinder to the registration of a trademark if there is a risk of the trademark being confusingly similar to the trade name (Chapter 2 Article 8 paragraph 3 of the Swedish Trademark Act, and Article 8.4 of the EU Trademark Directive);
- additionally, Complainant has de facto been using since 2018 the word-/device sign



to denote the services which Complainant provides, e.g., through its website which has been in use in Sweden since 2018, marketed, inter alia, through AdWords relating to the relevant services, and when providing quotations for its services;

- the disputed domain name is confusingly similar to Complainant's prior trade name registration, as it consists of the latter in its entirety as well as PPC-links to services, e.g., app development, which are identical to those of Complainant;
- Respondent has actively registered email addresses containing the first and last name of employees and the founder of Complainant with the disputed domain name to commit fraud by ordering products in the name and billing address of Complainant, therefore actively targeting Complainant's registered trade name which has achieved significance as a source identifier;
- Respondent's website under the disputed domain name merely consists of different PPC links to potential competitors or unserious actors on the market that claim to provide services such as app development courses and mobile app development, i.e., identical and very similar services as those provided by Complainant, therefore, Respondent's website is not used for legitimate purposes, but rather to deceive users who are looking to purchase services from Complainant, and so to compete with or capitalize on the reputation and goodwill of Complainant's trade name;
- the disputed domain name has not been actively used at least since November 2021;
- Respondent has in several separate matters, at least in two emails, impersonated persons in leading positions of Complainant through the use of the email addresses consisting of "[first name].[last name]@rocketship.com" and placed orders, with the billing address of Complainant; when Complainant has managed to shut down one of these addresses, Respondent has continued the fraud by using a different first and last name of an employee of Complainant;
- the background of the matter is that Complainant became aware of the disputed domain name when it was used for attempted fraud; Complainant has not, in any way, targeted the disputed domain name based on any potential value;
- after becoming aware of the disputed domain name, Complainant noted that it was being used for marketing similar services as those provided by Complainant; in addition to filing a police report, Complainant then requested the registrar to take down the disputed domain name who responded that the email was outside of the scope of the Registrar and that the issue needed to be directed to the owner of the website under the disputed domain name or the email-hosting provider;
- the purpose of filing the UDRP Complaint was to prevent the continued conflicting and illegal use of Complainant's registered trade name which, by the time of the filing of the Complaint, had become known to Respondent;
- the responsibility for how the disputed domain name is being used cannot be excluded by the mere act of leasing/renting or in some other form allowing a third party to use it; the arrangement, therefore, has the effect of the disputed domain name being used for illegitimate purposes in an indirect way, where the victim of the illegitimate use is unable to direct its claims against the proprietor of the disputed domain name. Such a use is not indifferent from a situation in where a parked webpage is facilitating a user, e.g., through URL links, to visit other domains where, for example, legal and illegal goods are sold;
- in addition, Complainant had no possibility to shut down the activities through the means provided by the web-based email services company Mail.com, as there was no hindrance for the third party to create new accounts;
- Respondent, therefore, knowingly has overlooked the conflicting and illegal use of Complainant's registered trade name in the disputed domain name, and, thus, is using the disputed domain name in bad faith to execute this act of fraud; and

- the false accusation that the purpose of filing the UDRP was to hijack the disputed domain name must accordingly be overlooked, too.

B. Respondent

Respondent contends that Complainant has not satisfied any of the three of the elements required under the Policy for a transfer of the disputed domain name, and that this was a clear case of RDNH.

