



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-18010141</b>
<b>Complainant:</b>	<b>Rimowa GmbH</b>
<b>Respondent:</b>	<b>Zhao Dawei</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;rlmowa.com&gt;; &lt;rimowamall.com&gt;</b>

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**1. The Parties and Contested Domain Names**

The Complainant is Rimowa GmbH, of Mathias-Bruggen-Str. 118, 50829 Köln, Germany, whose Authorized Representative is dompatent von Kreisler Selting Werner of Bahnhofsvorplatz 1, 50667 Köln, Germany.

The Respondent is Zhao Dawei, of Baoding City, Hebei Province, P.R. China.

The domain names at issue are <rlmowa.com> and <rimowamall.com> (collectively, the “**Disputed Domain Names**”), registered by Respondent with Name.com Inc., of 414 14<sup>th</sup> Street #200 Denver, Colorado 80202, USA.

**2. Procedural History**

On 4 July 2018, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“ADNDRC”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999. On 2 February 2017, the ADNDRC confirmed receipt of the Complaint. The Complainant elected that this case to be dealt with by a one-person panel.

On 17 July 2018, the ADNDRC transmitted by email to the Registrar, Name.com Inc., a request for registrar verification in connection with the disputed domain names. On 19 July 2018 and again on 3 August 2018, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the Registrant and that the language of the registration agreement is the English language.

On 13 August 2018, the ADNDRC transmitted a Written Notice of Complaint, forwarding the Complaint along with annexures to the Respondent, requesting that the Respondent submit a Response within 20 calendar days. The Notice specified the due date for the Response as being on or before 2 September 2018.

On 5 September 2018, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David L. KREIDER acting as the sole panelist. The ADNDRC advised the Panel that no Response was received from the Respondent. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. The Panel received the file from the ADNDRC and should render the Decision on or before 19 September 2018, if there are no exceptional circumstances.

### **3. Factual background**

The Complainant is a globally renowned designer, manufacturer and distributor of premium luggage and suitcases under the "RIMOWA" brand. Since its inception, the Complainant has been dedicated to innovation and luxury. The business was founded by Paul Morszeck in Cologne, Germany in 1898. At the time, the company was known as Kofferfabrik Paul Morszeck. Paul Morszeck's aim was to produce the most modern luggage of his day. At the turn of the twentieth century, the company was already making an effort to achieve the most lightweight construction possible.

The Complainant began selling its goods under RIMOWA mark in 1937, under the leadership of the founder's son, Richard Morszeck. The brand name RIMOWA was derived from the words Richard Morszeck Warenzeichen (Warenzeichen being German for "trademark"). 1937 was also the year that the Complainant introduced the first trunks made of aluminum to the market. This was the first time that lightweight metal was used as the main material for trunks – a groundbreaking innovation in luggage production.

In 1950, the Complainant began to produce aluminum suitcases with its signature grooves. The iconic grooves are a distinctive mark of RIMOWA luggage. The grooves on RIMOWA cases have been registered as a trademark in Germany, the EU and the USA. In 2000, the Complainant's current CEO and President, Dieter Morszeck (the founder's grandson) commissioned the first lightweight luggage series made of recyclable polycarbonate. Polycarbonate is an extremely resilient and lightweight material used for aircraft windows and in vehicle construction. The Complainant was the first manufacturer to use this material in luggage production, resulting in cases that are sleek and lightweight, yet extremely robust and durable.

Today, the Complainant continues to produce aluminum and polycarbonate luggage of the highest quality. The cases are carefully constructed in the Complainant's advanced manufacturing facilities, located in Germany, Canada, The Czech Republic and Brazil. Each RIMOWA case bears the "RIMOWA" mark, and has an additional seal of quality "DESIGN by RIMOWA" engraved into the suitcase frame. The Complainant's RIMOWA luggage is a fashionable travel accessory, favored by business executives, style-conscious travelers and artist around the world. RIMOWA luggage has also been featured in over 250 films.

The Complainant has expended significant time and effort to extensively promote its "RIMOWA" brand and products through publicity and advertising on the Internet, in trade press and other print media, and celebrating the opening of its new stores. For instance, the Complainant has engaged the highly sought after Brazilian top model Alessandra Ambrosio to star in its 2015 advertising campaign. Further, in the past year alone, the

Complainant opened new stores in Seoul, Rome, Porto, Xian, Kobe, Yokohama, Miami, New York, Beijing, Hanoi, Phnom Penh and Helsinki.

