Decision for dispute CAC-UDRP-100945

Case number	CAC-UDRP-100945
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Domain names	trisol.farm

Case administrator

Name	Lada Válková (Case admin)

Complainant

Name	Lenka Gallová

Complainant representative

Name	Mgr. Marek Vojáček

Respondent

Organization	TRISOL farm s.r.o.

Respondent representative

Name	Mgr. Petr Bureček

OTHER LEGAL PROCEEDINGS

No legal proceedings exist.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the Czech national trademark “TRISOL”, reg. no. 267239, date of priority 9 March 2004, which is registered under class (1) for chemical products intended for agriculture, gardening, and forestry, in particular, root and growth stimulators, flowering, plant regeneration, natural and artificial fertilisers. According to the License Agreement dated 23 January 2015 and with effect from 30 January 2015, is TRISOL the exclusive user of this trademark.
In addition, the Complainant is the owner of the Czech national trademark “TRISOL AKTIVÁTOR”, reg. no. 292842, date of priority 23 May 2006, which is registered under class (1) for chemical products intended for agriculture, gardening, and forestry, in particular, root and growth stimulators, flowering, plant regeneration, natural and artificial fertilisers. According to the License Agreement dated 23 January 2015 and with effect from 30 January 2015, is TRISOL the exclusive user of this

trademark.
The above trademarks of the Complainant are referred to hereafter as the “Trademarks”.

FACTUAL BACKGROUND

Complainant
The Complainant is a private individual and also the executive director and sole shareholder of TRISOL s.r.o., ID no. 01426486, with its registered office at Prague 1 – Nové Město, Opletalova 921/6, postal code 110 00, Czech Republic, entered in the Commercial Register at the Municipal Court in Prague, Section C, Insert 228982 (“TRISOL”). TRISOL is a well-established producer and seller of fertiliser and other cultivation products.
The Complainant is the user of the domain name trisol.cz (the “Trisol domain”), which is used, among other things, to promote the products of the brand name GALLEKO (fertiliser and nutritive substances for plants) produced by TRISOL s.r.o. The Trisol domain is formally held by L&I Consulting, s.r.o., ID no. 36659487, with its registered office at Clementisova 664/6, Trenčín, postal code 911 01, Slovakia, whose sole shareholder and sole executive director is the Complainant.

Respondent
The Respondent is a limited liability company registered in the Commercial Register at the Regional Court in Ostrava, Section C, Insert 20584. The Respondent sells fertiliser and cultivation products.
Until 12 January 2015, the Respondent conducted its business under the name DURST VJV s. r. o., ID no. 25835921, with its registered office at Bolatice, 1. máje 553/32, postal code 747 23, Czech Republic. On 12 January 2015, the Respondent unjustifiably and deliberately changed its business name to the current “TRISOL farm s.r.o.”.
The disputed domain name was registered on 13 August 2014.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant claims the Respondent (still under the former name DURST VJV s.r.o.) registered the disputed domain name “trisol.farm”, which it uses as a part of its business activities to promote and sell its products – fertilisers and cultivation products, whereas it unjustifiably designates these products with a title consisting of two words, a part of which is the Trademark protected under the “TRISOL” designation.
According to the Complainant, from 18 August 2014, the Respondent is the holder of the disputed domain name. The name of the disputed domain name is created entirely with the designation “TRISOL”, which is identical to the Trademark “TRISOL” owned by the Complainant. By registering and using the disputed domain name for promoting its products that are identical or similar to those registered under the Complainant’s Trademarks, the Respondent unjustifiably infringed the rights to the Complainant’s Trademarks
In addition, the Respondent uses the disputed domain name to promote its products, designated with the name “TRISOL”, which is protected by the Trademarks owned by the Complainant [Article 4(a)(i) of the Policy]. The Respondent does not have any legitimate rights to the designation “TRISOL” protected by the Trademarks [Article 4(a)(ii) of the Policy]. In this respect, the Complainant emphasises that the change in the Respondent’s business name to the current Trisol farm was made after the Respondent registered the disputed domain name. Hence, at the time of registration of the disputed domain name, the Respondent did not have any right to the designation “TRISOL”. Moreover, registration of the business name Trisol farm is, in itself, unlawful, as described below, and the Complainant intends to challenge this registration at the competent court.
The Complainant emphasises that the Respondent is not authorised without the Complainant’s consent to use or act as the owner of the designation “TRISOL” and to promote it on the publicly accessible domain, which also gives the impression that it is administered by the Complainant as the owner of the Trademarks. Such conduct of the Respondent constitutes an infringement of the rights of the Complainant to the Trademarks. Such conduct may also be qualified as unfair competition pursuant to the applicable national legislation, as stipulated below.