Notably, Respondent contends that:

- the disputed domain name is a highly common English dictionary word subject to tremendous third-party use, which was registered by Respondent's owner and its predecessors in interest in 1996 – nearly two decades before Complainant existed;
- Complainant does not have enforceable trademark rights under the Policy, neither by virtue of its filing for a Swedish business name in 2014, nor as a common law trademark; in particular, Complainant has not presented evidence of a registered trademark for ROCKETSHIP in any jurisdiction;
- also, Google search results for "rocketship" show many third-party uses of the word in association with schools, businesses, data companies, mobile or web applications, entertainers and more – none of the results seem to show Complainant's Swedish web development/hosting and mobile and web application business;
- there's no possible way Complainant can prove that Respondent targeted the non-existent Complainant when it registered the disputed domain name in 1996, meaning more than 18 years before Complainant was founded;
- rather Respondent purchased the disputed domain name because it was an available, generic dictionary word generic Top-Level Domain ("gTLD") ".com" domain name like the thousands of other generic and highly valuable dictionary word domain names registered by Respondent in the late 1990s and beyond; thus, Respondent registered the disputed domain name based on its meaning as a common English dictionary word and not to target a trademark;
- Respondent has registered hundreds of mail-related domain names for its consumer email business, many which are descriptive terms composed of common words combined with mail or post; also, Respondent creates and develops businesses combined with its portfolio of strong generic domain names, at times by founding the companies and building teams, and in other cases by forming partnerships;
- there are currently 7,061 active users with "[...].@rocketship.com" email addresses;
- since the original registration and creation of the disputed domain name in 1996 (as noted in the historical Whois records), Respondent's CEO and owner, through his entities, has maintained continuous unbroken ownership of the disputed domain name through the various corporate entities which he controlled or owns, including Mail.com, offering users personalized email addresses at their choices of hundreds of affinity domain names;
- the PPC advertising links that have appeared on the website under the disputed domain name were auto-generated by the domain name parking service SmartName that hosts the disputed domain name based on the contextual meaning of the latter or the Google algorithm, and were clearly not targeting Complainant; SmartName shares the revenue earned from the domain names under its PPC services with the domain name owners;
- while there are instances of abuse on any public email platform, the vast majority of users are engaged in appropriate email use and behavior; in any event, Respondent does not control the users or create email addresses in connection with the disputed domain name;
- when Respondent was contacted by Complainant on February 2, 2024, after having identified two allegedly offending email addresses, Respondent replied to Complainant advising that Mail.com is the provider of personalized email services in connection with the disputed domain name and that the emails were not under the control of Respondent (i.e., that Respondent was not creating and sending such emails) and that Mail.com's abuse and take down polices could address any harm;
- Respondent via email connected Complainant with Mail.com and after an investigation conducted by Mail.com, it found that only one of the two offending email addresses were real; according to the emails provided, that email account was suspended for violating the email service's terms and conditions; the

- other email, according to Mail.com, was a “spoofed” email address which although it appeared to be from an email user in connection with the disputed domain name <rocketship.com>, did not actually come from the disputed domain name; therefore, there was nothing that could be done by either Respondent or Mail.com, since the disputed domain name actually used was not under its control;
- despite the prior PPC links having no relationship to Complainant, out of courtesy and in good faith, Respondent logged into the SmartName platform and changed the links to refer only to the descriptive terms: “space”, “outer space”, “travel”, and “science”;
 - since 1996, Respondent has responsibly owned the disputed domain name and acted in good faith at all times; at no time has Respondent targeted the relatively newly created Complainant; and
 - this type of filing is an abuse of the UDRP; by choosing to persist with this case after being placed on notice and able to research and confirm the veracity of the situation, this is nothing more than a dubious claim use the UDRP to wrest the highly coveted disputed domain name from its owner without paying for the asset; given the rise of questionable claims brought by sophisticated businesses concerning highly aged domain names, a finding of RDNH is important for the UDRP and domain owners to deter future claims and abuses of the system.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

A. Identical or Confusingly Similar

First, it is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned, but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Also, as noted in [WIPO Overview 3.0](#), section 1.1.2., for a number of reasons, including the global nature of the Internet and Domain Name System, the fact that secondary meaning may only exist in a particular geographical area or market niche does not preclude the complainant from establishing trademark rights (and as a result, standing) under the UDRP. Noting in this context the availability of trademark-like protection under certain national legal doctrines (e.g., unfair competition or passing-off) and considerations of parity, where acquired distinctiveness/secondary meaning is demonstrated in a particular UDRP case, unregistered rights have been found to support standing to proceed with a UDRP case including where the complainant is based in a civil law jurisdiction.

