



# CPR Institute for Dispute Resolution

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|-----------------------|-------------------------|
| File Number:          | CPR 0201                |
| Date of Commencement: | January 17, 2002        |
| Domain Name:          | RIMI.COM                |
| Registrar:            | Network Solutions, Inc. |

## COMPLAINANT

Name: Rhode Island Medical Imaging, Inc.  
Address: 20 Catamore Blvd., E. Providence, RI 02914  
Telephone: (401) 432-2520  
Fax: (401) 432-2457  
E-Mail: esimas@rimiradiology.com

vs.

## RESPONDENT

Name: Vinmonopolet, Rimi, Remi, Aftenposten, Dagbladet, Arbeiderpartiet, Gameland, Americano and Partners Ltd.  
Address: 23, Hallswelle Road, Temple Fortune, London, NW11 0DH UK  
Telephone: 441 817318817  
Fax: 441 817318817  
E-Mail: x@hjerting.com

Before Thomas M. Pitegoff, Esq., Arbitrator

## PROCEDURAL HISTORY

The Complaint was filed with CPR Institute for Dispute Resolution (CPR) on January 15, 2002. After review for administrative compliance, CPR transmitted a copy of the Complaint to Respondent on January 17, 2002. The Respondent did not file a Response. On February 7, 2002, CPR appointed me as Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Rules for UDRP (the "Rules") promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). I issued a decision on February 11, 2002, based upon the written submitted record including the complaint and its attachments, granting Complainant's request to transfer the domain name RIMI.COM to Complainant.

Upon receiving this decision from the dispute-resolution service provider (the "Provider"), the Respondent's attorney objected, alleging that the Respondent had not received official notifica-

tion of the complaint as required by Rule 2(a) of the Rules. Under Rule 2(a), it is the Provider's responsibility when forwarding a complaint to the Respondent "to employ reasonably available means calculated to achieve actual notice to Respondent." Rule 2(a) states that the Provider will have discharged its responsibility to notify the Respondent by sending the complaint to multiple addresses by postal mail, facsimile and e-mail, as specified in the Rule. In this case, the Provider had notified the Respondent of the complaint solely by e-mail and had not received any acknowledgment of actual receipt by the Respondent.

I agreed with the Respondent and withdrew the decision, granting the Respondent additional time to respond to the Complaint. The Respondent's attorney submitted a response on February 15, 2002. Because of the unusual procedural circumstances, I then gave the Claimant an opportunity to respond to the response of February 15, 2002. The Claimant declined to respond.

Upon the written submitted record including the Complaint and Response and their attachments, I find as follows:

### **FINDINGS**

Respondent's registered domain name, RIMI.COM, was registered with Network Solutions, Inc., on October 11, 1996. In registering the name with Network Solutions, Inc., an ICANN accredited registrar, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

### **IDENTITY/CONFUSING SIMILARITY**

Complainant alleges that the domain name RIMI.COM is identical to Complainant's service mark "RIMI".

"RIMI" is an acronym for Complainant's name Rhode Island Medical Imaging, Inc. Complainant is a medical practice comprised of faculty of the Department of Radiology of the Brown Medical School. Complainant alleges that it is commonly known by its RIMI service mark, a mark Complainant has used for many years and which is displayed prominently on its letterhead and all of its corporate materials.

I conclude that Complainant has rights in the mark based on its use. For purposes of determining identity or confusing similarity, the .com extension is disregarded. Therefore, I conclude that the registered domain name is identical to Complainant's protected mark.

## **RIGHTS AND LEGITIMATE INTERESTS**

Complainant alleges that Respondent has no rights or legitimate interest with respect to the domain name RIMI.COM. In support of this allegation, Complainant notes that Respondent has never offered goods or services under the RIMI mark and that Respondent has never developed a web site under the RIMI.COM domain name.

UDRP Paragraph 4(c) provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, for example, by any of the following circumstances: (a) before notice to Respondent of the dispute, Respondent is using or has made 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 (b) Respondent has been commonly known by the domain name; or (c) Respondent is making 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.

Respondent alleges that Respondent registered RIMI.COM because (a) Respondent intended to create musical web site for the online exchange of sound files, "rimi" is close to "re mi" as in "do re mi", but remi.com was not available, and (b) "rimi" is part of Respondent's corporate name. Respondent alleges that Respondent has had difficulty raising funds to develop the web site because of the downturn in the Internet economy.

