

## Decision for dispute CAC-UDRP-104724

Case number CAC-UDRP-104724

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Domain names ahriiseusa.com

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### Case administrator

Name Iveta Špiclová (Case admin)

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### Complainant

Organization A. H. Riise Spirits ApS

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### Complainant representative

Organization Potter Clarkson LLP

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### Respondent

Name Anton Nyman Rasmussen

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#### OTHER LEGAL PROCEEDINGS

The Panel was made aware of a pending Danish court case (details below) involving the Complainant and the Respondent/Affiliated Party to these UDRP proceedings (collectively, “the Parties”). The Parties, nonetheless, disagree as to whether, and if so the extent to which, the resulting court judgment may have a bearing on the ownership of the domain name <ahriiseusa.com> (“the disputed domain name”).

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#### IDENTIFICATION OF RIGHTS

The Complainant relies upon numerous trade marks comprising the term “A.H. Riise”, including:

- EU trade mark registration no. 016484073, registered on 30 June 2017, for the figurative mark A.H. RIISE, in class 33 of the Nice Classification;
- UK trade mark registration no. 009017865929, registered on 19 June 2018, for the word mark A.H. RIISE, in class 33 of the Nice Classification;
- US trade mark registration no. 5934723, registered on 17 December 2019, for the word mark A.H. RIISE, in class 33 of the Nice Classification; and
- US trade mark registration no. 6098409, registered on 14 July 2020, for the figurative mark A.H. RIISE, in class 33 of the Nice Classification.

(hereinafter, collectively or individually, “the Complainant’s trade mark”; “the Complainant’s trade mark A.H. RIISE”; or “the

trade mark A.H.RIISE" interchangeably).

The disputed domain name resolves to an active website, the particulars of which are discussed further below ("the Respondent's website").

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#### FACTUAL BACKGROUND

### A. Complaint

The Complainant's contentions can be summarised as follows:

#### A.1 Background history

The Complainant is a Danish manufacturer of, among others, rum-flavoured spirit drinks. The Complainant has resellers, distributors and consumer outlets all over Europe and in most major airports.

The Complainant's name and trade mark originates from Albert Heinrich Riise who was born in 1810 and, after undertaking a pharmaceutical exam in 1832, was officially appointed exclusive pharmacist for the island of Saint Thomas, in the Caribbean, which granted him a monopoly status to produce alcohol in his pharmacy.

The Complainant asserts that the traditions, brand and trade mark were revived in 2015 by the Complainant who has since won numerous awards for, in particular, their rum products.

In addition to the trade marks mentioned in the section "Identification of Rights" above, and other trade marks in its portfolio, the Complainant informs that it is also the owner of the domain name <ahriiserum.com>, which was registered in 2013.

By way of relief, the Complainant seeks the transfer of the disputed domain name <ahriiseusa.com> to the Complainant on the grounds advanced in section A.2 below.

#### A.2 Legal grounds

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The Complaint submits that the disputed domain name <ahriiseusa.com> incorporates the Complainant's trade mark A.H. RIISE in its entirety; that the geographical term "USA" in the disputed domain name string serves no other purpose than to mislead consumers into believing that the disputed domain name is the Complainant's official US website and/or distributor; and that the generic Top-Level Domain (gTLD) <.com> is generally disregarded under the confusingly similar test.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant, nor is the Respondent affiliated to the Complainant in any form or has the Complainant endorsed or sponsored the Respondent or the Respondent's website. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark A.H. RIISE or the disputed domain name. Moreover, the Respondent is not known by the disputed domain name.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

#### Registration

- The Complainant has trade mark rights in A.H. RIISE since 2017, whereas the disputed domain name was registered in 2021. The Complainant states that a simple Internet search by the Respondent would have revealed the Complainant's website or websites of retailers selling the Complainant's products;
- The Complainant's trade mark A.H. RIISE is a distinctive trade mark registered worldwide;
- The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name; and
- Taken these factors together, the disputed domain name shall be deemed as registered in bad faith within the terms of paragraph 3.1.1 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0").