The Complainant also refers to the fact that the Respondent currently does business under a name that is confusingly similar to the business name of the company TRISOL, of which the Complainant is the executive director and sole shareholder. TRISOL, however, has been doing business under this name since 16 May 2013, whereas the Respondent did

not change its current business name until 12 January 2015. It is clear that the Respondent's name change from the original DURST VJV s.r.o. was deliberate and calculated and demonstrates the intention of the Respondent to free-ride on the familiarity and good reputation of the Complainant's Trademarks and illustrates the context and purpose of the registration of the disputed domain name. Using a business name that is confusingly similar with the Trademarks is, in and of itself, an infringement of the Complainant's rights to the Trademarks. The Complainant notified the Respondent in writing of the unlawful nature of its actions, but to no avail.
The Complainant asserts that the Respondent registered the disputed domain name at a time when it was not doing business under the current name TRISOL farm s.r.o., but still under the business name DURST VJV s.r.o., which was not changed to the current name until 12 January 2015. Hence, the Respondent has no right to use the designation "TRISOL" nor did it have this right at the time of registering the disputed domain name.
The Complainant contends that the overall content presented on the disputed domain name also gives the impression that the Respondent is the owner or the authorised user of the Trademarks. In addition, the registration and use of the disputed domain name which contains the Complainant's entire trademark "TRISOL" and which is confusingly similar with the Trisol domain used by the Complainant is unlawful when taking into account all circumstances.
Without a doubt, if the Respondent uses the Trademarks protected under the designation "TRISOL" on the disputed domain name and also offers products on this domain designated as "TRISOL", it is acting inconsistent with Section 8(2a) of Act no. 441/2003 Sb., on trademarks (the "Trademark Act"), under which no one is permitted to use in business conduct a sign or designation identical to a registered trademark without the consent of the trademark owner for products or services that are identical to those registered under the trademark. The Complainant is entitled, under Section 2 and Section 4 of Act No. 221/2006 Coll., on the enforcement of industrial property rights, to defend herself against such infringement. Moreover, such conduct constitutes a gross breach of fair commercial practices and competition (unfair competition), against which the Complainant is also entitled to defend herself.
With respect to the above-described circumstances in the case and in consideration of paragraph 4(a)(iii) in connection with paragraph 4(b) of the Policy, the Complainant is convinced that the Respondent registered the disputed domain name in bad faith from the very beginning, inasmuch as:
i. it registered the disputed domain name primarily for the purpose of interrupting the Complainant's business activities, since the Respondent has no legal title for using the disputed domain name, and on the contrary, registration of the disputed domain name infringes the rights of the Complainant to her Trademarks in the manner described above;
ii. the disputed domain name is confusingly similar with the Trisol domain used by the Complainant and her company TRISOL, whereas it also deceives consumers and leads users away from the Internet pages used by the Complainant to the pages operated under the disputed domain name whilst consumers reasonably assume that the disputed domain name in the wording of the Trademarks and the products promoted and offered there are produced by the Complainant or her company TRISOL;
iii. registration of the disputed domain name by the Respondent prevents its use by the Complainant as the owner of the Trademarks in an identical wording, whereas the Respondent unlawfully offers and promotes on the disputed domain name its own products with the designation "TRISOL" protected by the Trademarks owned by the Complainant