In light of the fact that Respondent registered RIMI.COM in 1996 and has not posted any RIMI.COM web site whatsoever in more than five years, I am not persuaded that Respondent "has made demonstrable preparations to use" the domain name in connection with a bona fide offering of goods or services. Although we have seen a downturn in the Internet economy in the last year, the period between 1996 and 2000 saw an enormous upsurge in the Internet economy. In addition, although "RIMI" is indeed a part of Respondent's company name and has been since the company was organized in 1996, it is the second word in the long company name "Vinmonopolet, Rimi, Remi, Aftenposten, Dagbladet, Arbeiderpartiet, Gameland, Americano and Partners Ltd." Respondent has offered no evidence that Respondent has been commonly known by the name "RIMI".

Respondent has failed to refute the allegation that Respondent is not using the domain name in connection with any offering of goods or services, nor has Respondent shown that it has made any demonstrable preparations to use the domain name in such connection. Respondent has not demonstrated that it has been commonly known by the domain name, nor that Respondent is making legitimate noncommercial or fair use of the domain name.

I therefore conclude that Respondent does not have any rights or legitimate interests with respect

to the domain name at issue.

## **BAD FAITH**

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent's cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent's web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's web site or location, or of a product or service on Respondent's web site or location.

Evidence produced by Complainant, including an e-mail it received from Respondent dated January 4, 2002, demonstrates Respondent's willingness, if not clear intention, to sell, rent or transfer the domain name to Complainant for a value in excess of Respondent's cost. Complainant offered to purchase the domain name from Respondent for \$3,000. Respondent's reply was that to make rebranding worthwhile, Respondent would need an offer approaching \$100,000. Specifically, Respondent's e-mail reply was as follows:

Perhaps your offer does reflect the value this domain has for your organisation. But it is rather a lot below what our board of directors consider [sic] to be the branding value of the domain for our company. To make a rebranding strategy worthwhile [sic] for our company, we would need an offer approaching 100 000 dollars, but I assume this price will render our domain uninteresting to your organisation [sic].

There is no evidence that Respondent has created a business since Respondent acquired the domain name in 1996, let alone a business that requires "rebranding". It is far more likely that the \$100,000 was to be used for the initial branding. Put another way, the logical reading of this response is that Respondent was seeking its start-up funding from the sale of the domain name. On the other hand, Respondent stated "I assume this price will render our domain uninteresting" to your organization. This statement can be read as an indication that Respondent is not interested in selling the domain name rather than as an indication that the domain name is being used in bad faith. We need not decide this question, however, because Claimant has failed to show that Respondent registered the domain name in bad faith.

Paragraph 4(a) of the UDRP requires a complainant to show that a respondent's domain name both (a) has been registered in bad faith and (b) has been used in bad faith. Complainant has presented no evidence that Respondent knew of Complainant's mark and business at the time that Respondent registered the domain name. Respondent alleges that Respondent had no knowledge of Complainant's mark at that time. Respondent offered to sell the domain name to Complainant was made only after Respondent received an inquiry from Complainant five years after the domain name was registered. This is not evidence of registration for the purposes of

selling, renting or transferring the domain name to the Complainant for value in excess of Respondent's cost.

Complainant has presented no evidence that Respondent registered the domain name in bad faith other than to allege that Respondent appears to have registered the dot com variants of many commercial domain names in which Respondent has no interest. The only example presented was [aftenposten.com](http://aftenposten.com), allegedly implying an association with "Aftenposten," a prominent Norwegian newspaper founded almost 150 years ago, which has no relationship to Respondent. Respondent allegedly registered [aftenposten](http://aftenposten.com) (meaning "evening mail" in Danish) for an e-mail service that was Respondent never launched. I am not persuaded that Respondent registered [aftenposten.com](http://aftenposten.com) in bad faith, let alone that this one other incident indicated a pattern of bad faith registration.

I conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN policy. The UDRP and Rules do not allow for the transfer of a domain name on the basis of nonuse alone.

### **CONCLUSION**

In light of the finding above that Respondent did not register and use the domain name in bad faith, I find in favor of Respondent.

### **REMEDY**

Complainant's request to transfer the domain name [RIMI.COM](http://RIMI.COM) to Complainant is DENIED.

March 4, 2002

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Thomas M. Pitegoff, Esq.

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Date