Complainant has demonstrated to be the registered owner of the Swedish company or trade name “Rocketship AB”, registered with the Swedish Companies Registration Office under No. 556977-6767 on October 11, 2018. As “AB” is the short version of the Swedish term “Aktiebolag”, identifying the type of company (“limited liability company”), it leaves the term “rocketship” as the distinctive part of Complainant’s trade name.

Also, Complainant has shown that under Swedish trademark law, the owner of a registered company or trade name automatically enjoys an exclusive right to use that name as a trademark (“trade symbol”), in that the Swedish Trade Marks Act (SFS 2010:1877, last amended SFS 2018:1652), Chapter 1, Article 8 provides:

“The holder of a trade name or another commercial sign has exclusive rights in the trade name or commercial sign as a trade symbol. If the commercial sign is protected only within a part of the country, the exclusive rights apply only within that territory”. A party using its personal name as a trade symbol has

exclusive rights in the symbol as a trade symbol, provided that the name is distinctive for the goods or services for which it is used. If the name is used only within a part of the country, the exclusive rights apply only within that territory.”

The Panel well notes that under Swedish law, “Aktiebolag” designates a form of companies with full national protection in Sweden, and that the term “rocketship” is the distinctive part of Complainant’s trade name. Also, Complainant, besides pointing to the above mentioned regulations under Swedish law, asserts that a Swedish trade name cannot be registered if there is a risk of confusion with a prior registered trademark or trade name and that in the application process, an examiner conducts an ex officio assessment on, inter alia, any risk of confusion. However, Complainant has not provided any further evidence to support its assertions in this very regard, allowing the Panel e.g. to conclude that trade names under Swedish law enjoy the same or at least a comparable status as a trademark in order to meet the first element standing test. Moreover, Complainant has also kept silent on whether or not its ROCKETSHIP trade name may have acquired some sort of secondary meaning e.g. due to extensive use, allowing the Panel, in turn, to examine the possible establishment of unregistered trademark rights within the meaning of paragraph 4(a)(i) of the Policy (see WIPO Overview,3.0, section 1,2).

Against this background, and in light of the findings set forth under Sections B and C below, the majority of the Panel decided to leave the first element open, while the third member of the Panel has filed a Concurring Opinion below that agrees with the outcome of the case but disagrees with the majority on this element.

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel finds that, before any notice of the dispute, Respondent used the disputed domain name in connection with a bona fide offering of services in accordance with the UDRP, paragraph 4(c)(i).

It has been evidenced by Respondent, and Complainant has not objected thereto, that Respondent has been operating, inter alia, a business of email hosting through the disputed domain name since already 1996 when Complainant neither existed nor was even about to become existing. There are no facts or other circumstances included in the Case File to disbelieve Respondent’s contentions that it purchased the disputed domain name in 1996 because it was an available, generic dictionary word gTLD “.com” domain name like the thousands of other generic and highly valuable dictionary word domain names registered by Respondent and/or its predecessors in the late 1990s and beyond; thus, it is reasonable to argue that Respondent registered the disputed domain name based on its meaning as a common English dictionary word and not to target a specific trademark. Moreover, it also sounds reasonable, and has not been questioned by Complainant as such either, that the disputed domain name forms part of Respondent’s consumer email business which includes hundreds of mail-related domain names, many of which are descriptive terms composed of common words combined with the terms “mail” or “post”; also, Respondent creates and develops businesses combined with its portfolio of strong generic domain names, at times by founding the companies and building teams, and in other cases by forming partnership. Finally, it should be noted that the MX records activated under the disputed domain name point to the legitimate email service business of Mail.com, too. This Panel, thus, concludes that the primary purpose of Respondent’s making

use of the disputed domain name is bona fide within the meaning of paragraph 4(c)(i) of the Policy, thus constituting rights or legitimate interests therein.