RESPONDENT:
The Respondent states that the complaint is unjustified in all of its claims and should be dismissed
The Complainant failed to describe in the complaint that for the long time there existed collaboration and legal relations between both Complainant and companies she owns or represents on one side and Respondent and other companies owned or represented by Pavel Bezděk on the other side. Respondent feels obligated to disclose at least rough outline of these activities as they might play a fundamental role in this proceedings.
The Respondent would like to emphasize that designation "TRISOL" is well-established brand in fertilizer and stimulant industry. The Complainant did not contribute, in any way, to the creation of designation "TRISOL". The designation "TRISOL" was created in 2003 by Alois Vančura, born 15 June 1947 (representing the company Kontura s.r.o., ID no. 25118536, with its registered office at Vondroušova 1187/35, Řepy, 163 00 Praha 6, Czech Republic) and Pavel Bezděk, born 12 November 1961 (representing the company then known as DURST VJV s.r.o., now TRISOL farm s.r.o. – the Respondent). Both Alois Vančura and Pavel Bezděk agreed on terms of future collaboration, branding, development and distribution of products carrying the designation "TRISOL" and on 16 December 2003 concluded the Collaboration Agreement in this regard.
The "TRISOL" fertilizers were in accordance with Czech legislation registered (in sense of the act no. 156/1998 Coll.) with the authorities – Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ). The supporting evidence of this claim

can be found in bulletins published by ÚKZÚZ (for example year IV – issue no. 1, year VII - issue no. 2, year VIII - issue no. 2, year VIII - issue no. 1, year IX - issue no. 2, year IX - issue no. 1, year X - issue no. 1), which contain registration number of each fertilizer together with the name of applicant and manufacturer. One can, for example, find records of the following fertilizers: “TRISOL aktivátor” (reg. no. 2580), “TRISOL CUKROVKA” (reg. no. 2583), “TRISOL FOLIAR” (reg. no. 2865), “TRISOL květ” (reg. no. 2452), “TRISOL list” (reg. no. 2451), “TRISOL LIST MIKRO” (reg. no. 2584), “TRISOL OLEJNINY” (reg. no. 2582), “TRISOL PLANTAREGEN” (reg. no. 2585), “TRISOL postřik na list - pomocný rostlinný přípravek” (reg. no. 2527), “TRISOL STIMUL plus” (reg. no. 2866) or “TRISOL SUPER” (reg. no. 2526). In each one of those cases, the applicant is either Kontura s.r.o or Respondent (under former company name DURST VJV s.r.o.) or both of these companies.
The first “TRISOL” branded product entered the market in 2004. This brand, from the very beginning, was connected to Pavel Bezděk and Alois Vančura and their companies DURST VJV s.r.o (now known as TRISOL farm s.r.o.) and Kontura s.r.o respectively. Those two made “TRISOL” well-established name in the eyes of general public. The trademark “TRISOL” (reg. no. 267239) was registered at Industrial Property Office of The Czech Republic by Alois Vančura and the before mentioned Collaboration agreement (dated 16December 2003) allowed Pavel Bezděk to use trademark “TRISOL” without limitation for distribution and manufacturing products carrying name “TRISOL”.
The current graphical representation of “TRISOL” was created by Ing. Pavel Bezděk as specified by the above-specified Collaboration agreement and Copyright agreement concluded on 5 July 2007 between Pavel Bezděk and Martin Zika, with office at Hudečkova 1, 405 01 Děčín 1, Czech Republic (Pavel Bezděk is thus holder of copyright rights for such graphical representation).