The Complainant now operates its business through a number of subsidiaries and affiliates (collectively referred as the "**RIMOWA Group**"). RIMOWA luggage is sold at over 100 stores around the world, 75 of which are in Asia. The market comprising Hong Kong and Macau is among the Complainant's biggest. The Complainant entered the PRC market in 2007 through its general distributor BCDT (Beijing) and now has over 25 RIMOWA stores in China. It also runs an official store on Tmall, China's leading business-to-consumer (B2C) shopping destination for brand-name goods. The Complainant operates seven RIMOWA stores in the Respondent's city Hong Kong.

Complainant's trade mark registrations for marks comprising of or incorporating "RIMOWA" on which the Complaint is based, include registrations in Hong Kong, Germany, Mainland China, Singapore, Taiwan, and the USA. These trademark registrations shall collectively be referred to in this Complaint as the "RIMOWA Trade Marks".

The Respondent is Zhao Dawei, of Baoding City, Hebei Province, P.R. China. The Respondent registered the Disputed Domain Names on 25 April 2018.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

##### **i) The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

The Complainant has registered numerous trademarks comprising the Rimowa Trade Marks to protect its interest around the world. Therefore, the Complainant has established that it has rights in the RIMOWA Trade Marks, including "RIMOWA" in Germany, Hong Kong, Mainland China, Taiwan, Singapore, the USA and other parts of the world.

The first Disputed Domain Name "rlmowa.com" differs only in the second letter with the Complainant's "RIMOWA" mark. The letters "l" and "I" are extremely similar to each other and it makes the first Disputed Domain Name consequently confusingly similar to the Complainant's "RIMOWA" mark.

The second Disputed Domain Name incorporates the Complainant's "RIMOWA" mark in its entirety and consists of "rimowamall.com". There in, "mall" means a usually large suburban building or group of buildings containing various shops with associated passageways. It is a common business practice. It is well-established that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case, "...mall.com" should be disregarded.

The Complainant accordingly submits that it has proved that the Disputed Domain Names are identical to its registered trademarks in which the Complainant has rights or interests for the purposes of paragraph 4 (a)(i) of the Policy.

**ii) The Respondent has no rights or legitimate interests in respect of the domain name(s):**

The Rimowa Trade Marks are inherently distinctive, and given also their extensive use by the Complainant since at least 1937 in commerce, Rimowa Trade Marks are immediately recognizable to consumers as being associated with the Complainant, its business and its products.

The Respondent registered the Disputed Domain Names on 25 April 2018 – at least 80 years after the "RIMOWA" mark was first used by the Complainant. The fame of the Rimowa Trade Marks, coupled with the fact that the Complainant has not licensed, consented to or otherwise authorized the Respondent's use of the Rimowa Trade Marks, has the practical effect of shifting to the Respondent the burden of proof in establishing that it has rights and/or legitimate interest in the Disputed Domain Names.

There is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Names. The Respondent's name (Zhao Dawei) does not reflect or correspond with the Disputed Domain Names, and there is no justification or apparent need for him to use "RIMOWA" in the Disputed Domain Names.

Further, to the best of the Complainant's knowledge and information, the Respondent does not own any trade mark registration reflecting or corresponding to the Disputed Domain Names in China (where the Respondent is apparently domiciled).

The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of paragraph 4 (a)(ii) of the Policy.

**iii) The disputed domain name has been registered and is being used in bad faith:**

The Complainant submits that the Disputed Domain Names have been registered and are being used by the Respondent in bad faith based on the following:

(a) The Respondent has no rights or legitimate interests in the Disputed Domain Names, which is in itself evidence of bad faith.

(b) The Disputed Domain Names do not reflect or correspond to the Respondent's own name. The Complainant began using the "RIMOWA" mark in 1937 – at least 80 years before the Disputed Domain Names were registered. The "RIMOWA" mark has acquired distinctiveness through its extensive use for over seven decades by the Complainant in commerce, so that it is immediately recognizable to consumers as being associated with the Complainant and its Rimowa Trade Marks are very well known in Hong Kong, where the Complainant has several stores. In light of the fame of the Rimowa Trade Marks, both in Hong Kong and worldwide, it is inconceivable that the Respondent (who appears to be domiciled in Hebei Baoding, China) was not aware of the Complainant and its Rimowa

Trade Marks at the time he registered the Disputed Domain Names. As such, the Respondent's registration of the Disputed Domain Names cannot possibly have been for any reason other than to take advantage of the Complainant's reputation in the Rimowa Trade Marks in bad faith for the purposes of selling it for commercial gain; to block any registration by the Complainant and/or to take unfair advantage of the Complainant's reputation in the Rimowa Trade Marks in order to redirect users to the Disputed Domain Names.

