Decision for dispute CAC-UDRP-101001

Case number	**CAC-UDRP-101001**
Time of filing	**2015-06-09 15:16:55**
Domain names	**RIBOSE.club**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Ribose Inc.**

Complainant representative

Organization	**Muscovitch Law P.C.**

Respondent

Name	**Wang Liqun**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of 17 trademark registrations in the term RIBOSE in connection with, inter alia, computer software and services, in over 10 jurisdictions across the world, including Australia, Canada, China, the European Union, Japan, Hong Kong, Korea, Macau, Russia, Taiwan, United Kingdom and the United States. The Complainant has provided evidence of such trade mark registrations, which include but are not limited to:
- Australian Trade mark No. 1399639, registered on 29 July 2011 (classes 9, 38, 42);
- Canadian Trade mark No. 887549, registered on 7 October 2014;
- Chinese Trade mark No. 8740411, registered 28 October 2011 (class 38);
- Chinese Trade mark No. 8740412, registered on 7 December 2011 (class 42),
- Chinese Trade mark No. 8740413, registered on 21 October 2011 (class 9);
- Community Trade mark No. 9425653, registered on 18 March 2011 (classes 9, 38, 42);
- Hong Kong Trade mark No. 301701512, registered on 30 August 2010 (classes 9, 38, 42);
- Hong Kong Trade mark No. 301832418, registered on 14 February 2011 (classes 9, 38, 42, 45);
- Taiwanese Trade mark No. 01607705, registered on 1 November 2013 (classes 9, 38, 42);
- United States Trade mark No. 4743808, registered on 26 May 2015 (classes 38, 42).

FACTUAL BACKGROUND

The Complainant is a corporation incorporated pursuant to the laws of the Territory of the British Virgin Islands in 2008, and has its principal office in Hong Kong, People's Republic of China.

The Complainant has developed and operated a cloud-based collaboration platform called RIBOSE, which enables users to securely work together on projects and plan events, by allowing them to communicate and share files via an online portal available at www.ribose.com. The Complainant is also the owner of over 150 domain names consisting of the term RIBOSE. The Complainant's RIBOSE platform is licensed to nearly 4,000 registered users and, to date, there have been nearly 10,000 work groups established on RIBOSE. The Complainant has provided evidence of numerous press releases about its brand and services, including within China.

The disputed domain name, <ribose.club> (the "Domain Name"), was registered on 7 May 2015 by the Respondent. The Domain Name is not resolving, although it appeared listed for sale on the Sedo platform for 8,000 USD.

The Respondent was involved in another domain name dispute concerning the Complainant's RIBOSE trade mark, namely <ribose.com.cn>, before the China International Economic and Trade Arbitration Commission's Domain Name Dispute Resolution Centre (the domain name <ribose.com.cn> was registered using the same email address the Respondent used to register the Domain Name). The decision ordering the transfer of the domain name <ribose.com.cn> to the Complainant is dated 9 May 2014 (CIETAC Case No. CND-2014000013).

The Respondent was also the respondent in several other domain name dispute proceedings in relation to third party trade marks and is also currently the registrant of a number of domain names infringing third party brands, including but not limited to <lorealtaiwan.com>, <bananarepublic.org>, <wellsfargobank.net>, <sephora.club>, <sonystyle.club>, <givency.org>, <windows8.info>, and <flyemirates.net>.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The Complainant asserts that the Domain Name is confusingly similar to its RIBOSE trade mark. The Complainant points out that its RIBOSE trade mark is incorporated in its entirety in the Domain Name and that the ".club" new generic Top Level Domain (gTLD) is irrelevant when assessing whether a domain name is confusingly similar to a trade mark.

No Rights or Legitimate Interests

The Complainant asserts that the Respondent has no rights or legitimate interest in the Domain Name. The Complainant points out that the Respondent has not been commonly known as RIBOSE or by the Domain Name, and has not been authorized or licensed to use the Complainant's trade mark in the Domain Name. In addition, the Complainant asserts that the Respondent has not used the Domain Name in connection with a bona fide offering of goods or services, and nor has he made a legitimate non-commercial or fair use of the Domain Name. Thus, the Complainant submits that the Respondent lacks rights or legitimate interests in that the Domain Name.

The Complainant also argues that the fact that the term "ribose" corresponds to an organic compound does not confer on the Respondent a legitimate interest in the Domain Name, particularly in light of the fact that the Respondent is a serial cybersquatter, and has previously cybersquatted a domain name reproducing the Complainant's trade mark, namely <ribose.com.cn>.

Bad Faith Registration and Use

The Complainant asserts that bad faith registration and use can be inferred from the Respondent's lack of rights or legitimate interest in the Domain Name.

Furthermore, the Complainant asserts that the Respondent registered the Domain name in full knowledge of its trade mark rights, as evidenced most notably by the fact that the Respondent was previously involved in another domain name dispute involving the Complainant's RIBOSE trade mark, and that there can be no genuine question that the Respondent purposefully targeted the Complainant and its trademarks in the present case.

The Complainant further argues that the Respondent most likely registered the Domain Name in an attempt to extort money from the Complainant. Alternatively, the Complainant argues that the Respondent registered the Domain Name to sell it to a third party in an amount in excess of his out-of-pocket expenses, as the Domain Name was listed for sale on the Sedo platform for 8,000.00 USD. The Complainant thus argues that the Respondent's offer to sell constitutes quintessential bad faith registration and use, in accordance with paragraph 4(b)(i) of the Policy.

The Complainant further asserts that the fact that the Respondent has never used the Domain Name in any bona fide fashion is further evidence of bad faith registration and use of the Domain Name. The Complainant also states that the Respondent is passively holding the Domain Name and that the absence of any demonstrable plans to use the Domain Name in a bona fide fashion, together with the absence of evidence of any actual use of the Domain Name for a bona fide purpose, is evidence of the Respondent’s bad faith.