The company TRISOL, s.r.o., ID no. 28225627, with its registered office at Praha 2 - Nové Město, Gorazdova 332/20, postal code 12000 (now known as BEIDEA s.r.o., with its registered office at Dolní 142/6, 747 23 Bolatice) was founded on 21 January 2008 for sales and marketing of “TRISOL” products which were solely produced by DURST VJV s.r.o. The only owners and representatives of TRISOL, s.r.o., ID no. 28225627 (now known as BEIDEA s.r.o.) were Alois Vančura and Pavel Bezděk. The above mentioned collaboration agreement allowed Ing. Pavel Bezděk and his companies TRISOL, s.r.o. (now BEIDEA s.r.o.) and DURST VJV s.r.o. to use the name “TRISOL” (in a good faith) for products manufactured and distributed by these two companies of Pavel Bezděk.
In 2011 the above mentioned companies started to supply Complainant's companies FORSOL, s.r.o., ID no. 44195206, with its registered office at Kasárenská 9, 911 05 Trenčín, Slovakia and L&I Consulting, s.r.o., ID no. 36659487, with its registered office at Clementisova 664/6, 91101 Trenčín, Slovakia, with “TRISOL” products.
This led to further negotiations between Pavel Bezděk, Alois Vančura and Complainant at the end of 2012. Negotiations resulted in further collaboration with Complainant on the Czech market, specifically sales of products manufactured by TRISOL, s.r.o. and DURST VJV s.r.o. (in order to increase marketability, as has already been predicted in Collaboration agreement concluded on 16 December 2003). The Complainant was allowed to resell products manufactured by TRISOL, s.r.o. and DURST VJV s.r.o. on the already well-established Czech market with fertilizers and stimulants, while TRISOL, s.r.o. and DURST VJV s.r.o. should focus mainly on production of whole range of “TRISOL” branded products. The significant amount of know-how was also transferred to Complainant. Some structural changes took place in the above mentioned companies in order to accommodate for the collaboration with the Complainant.
The Complainant founded the company 11022013 s.r.o., ID no. 01426486, with its registered office at Krapkova 1159/3, Nová Ulice, 779 00 Olomouc on 19.2.2013. Upon agreement of above mentioned parties, TRISOL s.r.o. got renamed to BEIDEA s.r.o. on 26 April 2013 and company 11022013 s.r.o. got (effective on 16 May 2013) renamed to TRISOL s.r.o. (now with its registered office at Opletalova 921/6, Nové Město, 110 00 Praha 1).
On 6 February 2013 there was concluded above-mentioned Trademark transfer agreement between Alois Vančura and the Complainant. The subject of that transfer was the trademark “TRISOL”, which is registered with Industrial Property Office of The Czech Republic, reg. no 267239.
The relations between Ing. Pavel Bezděk and the Complainant deteriorate significantly afterwards. This was caused mainly by skyrocketing debt of Complainant's company TRISOL s.r.o. (ID no. 01426486) towards DURST VJV s.r.o. (now known as TRISOL farm s.r.o.). This debt for delivery of fertilizers and stimulants went to millions of Czech crowns. A noticeable example of this is Complainant's company letter dated 5 June 2014 (signed by Complainant herself), in which Complainant's company acknowledges debt towards DURST VJV s.r.o. of at least CZK 2 357 322 (the real debt is much higher). Complainant's TRISOL s.r.o. also acknowledges inability to meet its financial obligations (defaulting).
In the light of the above described circumstances it is obvious that the Complainant and her companies – when in default and unable to succeed with their products on the market - consistently try to damage good name and reputation of Pavel Bezděk's companies as well as reputation of his customers, maybe in attempt to negotiate waiver on the above mentioned