## Use

The Complainant refers to paragraph 2.5.1 of the WIPO Jurisprudential Overview 3.0, according to which a domain name which contains a complainant's trade mark entirely carries a high risk of implied affiliation.

Furthermore, the Respondent's website contains identical word and figurative trade marks; identical story of origin and products, as well as lookalike website features, such that the Respondent's website is designed to act as an official distributor of the Complainant.

The Complainant contends that the use of the disputed domain name is unquestionably targeted to mislead and take advantage of the trade mark A.H. RIISE and of unsuspecting consumers.

In light of the above, the Complainant therefore concludes that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

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## PARTIES CONTENTIONS

### C. Response

The Respondent provides a Response as the domain name holder and manager of the company A.H. Riise Rum LLC (now A.H. Riise LLC) incorporated in the state of Delaware, United States, with registration no. 5468552 on 21 January 2014.

The Response can be summarised as follows:

- Henrik Klimek, the father of the Respondent, is the owner of A.H. Riise LLC which has the right to use the name "A.H. Riise" in the United States;
- The Respondent is entitled to use the prefix "ahriiseusa" as the Respondent operates a company out of United States bearing that name;
- Henrik Klimek and A.H. Riise LLC have sued the Complainant for large scale trade mark and domain name infringements totalling EUR 5.3m, and a court case is set to take place in the Sea & Commercial Court of Copenhagen from 6 through to 8 September 2022 ("the Danish court case"); and
- The rights to the trade mark and domain name A.H. Riise are one of the key issues of the Danish court case, the consequence of which being that the Respondent requests the Panel to make no determination until the court decision is available, which is expected to happen by end of October 2022.

## D. Complainant's Supplemental Filing

The Complainant submitted an unsolicited supplemental filing to rebut the Respondent's Response.

The Complainant's Supplemental Filing can be summarised as follows:

- The Complainant acknowledges the pending Danish court case involving the Parties to this UDRP case as well as several other third parties, and asserts that the Respondent fails to mention that the court case only involves Danish and EU trade marks;
- The Respondent is neither a plaintiff nor a defendant in the Danish court case, and the disputed domain name is not part of such court case, the result of which being that the court judgment should have no impact on these UDRP proceedings;
- In May 2016, the Complainant bought the business of Henrik Klimek, such business had shortly before been raided by the Danish Tax Authorities and the Danish police. All the trade marks were assigned to the Complainant, some of the legal entities were assigned to the Complainant and others left to be struck off the registries or became "dormant" – among which, the Delaware company A.H. Riise Rum LLC;
- The Complainant registered the Delaware company "A.H. Riise Rum 1838 LLC" on 8 March 2017 in order to comply with European regulations regarding marketing requirements;
- The Respondent re-activated the dormant Delaware company A.H. Riise Rum LLC on 3 December 2018 by paying the outstanding tax debt of the company. Despite this, the Complainant has earlier rights to a company name comprising the term "A.H. Riise" in the United States; and
- The Complainant maintains that the Respondent only registered the disputed domain name to infringe upon the Complainant's trade mark and pass off the reputation acquired by the Complainant in the trade mark after buying the business from Mr Klimek in 2016 at which time the business was effectively non-existent. The Complainant further avers that the Respondent has registered the disputed domain name without any legitimate interest and in bad faith.

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### RIGHTS

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

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### NO RIGHTS OR LEGITIMATE INTERESTS

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

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### BAD FAITH

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

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### PROCEDURAL FACTORS

#### A. Preliminary Matters

##### A.1 Admissibility of the Complainant's Supplemental Filing

The Complainant has decided, on its own account, to submit a supplemental filing to address the issues raised in the Respondent's Response.

The Panel notes that, whilst there is no specific provision to account for this eventuality, Rule 10 of the UDRP Rules affords a

latitude of discretion for panels to conduct a UDRP proceeding as they see fit, so long as it conforms to the procedural legal framework. It is therefore within the Panel's jurisdiction to determine the admissibility, relevance, materiality and weight of the evidence presented in the course of a UDRP proceeding.