(c) Due to the confusing similarity and identity between the Disputed Domain Names and the Rimowa Trade Marks, and the fact that the Respondent had to have been aware of the Complainant and its Rimowa Trade Marks (for the reasons stated above), it is inconceivable that the Respondent registered the Disputed Domain Names for any reason other than in bad faith. It is reasonable to infer that the Disputed Domain Names intentionally incorporated the Complainant's "RIMOWA" mark in its entirety for the purposes of misleading and confusing Internet users into believing that the Disputed Domain Names are associated with the Complainant and its Rimowa Trade Marks in order to increase the number of Internet users that access the Website, for commercial gain. The confusion that is relevant here is the confusion that may arise in the minds of Internet users when they come across the domain name "rlmowa.com" and "rimowamall.com", or type these domain names into their internet browser thinking that it will actually direct them to Rimowa GmbH's website.

(d) For the reasons stated above, it is inconceivable that registration and used of the Disputed Domain Names could be for any reason other than bad faith, in order to misled users into believing the Respondent is associated with the Complainant for the purposes of commercial gain; to sell the Disputed Domain Names for profit; and/or prevent the Complainant from reflecting its Rimowa Trade marks in a corresponding domain name. This falls squarely within paragraph 4 (b) of the Policy as evidence of bad faith.

(e) The Disputed Domain Names will inevitably mislead users into believing that they will resolve to the official website of the Complainant. In these circumstances of blatant misappropriation of the Complainant's "RIMOWA" mark, there can be no possible grounds on which to find that the Respondent's registration and use of the Disputed Domain Names has been otherwise than in bad faith and for the sole purpose of misappropriating the Complainant's goodwill and disrupting the Complainant's business.

The Complainant accordingly submits that it has proved that the Respondent has registered and is using the Disputed Domain Names in bad faith for the purposes of paragraph 4 (a)(iii) of the Policy.

## B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent failed to file timely a Response and has not participated in these administrative proceedings.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain names are 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 names; and
- iii. Respondent's domain names have been registered and are being used in bad faith.

#### **A) Identical / Confusingly Similar**

The Disputed Domain Names incorporate the Complainant's "RIMOWA" mark in its entirety and are therefore identical or confusingly similar to the RIMOWA Trade Marks. The first Disputed Domain Names, moreover, in which the similarly-appearing letter "I" is substituted for the "i" in "RIMOWA", reflects, in the view of this Panel, the Respondent's intention to confuse Internet users who seek the Claimant's official website by the use of a practice known as "typosquatting". *See*, WIPO Jurisprudential Overview 3.0, at par. 1.9.

The Panel finds that the Complainant has proved that the Disputed Domain Names are identical to its registered trademarks in which the Complainant has rights or interests for the purposes of paragraph 4 (a)(i) of the Policy.

#### **B) Rights and Legitimate Interests**

The Respondent registered the Disputed Domain Names on 25 April 2018 – at least 80 years after the RIMOWA Trade Marks were first used by the Complainant. The fame of the Rimowa Trade Marks, coupled with the fact that the Complainant has not licensed, consented to or otherwise authorized the Respondent's use of the Rimowa Trade Marks shifts to the Respondent the burden of proof in establishing that it has rights and/or legitimate interest in the Disputed Domain Names. The Respondent has failed timely to submit a Response and to carry its burden of proof.

The Panel finds that the Complainant has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of paragraph 4 (a)(ii) of the Policy.

#### **C) Bad Faith**

The Panel notes that the Claimant has provided no information or evidence about whether the Respondent has made specific use of the Disputed Domain Names, or either of them. Nonetheless, in view of the distinctiveness, fame, and wide global recognition of the Claimant's "RIMOWA" mark, which the Claimant has established with compelling evidence, the Panel finds weight in the Claimant's argument that it is simply inconceivable that the registration and use of the Disputed Domain Names by the Respondent could be otherwise than in bad faith, in order to mislead users into believing the Respondent is associated with the Complainant for the purpose of commercial gain; to sell the Disputed Domain Names for profit; and/or prevent the Complainant from reflecting its Rimowa

Trade marks in corresponding domain names. This is particularly apparent given that the Disputed Domain Names consist of misleading variants of the Complainant's mark, by substituting a similar-looking "l" for the letter "i", in the first instance, and adding the generic word "mall", in the second, which would tend to attract Internet users seeking retail outlets where they might purchase the Complainant's stylish luggage.

The Panel finds that Respondent registered and is using the Disputed Domain Names in bad faith to intentionally mislead public Internet users for its own commercial gain. The Complainant has proved that the Respondent registered and is using the Disputed Domain Names in bad faith for the purposes of paragraph 4 (a)(iii) of the Policy.

## 6. Decision

It is ORDERED that the <rlmowa.com> and <rimowamall.com> domain names be TRANSFERRED to the Complainant.



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David L. Kreider  
Panelist

Dated: 6 September 2018