debt. Such behaviour in itself must be considered a breach of fair commercial practices and competition. Nature of such behaviour can be demonstrated on communication between the Complainant's legal representative and a legal representative of Respondent`s customer A-V Stimul s.r.o., dated 30 March 2015, in which the Complainant is requested to stop her illegal practices.

From the foregoing follows that the Respondent's company (respectively Pavel Bezděk as the representative and the shareholder in this company and the company BEIDEA s.r.o.) is together with Alois Vančura (without any Complainant's intervention) originator of the „TRISOL" designation, as well as products of this brand manufactured subsequently. It is only his achievement that this designation is publicly known. It is necessary to point out that this happened in completely legal and legitimate way and in good faith on the side of Pavel Bezděk and his companies.
Thus, if the Complainant states in the complaint that her company TRISOL s.r.o., ID no. 01426486, is well established manufacturer and distributor of the fertilizer products, she deliberately misleads the panel by confusing the initial company Ing. Pavel Bezděk - TRISOL s.r.o., ID no. 28225627 (now BEIDEA s.r.o.), which is the originator of the "TRISOL" designation and "TRISOL" brand products with her new company, TRISOL s.r.o., ID no. 01426486, which was established in the year 2013 as 11022013 s.r.o. It is obvious that this is entirely new company operating on the market with a registered capital of CZK 200 000. According to the statistical data recorded in the Register of the Economic Subjects of the Czech Statistical Office, it belongs to the sector of smallest companies (number of employees in the category 1 – 5 employees). This company obtained the right to use the discussed trademark „TRISOL" (based on the Licence Agreement for the Trademarks concluded with the Complainant) just at the beginning of this year, i.e. shortly after the acquisition of the right by the Complainant.
On 18 April 2014 Pavel Bezděk also applied for registration of the combined trademark TRISOL (used by him for a long time) at the Industrial Property Office of the Czech Republic (application no. 515765) for the similar group of products and services, whose form is evident from the attached printout from the Trademark Database.
As mentioned above, such a combined designation was used by Pavel Bezděk and his company long before the filing of the application (in this form from since 2007, when it was created based on the aforementioned Copyright Agreement from 5 July 2007). In the opinion of the Respondent, the bad faith is actually on the Complainant's side, respectively its company TRISOL s.r.o., since it filed an application on 25 February 2015 at the Industrial Property Office of the Czech Republic for the registration of the identical combined trademark TRISOL (application no. 520339) for the same group of products and services (no. 1, 35 and 42).
It is also necessary to point out the fact that Pavel Bezděk's company BEIDEA s.r.o., ID no. 28225627 (formerly known as TRISOL, s.r.o., with its registered office at Praha 2 - Nové Město, Gorazdova 332/20) is the rightful owner of registered trademark including the word "TRISOL". BEIDEA s.r.o. is owner of registered trademark „TRISOL FOREST GUARD" (reg. no. 314297), registered by Industrial Property Office of the Czech Republic on 31 March 2010, as proven by attached Extract from the Trademark Register (in this extract the company BEIDEA s.r.o. is listed under its previous company name TRISOL, s.r.o. – not to be confused with Complainant's company TRISOL s.r.o., ID no. 01426486, former 11022013 s.r.o.
In the light of above mentioned facts, the "good will" of Pavel Bezděk and his companies is evident. The use of designation „TRISOL" by Pavel Bezděk and his subsidiaries is legitimate as well as use of disputed domain name „trisol.farm".
The Respondent also points out that the application for transfer of the trademark „TRISOL" (reg. no. 267239) from Alois Vančura to Complainant was submitted on 19 January 2015 and effective on 20 January 2015. According to the Trademark transfer contract concluded on 6 February 2013, the Complainant's obligation was to pay CZK 1 176 000 for the trademark transfer in annual instalments of CZK 235 200, starting on 30 June 2013 and ending on 30 June 2017 (article 4 of above-mentioned agreement). Both parties agreed that the trademark "TRISOL" will be transferred only after the full payment of the above mentioned sum CZK 1 176 000 (article 5/2 of above-mentioned agreement), i.e. after 30 June 2017.
However, the trademark transfer occurred on 20 January 2015. It is obvious that the Complainant intentionally broke to contract in order to achieve faster trademark transfer, probably in order to achieve means to damage Pavel Bezděk's good name and reputation, as well as reputation and good name of his subsidiaries.
It is beyond any doubt that until the date of trademark transfer Pavel Bezděk was legally allowed to fully use designation "TRISOL" according to the Collaboration agreement concluded on 16 December 2003 between Pavel Bezděk and Alois Vančura.
The Respondent refers to the fact that he registered the disputed domain name on 13 August 2014 and has used it since as a natural consequence of the above-described facts, i.e. especially in relation to the creation of the designation „TRISOL" and long-term business activities in manufacturing and selling products of the TRISOL brand.
At the same time, it is a fact that the Respondent, starting from 12 January 2015, i.e. before the trademark „TRISOL" has