The Panel considers that the Complainant's Supplemental Filing is material to the Panel's determination of these UDRP proceedings (for the reasons set forth under section C below), such that the Complainant's Supplemental Filing is due to be admitted in to the record.

#### A.2 Respondent's Request for the Proceedings to be Held in Abeyance

As mentioned before, the Respondent asserts that the rights to the trade mark and domain name A.H. Riise is one of the key issues of the court case. Consequently, the Respondent seeks an order for these UDRP Proceedings to be held in abeyance pending decision of the Danish court case, which is expected to happen by the end of October 2022 ("the Respondent's Request").

The Panel refers to Rule 18 of the UDRP Rules, which provides as follows:

##### "18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the Pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above".

Irrespective of whether or not the resulting judgment of the Danish court case may have a bearing on the ownership of the disputed domain name, the Panel has discretion to determine the UDRP case as it sees fit.

The Panel considers it appropriate to make a determination, as opposed to stay these UDRP proceedings, such that the Respondent's Request is denied.

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

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#### PRINCIPAL REASONS FOR THE DECISION

##### I. The UDRP threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

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

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three Policy elements.

## II. The Scope of the UDRP

The UDRP Policy is rather clear on the taxonomy of cases which it seeks to adjudicate: “Disputes alleged to arise from abusive registrations of domain names (for example, cybersquatting) may be addressed by expedited administrative proceedings that the holder of trademark rights initiates by filing a complaint with an approved dispute-resolution service provider” (source: <https://www.icann.org/resources/pages/help/dndr/udrp-en>).

The UDRP Policy aims to provide a fast-track procedure for clear cut domain name disputes. It is certainly not a forum intended for parties to seek relief in respect of any domain name matter, and is particularly not suitable for cases where the domain name is – or may be – part of a more complex dispute claim or agreement between the parties or is subject to a pending court proceeding. In this regard, the WIPO Jurisprudential Overview 3.0 provides a helpful guidance in paragraph 4.14.6:

“Depending on the facts and circumstances of a particular case, and irrespective of whether the parties may also be engaged in court litigation, in some instances (e.g., complex business or contractual disputes) panels have tended to deny the case not on the UDRP merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited “cybersquatting” scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction [...]”.

In this case, the commercial/contractual relationship between the Parties dates as far back as 2016, and the Parties are presently litigating in the courts of Denmark in respect of more wide-ranging (contractual and non-contractual) legal issues including, but not limited to, trade marks and trade names. Although the Parties disagree as to whether the disputed domain name is part of the claims in the Danish court case, the Panel cannot fail to note that the resulting judgment may have a bearing on the ownership of the disputed domain name.

The Panel also notes that the commercial/contractual relationship between the Parties has not been fully particularised to the Panel in this instance. Admittedly, these might be more conducive to the Panel’s assessment of (if any) the Respondent’s rights or legitimate interests in the disputed domain name. Nevertheless, and for the sake of argumentation, even if the Parties were to provide the Panel with a full evidentiary record, the case circumstances would require jurisdictional powers which exacerbate the remit of the UDRP legal framework. The Parties should be mindful that the Panel’s jurisdiction is restricted to the reach of the UDRP Rules and Policy, which are narrowly designed to adjudicate abusive cybersquatting cases, and not every dispute whose object is a domain name.

In view of the above, the Panel considers that the underlying legal and factual matrices of these UDRP proceedings far exceed the very narrow scope and limit of the UDRP Policy. For this reason, the Panel is unable to proceed to a decision on the merits of the case. Nonetheless, the Panel takes no stance and thus makes no finding as to whether the disputed domain name has or has not violated the UDRP Policy – and rather, the Panel denies the Complaint on a “without prejudice” basis.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **AHRISEUSA.COM**: Remaining with the Respondent

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**PANELLISTS**

Name Yana Zhou

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DATE OF PANEL DECISION 2022-09-22

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Publish the Decision

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