# Decision for dispute CAC-UDRP-101405

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| Case number | CAC-UDRP-101405 |
| Time of filing | 2017-01-18 08:22:06 |
| Domain names | PERSPIREX-VN.COM |

## Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

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| Organization | Riemann Trading ApS |

## Complainant representative

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| Organization | BrandIT GmbH |

## Respondent

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| Name | Ba Duyen |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a number of trademarks, including International Trademark Registration with number 770743 PESPIREX in classes 3 and 5, which designates several countries all over the world, including Viet Nam, which trademark was registered on November 21, 2001 (the "Trademark").

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1. As the language of the registration agreement is Vietnamese, the Complainant filed a request that the language of the proceeding should be English based on the fact that (a) the Respondent has not replied to the Complainant's cease and desist letter and reminders, and more particularly has not responded that he did not understand the content of the letter, (b) the disputed domain name contains the Trademark, and the Complainant company's language is English and (c) language disputed domain name contains the Trademark coupled with a hyphen and the letters “vn”, which is an abbreviation in the

English language of the country code for Viet Nam, where the Respondent is located. This means that the Respondent is aware of the use of the English language by adding the letters "vn" to the disputed domain name while registering it; and (d) translation of the Complaint would cause unnecessary delay and the Complainant would be unfairly disadvantaged by being forced to translate, as the translation would raise high costs.

2. The Complainant was founded in 1979 in Denmark and currently focuses on two niche brands, an antiperspirant "Perspirex", and a sunscreen "P20". The Complainant sells its products in different markets worldwide, including Asia.

3. The disputed domain name was registered on September 26, 2016 and directly and entirely incorporates the Trademark, coupled with a hyphen and the letters "vn", which is the commonly known country code for Viet Nam, where the Respondent is located. This exaggerates the impression that the Respondent is somehow affiliated with the Complainant, and the Respondent is somehow legitimately doing business in Viet Nam using the Trademark. For the above reasons, the disputed domain name should be considered as confusingly similar to the Trademark.

4. The Complainant has not found that the Respondent is commonly known by the disputed domain name. as the Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that it will be used in connection with a bona fide offering of goods or services. There is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive identifier associated with the Trademark and that the intention of the disputed domain name is to take advantage of an association with the business of the Complainant. At the time of the filing the Complaint, the disputed domain name did not resolve to an active website. The Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the disputed domain name. Clearly, the Respondent is not known by the disputed domain name, nor does the Respondent claim to have made legitimate, non-commercial use of the disputed domain name. Moreover, the Complainant had never authorized the Respondent to use the Trademark in any form.

5. The Trademarks significantly predate the registration of the disputed domain name. In addition, the Complainant has a strong business presence in the Asian continent where the Respondent resides. These facts clearly demonstrate that Respondent was aware of the Trademark at the time of the registration of the disputed domain name.
The Complainant sent a cease and desist letter and a reminder to the Respondent´s email address listed in the whois record. No reply was received and the Respondent has simply disregarded such communication. The failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith in earlier UDRP cases. Further, the inaction in relation to a domain name registration can also constitute a domain name being used in bad faith and any attempt to actively use the disputed domain name would lead to confusion as to the source, sponsorship of the Respondent´s web site among the internet users who might believe that the web site is owned or in somehow associated with the Complainant. These cumulative factors clearly demonstrates that Respondent should be considered to have registered and to be using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad

faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Language of the proceedings

Article 11(a) of the Rules provides that “[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The language of the Registration Agreement is Vietnamese.

The Panel shall use his discretionary authority to decide that the language of the proceedings shall be English for the following reasons:
(a) the Respondent received the Complainant's communications and failed to reply and therefore did not express in any way that he cannot answer the allegations since he does not understand English; and
(b) the Complainant has submitted its Complaint and supporting evidence in English and, therefore, if the Complainant were required to submit all documents in Vietnamese, the administrative proceeding would be unduly delayed and the Complainant would have to incur substantial expenses for translation.
(cf. Aktiebolaget Electrolux v. Domain Admin, whoisprotection.biz / Emrecan ARSLAN, WIPO Case No. D2015-0298);
(b)

2. Substantive issues

a. The disputed domain name includes the entire Trademark with the addition of "-vn", which represents the country code for Viet Nam. According to standard case law under the UDRP an addition of a generic term to a trademark does not take away the similarity between domain name and trademark. The Panel therefore finds that the disputed domain name is confusingly similar to the Trademark.

b. The Panel finds the Complainant has established that the Respondent was not licenced or authorised to use the Trademark in the disputed domain name. Furthermore, the Panel finds the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. The Panel therefore finds the Respondent has no rights or legitimate interests in respect of the disputed domain name.

c. The Panel is satisfied that the Respondent registered the disputed domain name in bad faith as the disputed domain name incorporates the entire Trademark, which Trademark is distinctive, so that it is likely that the Respondent was familiar with the Trademark when he registered the disputed domain name. Further, the Panel is satisfied that the Respondent used the disputed domain name in bad faith, even though it did not resolve to an active website, as the Respondent chose to ignore the Complainant's cease and desist letter and communications and there is a genuine threat that the Respondent shall use the disputed domain name to create confusion with the Complainant and/or take unfair advantage of the Trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **PERSPIREX-VN.COM**: Transferred

## PANELLISTS

| Name | Alfred Meijboom |
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DATE OF PANEL DECISION 2017-02-23

Publish the Decision