

Decision for dispute CAC-UDRP-105571

Case number	CAC-UDRP-105571
Time of filing	2023-06-27 09:33:58
Domain names	lactalisrestauracion.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Groupe Lactalis
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Tool Domains
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the LACTALIS trademark registrations in several countries, including but not limited to:

- The European trademark LACTALIS #1529833 registered on February 28, 2000;
- The International trademark LACTALIS #900154 registered on July 27, 2006;
- The International trademark LACTALIS #1135514 registered on September 20, 2012;
- The European trademark LACTALIS #017959526 registered on May 22, 2019.

FACTUAL BACKGROUND

Founded in 1933, the Complainant is a French multi-national company, engaged in the food industry, particularly the dairy sector. The Complainant has traded under the name "Lactalis" since 1999.

Lactalis is the largest dairy products group in the world, with over 85,500 employees, 270 production sites, and a presence in over 51 different countries.

The Complainant is also the owner of a large domain names portfolio, including the same distinctive wording LACTALIS, such as <lactalis.com> registered on January 9, 1999 and <lactalis.net> registered on December 28, 2011.

The Respondent appears to be located in Sofia, Bulgaria.

The disputed domain name was registered on June 1, 2023.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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).

First, the Complainant claims rights in the LACTALIS mark through its global trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See Avast Software s. r. o. v Milen Radumilo, 102384, (CAC 2019-03-12).

Second, the Complainant claims that its LACTALIS mark is a well-known and distinctive trademark, and the additional "restauracion" (Spanish term for "RESTAURATION") is not sufficient to escape the finding that the domain name is confusingly similar to the trademark LACTALIS. It does not change the overall impression of the designation as being connected to the Complainant's trademark LACTALIS. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Third, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated.

The Panel accepts Complainant's contention and agrees that the disputed domain name is confusingly similar to Complainant's LACTALIS trademark.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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 disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). More specifically, the Complainant must first make a prima facie case that the Respondent lack rights and legitimate interests in the disputed domain name, and the burden of prove then shifts to the Respondent to show they do have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

First, the Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

Second, the Complainant contends that the Respondent is not affiliated with nor authorized by LACTALIS Group in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name, and he is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark LACTALIS, or apply for registration of the disputed domain name by the Complainant.

Third, the disputed domain name resolves to a parking page with commercial links and is being listed for sale. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Having reviewed the evidence including the screenshot provided by the Complainant, the Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of proof has been shifted to the Respondent to prove that it has rights or legitimate interests to the disputed domain name. However, the Respondent has not submitted any response to rebut the assertion within the required period of time.

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

First, the Complainant reiterates that its LACTALIS brand is well known and has been protected in different countries via its global trademark registrations. The Complainant is one of the leading producers of dairy products and enjoys a strong worldwide reputation. Past panels have confirmed that the trademark LACTALIS is well-known. Thus, the Complainant claims that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark LACTALIS. Without receiving a timely response from the Respondent, the Panel is of the view that the Respondent should have actual knowledge of the Complainant and its LACTALIS brand. The registration of a confusingly similar domain name constitutes bad faith, see ARCELORMITTAL (SA) v. acero, 102399 (CAC 2019-04-22). The Panel agrees with Complainant and finds that Respondents should have actual knowledge of Complainant's mark, demonstrating bad faith registration under paragraph 4(a)(iii) of the Policy.

Second, the Complainant alleges that the disputed domain name resolves to a parking page with commercial links by attempting to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain. The Respondent further contends that the disputed domain name is being offered for sale which evinces that Respondent has registered the disputed domain name in order to sell it back for out-of-pocket costs. The uses of the disputed domain name constitute bad faith.

Paragraph 4(b) of the Policy lists out four common circumstances to be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Panel is of the view that Respondent registered and uses the disputed domain name in bad faith to confusion with Complainant's trademarks for commercial gain by using the confusingly similar domain name to resolve to website offering commercial advertisements and listing the domain name for sale. Using a confusingly similar domain name to trade upon the goodwill of a complainant and attempt for commercial gain can evince bad faith under paragraph 4(b)(iv) of the Policy, see Intesa Sanpaolo S.p.A. v. David Czinczenheim, 104885 (CAC 2022-11-04) ("According to the consistent case law of this Court, panelists have found that redirection to parking pages in which the disputed domain name is offered for sale constitutes bad faith.").

For the foregoing reasons, the Panel finds the Complainant has satisfied 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

Having established all three elements required under the UDRP Policy, the Panel concludes that relief shall be granted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lactalisrestauracion.com**: Transferred

PANELLISTS

Name	Mr Paddy TAM
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DATE OF PANEL DECISION 2023-07-22

Publish the Decision