been transferred to the Complainant, operates under the company name TRISOL farm s.r.o. This company name was properly entered into the Commercial Register of the Czech Republic in accordance with the laws of the Czech Republic. It is necessary to note that such change of company name is subject to scrutiny by the court keeping the Commercial Register and should there be any conflict with the Complainant's rights the company name change would be denied. Also for this reason it is, according to the Respondent, absolutely legal and legitimate for him to use the disputed domain name, which is identical to the Respondent's company name.
Regarding the products manufactured and distributed by the Respondent (or by the company BEIDEA s.r.o.), then for this should be noted that currently (and at least since the time of registration of the trademark „TRISOL" for the Complainant), the Respondent does not offer products labelled with the designation „TRISOL". Respondent instead manufactures his products under designation „TS", which is designation without any possibility of confusion with the original designation „TRISOL". Respondent does so solely for purpose of avoiding possible conflicts with the Complainant and her possible rights. Therefore it can be safely concluded that screenshots attached to the complaint are not screenshots made after the Complainant acquired the trademark "TRISOL", but before this moment, thus completely irrelevant. This can be proven by attached screenshot of the index page and products page of his website (note the contact person in the corner of the page) and also by attached catalogue of Respondent's products (also available on the website „www.trisol.farm").
The Respondent denies that the website of the Respondent and Complainant's website are interchangeable in any way, in the visual aspect as well as in terms of content, while each of these websites offers different products under different designations and provide data about completely different entities. Even from this point of view it cannot be seen any bad faith or any action that would be inconsistent with the competition rules in the Respondent's actions, as stated by the Complainant.
Just for completeness the Respondent repeatedly states that he still owns the rights to use the registered trademark „TRISOL FOREST GUARD" (reg. no. 314297). Nevertheless the Respondent and the company BEIDEA s.r.o. refrained from the production and sale of any products labelled by „TRISOL".
Thus, by registering and using the disputed domain name, the Respondent does not violate any rights of the Complainant, because:
a) the Respondent is registered and uses entirely in accordance with Czech law company name TRISOL farm s.r.o., i.e. company name completely identical with the disputed domain name;
b) the Respondent has been authorized to use the designation „TRISOL", based on its the authorship and moreover on the basis of the above mentioned Cooperation Agreement concluded between Alois Vančura as the former owner of the trademark and Pavel Bezděk;
c) the Respondent has the right to use registered trademark „TRISOL FOREST GUARD" (reg. no. 314297), whose owner is another company of Pavel Bezděk (BEIDEA s.r.o., former TRISOL, s.r.o.) and this trademark was registered already in 2010;
d) the above specified combined trademark – graphic form (see the extract from the trademark database – application no. 515765) created and used Pavel Bezděk and his companies including the Respondent long before filing of application for its registration as trademark (in this form since the year of 2007) and thus a long time before filing the application by the Complainant's company TRISOL, s.r.o. (application no. 520339) and long before the registration of the trademark „TRISOL" for the Complainant.
The Respondent reaffirms that the disputed domain name was registered by him before the Complainant had acquired the trademark „TRISOL" from Alois Vančura, therefore rightfully and in accordance with the agreement concluded with Alois Vančura. Under this disputed domain name the Respondent in good faith continues to run his business activities that have been initiated a long time ago. This in the Respondent's opinion is perfectly lawful conduct.
Therefore in the opinion of the Respondent the Complainant has not proven that the conditions of Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy have been met and therefore asks the Panel to reject the complaint.

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 not, 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

BAD FAITH

The Complainant has not, 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).
It is completely opposite and it is in fact Respondent who shown and evidence that he and its related persons have and had all rights to the disputed domain name.