Such finding is not in contrast to the fact that the disputed domain name resolved temporarily to a typical PPC website with hyperlinks to subjects such as “App Development”, which is at the core of Complainant’s business in Sweden. UDRP panels recognize that the use of a domain name to host a page comprising PPC links would be permissible, and therefore consistent with respondent rights or legitimate interests under the UDRP, where the domain name consists of an actual dictionary word or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word or phrase comprising the domain name, and not to trade off the complainant’s or its competitor’s trademark (see [WIPO Overview 3.0](#), section 2.9).

In the case at hand, Complainant alleges that Respondent’s website under the disputed domain name at some point merely consisted of different PPC links to potential competitors or unserious actors on the market that claim to provide services such as app development courses and mobile app development; however, Complainant fails to bring any evidence in that respect, plus that other links on this PPC website pointed to services that clearly had nothing to do with Complainant (e.g., “Accounting Courses” or “Finance Jobs”), indicating that those links rather did not go to any of Complainant’s competitors. In turn, Respondent has shown that current Google search results for the term “rocketship” show many third-party results related to, among other things, schools, data companies, applications and other technological web companies unrelated to Complainant, moreover, that e.g., in the United States at Respondent’s place of business, there are a number of companies with the term “rocketship” (such as “RocketShipIT”, “HostRocket”, Rocketship hosting”, “Rocket.net”), all of which provide app development and hosting services such as Complainant (who apparently operates only in Sweden through a website at “www.rocketship.se”, set up in the Swedish language). In addition, to the extent that Complainant does have trademark rights, the Swedish law makes it clear that those rights only extend to the specific locale in Sweden where Complainant operates and does not apply outside of that limited territory.

Against this background, there is no reason for this Panel to conclude that Respondent, by using the disputed domain name as part of its email hosting business, at any point of time specifically targeted Complainant, but rather holds that Respondent used the disputed domain name in a bona fide manner as set forth by paragraph 4(c)(i) of the Policy.

The Panel, therefore, finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Third, for the sake of completeness and in light of Respondent’s request to find for a case of RDNH, the Panel holds that the evidence submitted by the Parties does not indicate that Respondent’s aim in registering the disputed domain name was to profit from or exploit Complainant’s ROCKETSHIP trade name; in particular, Respondent did not register the disputed domain name in bad faith targeting Complainant or its trade name rights because, undisputedly, Complainant had no trademark rights at the time that Respondent registered the disputed domain name. [WIPO Overview 3.0](#), section 3.8.1.

It is totally undisputed between the Parties that Complainant neither existed nor had acquired any rights in the designation “rocketship” (whether by means of a trademark or trade name) when the disputed domain name was acquired by Respondent in 1996 as an available, generic dictionary word gTLD “.com” domain name, and that it was simply impossible that Respondent could have targeted Complainant by the time of its registration of the disputed domain name. Respondent’s CEO and owner has maintained continuous unbroken ownership of the disputed domain name through the various corporate entities which he controlled or owns, with registration of the disputed domain name in 1996.

The Panel, therefore, finds the third element of the Policy has not been established, either.

D. Reverse Domain Name Hijacking

Finally, this Panel, needs to decide on Respondent's request to find for a case of RDNH.

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at RDNH or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute RDNH. [WIPO Overview 3.0](#), section 4.16.