Finally, the Complainant states that given the evidence that the Respondent is a “serial cybersquatter”, the Respondent is engaging in a systematic pattern of abusive registrations which further demonstrates that the Respondent registered and used the Domain Name in bad faith.

RESPONDENT:

The Respondent did not submit a response to 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, 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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the Domain Name, the Complainant must prove that each of the following elements is present:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

Paragraph 15 (a) of the Rules provides that the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality and weight of the evidence.

Furthermore, paragraph 14(b) of the Rules further provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

The Respondent has failed to respond to the Complaint. The Respondent's failure to respond, however, does not automatically result in a decision in favour of the Complainant. However, the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules.

Accordingly, taking the aforementioned provisions into consideration, the Panel finds as follows:

A. Identity or confusing similarity

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Domain Name registered by the Respondent is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has established trade mark rights in the term RIBOSE.

The Panel notes that the Complainant's trade mark is reproduced without adornment under the ".club" new gTLD and that the ".club" new gTLD does not diminish the confusing similarity with the Complainant's trade mark.

The Panel therefore finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights, in accordance with paragraph 4(a)(i)of the Policy.

B. Rights or legitimate interests

Paragraph 4(c) of the Policy sets out a list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including:

(i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Whilst the burden of proof rests with the complainant, it is often difficult for a complainant to prove a negative (ie. that a respondent has no rights or legitimate interests in the domain name in question). It has therefore become generally accepted that a complainant must first show a prima facie case that a respondent lacks rights or legitimate interests in the domain name, and then this burden shifts to the respondent.

The Panel has considered the statements and evidence put forward by the Complainant and finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the Domain Name and, as a result of his default, the Respondent has failed to rebut such a showing.

The Complainant has stated that it has not authorised the Respondent to make any use of its RIBOSE trade mark, and that the Respondent is not associated in any way with the Complainant. It also argues that there is no evidence suggesting that the Respondent is commonly known by the Domain Name, or that the Respondent has ever used the Domain Name in connection with a bona fide offering of goods or services or for any other legitimate purpose.

The Panel notes that the Domain Name consists of a dictionary term (as pointed out by the Complainant, "ribose" refers to an organic compound). Panels under the Policy have long recognized, however, that the mere registration of a domain name consisting of a dictionary term does not automatically confer rights or legitimate interests in the domain name in question. Rather, it is necessary to examine factors such as the fame and status of the trade mark, whether the respondent has registered other domain names consisting of dictionary terms, and whether the domain name is used in connection with its descriptive or generic meaning or whether there is evidence that the respondent has made demonstrable preparations for such use.

In the present case, the Respondent does not appear to have made any use of the Domain Name other than to offer it for sale on the Sedo platform for 8,000 USD. This would not be objectionable in itself except that the evidence put forward by the Complainant shows that the Respondent was involved almost exactly a year prior to the registration of the Domain Name in another domain name dispute involving the Complainant's RIBOSE trade mark (which resulted in a decision in favour of the Complainant). There is also irrefutable evidence that the Respondent has been involved in a number of domain name disputes concerning third party brands and, furthermore, appears to be currently engaging in a pattern of making abusive registrations. Based on the overall circumstances of this case, the Panel is of the view that the Respondent most likely registered the Domain Name based on the trade mark value of the Complainant's mark as opposed to its generic or descriptive value.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the Domain Name, in accordance with paragraph 4(a)(ii) of the Policy.

C. Bad faith registration and use

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that the respondent has registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the respondent has registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds that the Respondent registered the Domain Name in bad faith. Although the Domain Name consists of a dictionary term, the Complainant has produced evidence sufficient to establish that Respondent registered it with knowledge of the Complainant and with the intention of exploiting its rights. First, not only do the Complainant's RIBOSE trade marks (the earliest of which dates from 2010) predate the Domain Name, the evidence put forward by the Complainant shows that the Complainant's cloud platform has been receiving wide press coverage, including in China, where both the Complainant and the Respondent are based. Furthermore, and perhaps more importantly, the fact that the Respondent was found to have made an abusive domain name registration in relation to the Complainant's RIBOSE trade mark exactly a year prior to the registration date of the Domain Name leaves no doubt as to the fact that the Respondent had the Complainant in mind at the time of registration of the Domain Name and also strongly suggests that he most likely registered the Domain Name based on the trade mark value of the Complainant's mark.

Based on the above, the Panel finds that the fact that Respondent put the Domain Name up for sale on an auction platform for 8,000 USD constitutes, in the particular circumstances of this case, strong evidence that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant or one of its competitors for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Domain Name, in accordance with paragraph 4(b)(i) of the Policy.

The Panel also finds that the Respondent's passive holding of the Domain Name constitutes, in the circumstances of this case, strong evidence of bad faith. In this regard, the Panel has taken into consideration the increasing notoriety of the Complainant's trade mark, including in China (the Respondent's country of residence), the Respondent's pattern of abusive domain name registrations, the Respondent's offer to sell the Domain Name on an auction platform, and the Respondent's failure to take part in the present proceedings. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 (finding that passive holding can constitute bad faith).

In summary, there is no indication that the Respondent registered and used the Domain Name for its dictionary or generic value; on the contrary, the evidence points towards a finding that the Respondent both registered and used the Domain Name to exploit the value attached to the Complainant's trade mark.

The Panel therefore finds that the Respondent registered and is using the Domain Name in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RIBOSE.CLUB**: Transferred

PANELLISTS

Name	**David Taylor**

DATE OF PANEL DECISION 2015-07-24

Publish the Decision