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

The Panellist has made a broad review of public sources, namely internet websites, domain database (WHOIS), trademark database research etc. to find all relevant information which is available.
The Panellist is of the opinion that all intellectual property rights have to be reviewed to come the conclusion this case. It is a combination of rights vested to trademark, domain name and of course mainly business name of different parties. It has to be stressed that there is a strange approach of the Complainant when there was a good cooperation between the Parties resulting into different positions of the Parties and even agreements which were intended to clarify the position of the Parties and maybe have not been abided later on.
Basic principles of civil law, namely the Civil Code have to be applied. The principles of good morals and standard business practices have to be reviewed in this aspect in relation to UDRP rules.
The timing of different acts of the Complainant, Respondent and related Parties is of the essence here. This issue will be reviewed further in reflection to different acts as described later on.
The question is whether “TRISOL” can be understood as a separated “leading” word – see different Trademarks registration and mainly websites with domain names.
The acts which lead to strength the position of the Complainant with the aim in fact to breach basic rules of law and the rules of fair business conduct are prohibited. If someone changes the tradename after another IP law was in place with the aim to attract right to him is generally prohibited by operation of law.
It was proven with no doubt that initiation of word and marking “TRISOL” was made by Mr. Pavel Bezděk and probably even Alois Vančura but not by the Complainant. There was a very far and strong development of production and marketing of the “TRISOL” and was even proven by special cooperation with the Slovak companies and further also in the Czech market.
It was confirmed by the public sources, namely the company registration extract that the business name of on one of the companies of Mr. Bezděk was “TRISOL, s.r.o.” which was registered initially on 21 January 2008 and then renamed to BEIDEA on 26 April 2013. This maybe result of negotiations among the Parties involved in the dispute.
It is very likely that even TRISOL farm s.r.o. was renamed by the Respondents owner due to the attack of the Claimant to protect its interests because before (until 12 January 2015) this company was named “DURST VJV s.r.o.”.
The Panellist is of the opinion that situation among the Complainant, the Respondent and related parties of those is result of unfair business conduct of one or more parties which have been cooperating in the past and for some reasons this cooperation was broken.
The Panellist is not in the position here to judge on unfair competition, change of the business names etc. even though the Panellist is obliged to respect the basic civil law principles, unfair competition rules and the like.
The Panellist shall therefore concentrate on the issue of the disputed domain name and related issue which may support position of one of the Parties.

Domain issues under UDRP are whether:
i) domain name is identical or confusingly similar to domain name or a trademark or servicemark in which the Complainant has rights;
and
ii) the Respondent has no rights or legitimate interests with respect to domain name;
and
iii) the domain name has been registered and has being used in bad faith.

ad i) domain name is identical or confusingly similar to domain name or a trademark or servicemark in which the Complainant has rights
It has to be admitted that the domain name is similar to the domain name or trademark used by the Complainant.
It also may be confirmed that adding (any) word like “FARM” is not enough the trademark and/or domain name to be distinctive.
On the other hand, the above has to be viewed in the light of the ownership of other trademarks and business names and priority of all Parties involved in the dispute and related Parties.
ad ii) the Respondent has no rights or legitimate interests with respect to domain name
It has not been proven by the Complainant that the Respondent has no rights or legitimate interest with respect to the disputed domain name. It was even opposite and the Respondent has proven that he and his related persons had and still have a legitimate interest to use the disputed domain name.
It is without any doubt that the Respondent and his related persons have been inventing, creating and long-time using the “TRISOL” marking and any modifications of it.
It was therefore a legitimate interest on the Respondent to register the domain name to enable him to identify and use further the products which he and his related persons developed.
The Panellist understands that the Respondent was led by the intention to register a domain name which is not the same as it is under related Agreements among the Parties involved but at the same time having chance to profit from its activities which are linked to “TRISOL” products and which are in fact connected historically to the Respondents activity.
It is therefore beyond any doubt that there was a legitimate business interest of the Respondent to use and register the disputed domain name.
ad iii) the domain name has been registered and has being used in bad faith.
In the light of all the above there is no doubt that the Respondent is not a person who had and has no relation to the domain name but it is opposite.
The Panellist has to confirm that the registration of the disputed domain name and its use was in good faith to protect the position of the Respondent and to protect his business activities in the internet space.

To conclude, the Panellist is of the opinion that the Respondent is here in the position to be a corporate owner and user of the disputed domain name.
The Panellist is therefore of the opinion that the Complaint was filed in bad faith.
The Panellist believes that there is a large unfair competition and nonstandard business practices issues which cannot be, as already said, reviewed in this dispute. The domain name question is very much linked to all of that and therefore the Panellist strongly recommends to the Parties to resolve this dispute either amicably and by mediation and/or in the court case which may also lead to the final decision concerning the domain names.
At this stage the Panellist is of the opinion that the position of the Respondent is quite firm and according to law when using the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **TRISOL.FARM**: Remaining with the Respondent

PANELLISTS

Name	**Vít Horáček**

DATE OF PANEL DECISION 2015-06-04

Publish the Decision