In taking this decision, the Panel has well noted Complainant's line of argumentation that the purpose of filing the UDRP Complaint was to prevent what it viewed as conflicting and illegal use of Complainant's registered trade name ROCKETSHIP as part of fraudulent emails set up under the disputed domain name, all of which are circumstances which, by the time of the filing of the Complaint, had become known to Respondent. The latter, in turn, argues that those emails were not under Respondent's control (i.e., that Respondent was not creating and sending such emails, rather that there are currently 7,061 active users with "[...].@rocketship.com" email addresses) and that Mail.com's abuse and take down policies could (and did) address any harm; also, Respondent points to the fact that since the original registration and creation of the disputed domain name in 1996, Respondent's CEO and owner has maintained continuous unbroken ownership of the disputed domain name through the various corporate entities which he controlled or owns, including Mail.com.

By the same time and as stated above, it is totally undisputed between the Parties that Complainant neither existed nor had acquired any rights in the designation "rocketship" (whether by means of a trademark or trade name) when the disputed domain name was acquired by Respondent and its predecessors in 1996 as an available, generic dictionary word gTLD ".com" domain name, and that it was simply impossible that Respondent could have targeted Complainant by the time of the registration of the disputed domain name.

In this context, this Panel recalls the fact that in order to succeed on the third element under the UDRP set forth by paragraph 4(a)(iii) of the Policy, Complainant carries the burden of proving that the disputed domain name has been registered *and* is being used in bad faith (so-called conjunctive requirement) which is why UDRP panels agree that reasons for finding RDNH include facts which demonstrate that the complainant knew it could not succeed as to any of the three required elements, such as registration of the disputed domain name well before the complainant acquired trademark rights (see [WIPO Overview 3.0](#), section 4.16).

Consequently, the facts in this case demonstrate that Complainant knew or should have known that it could not succeed in demonstrating the registration and use of the disputed domain name in bad faith. Complainant, represented by counsel, also did not disclose to the Panel in either its original filing, nor did it even acknowledge in its supplemental filing, that its allegations of the fraudulent email addresses had been responded to, and in fact, addressed by Respondent and its email service provider. Yet, despite knowing Respondent's service was being used by thousands of users for more than two decades, and that in those two decades, it can only point to one instance in which an actual email address was used for improper purposes (where upon notice Respondent's service providers took immediate action), Complainant continued to argue in its supplemental filing that Respondent was "using the domain rocketship.com in bad faith to execute the act of fraud." It needs by emphasized that the UDRP is not intended to be a mechanism to address allegations of general fraud, but rather only cases where a complainant can prove that the disputed domain name was both registered and used in bad faith. Complainant, represented by counsel, evidently knew, or should have that this could not have been the case here, which is why bringing this UDRP Complaint constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

Moreover, the Panel finds that this Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/Stephanie G. Hartung/
Stephanie G. Hartung
Presiding Panelist

/Jeffrey Neuman/
Jeffrey Neuman
Panelist

/Petter Rindforth/
Petter Rindforth
Panelist
Date: May 23, 2024

Concurring Opinion

I wholeheartedly agree with the outcome of this case and the finding of Reverse Domain Name Hijacking. However, I am not convinced that Complainant has satisfied its burden of proof that it has standing to bring this action. More specifically, Complainant has not demonstrated that it has trademark rights in the ROCKETSHIP mark.

It is understood that Complainant has a trade name under the Trademark Act of Sweden ("Act"). And that Act does state that a proprietor of a trade name has exclusive rights in the trade name as a trade symbol. However, the Act then states that "A party using his or her name as a trade symbol has exclusive rights in the symbol as a trade symbol; provided that the name is distinctive for the goods or services for which it is used."

In this case, Complainant concedes that it does not have a registered trademark with Sweden's national trademark office. WIPO Overview Section 1.3 states that where a mark is not registered, to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

"Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys [...]. Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning."

In this case, Complainant merely provided conclusory allegations of unregistered rights and does not provide any of the types of evidence identified in the WIPO Overview. Therefore, I believe that the Panel should not have found that Complainant satisfied the first element of the UDRP.

/Jeffrey Neuman/

Jeffrey Neuman

Panelist

Date: May 23, 2024