

Decision for dispute CAC-UDRP-105568

Case number CAC-UDRP-105568

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Domain names lactaliscnf.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Groupe Lactalis

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Tigmoor Dot Com Limited

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 following trademark registrations for the sign "LACTALIS" (the "LACTALIS trademark"):

- the European Union trademark LACTALIS (word) with registration No. 001529833, registered on 7 November 2002 for goods and services in International Classes 1, 5, 10, 13, 16, 31, 33, 34, 40 and 42;
- the International trademark LACTALIS (combined), with registration No. 900154, registered on 27 July 2006 for goods and services in International Classes 29, 30 and 35; and
- the International trademark LACTALIS (combined) with registration No. 1135514, registered on 20 September 2012 for goods and services in International Classes 5, 29, 30, 32 and 35.

FACTUAL BACKGROUND

The Complainant was founded in 1933. It is a French multi-national company, engaged in the food industry, particularly the dairy sector, and has traded under the name Lactalis since 1999. The Complainant is the largest dairy products group in the world, with over 85500 employees, 270 production sites, and presence in 51 countries.

The Complainant is the owner of the domain names <lactalis.com>, registered on 9 January 1999, and <lactalis.net>, registered on 28 December 2011.

The disputed domain name <lactaliscnf.com> was registered on 6 June 2023. It currently resolves to an online shop that markets dairy or milk-based food products, and other products.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to its LACTALIS trademark, as it incorporates the trademark entirely, and the addition of the sequence “cnf” (abbreviation for “Canadian Nutrient File”) is not sufficient to escape the confusing similarity to the LACTALIS trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the disputed domain name and is not related to the Complainant or authorized by it to register and use a domain name that includes the Complainant’s LACTALIS trademark. The Complainant adds that the Respondent is not using the disputed domain name for a bona fide offering of goods or services, because it resolves to an online shop that markets mainly dairy or milk-based food products and thus competes with the Complainant. According to the Complainant, the Respondent’s use of the disputed domain name reflects an intent to trade on the reputation of the Complainant’s trademark and falsely suggests to Internet users that the associated website is affiliated with the Complainant.

The Complainant states that the disputed domain name was registered and is being used in bad faith. It claims that its LACTALIS trademark is well-known, and the Respondent has registered the disputed domain names with full knowledge of it. The Complainant argues that Respondent has registered and used the disputed domain name either to attract Internet users and offer possibly fraudulent services while impersonating the Complainant, or to disrupt the Complainant’s business by offering services in direct competition with the Complainant.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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).

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).

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).

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(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 was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the LACTALIS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The disputed domain name reproduces the LACTALIS trademark entirely with the addition of the element “cnf”. As noted by the Complainant, this represents the commonly used abbreviation for “Canada Nutrient File”. The addition of this non-distinctive element has a low effect on the overall impression made by the disputed domain name, in which the LACTALIS trademark is easily recognizable. As discussed in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), in cases where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the LACTALIS trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because there is no relationship between the Parties and the Respondent is not commonly known under the disputed domain name. The Complainant points out that the disputed domain name is not used for a bona fide activity, because it resolves to a website that offers dairy products in competition with the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided a plausible explanation for the registration and use of the disputed domain name.

The Panel considers that the circumstances of this case do not support a finding that the Respondent has rights or legitimate interests in the disputed domain name. It is well-established under the UDRP that the use of a domain name that is confusingly similar to the trademark of another to offer competing goods or services is not a bona fide offering of goods or services or a legitimate non-commercial or fair use of a domain name under the Policy.

In the present case, the disputed domain name fully incorporates the Complainant’s LACTALIS trademark and is confusingly similar to it, which creates a risk of implied affiliation, and is being used for a website that offers competing goods and includes no disclaimer for the lack of relationship with the Complainant. Such use cannot create rights or legitimate interests of the Respondent in the disputed domain name.

On this basis, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

The registration of the Complainant’s LACTALIS trademark predates with more than twenty years the registration of the disputed

domain name, which is confusingly similar to it, and the associated website offers goods that compete with the Complainant's goods protected by the LACTALIS trademark. The website includes no disclaimer for the lack of relationship between the Parties and does not identify the provider of the goods offered. This may mislead Internet users to believe that the disputed domain name and the website to which it resolves represent official or authorized online locations where goods authorized by the Complainant are legitimately offered. The Panel is therefore of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant's LACTALIS trademark and with the intention of taking advantage of its goodwill by attracting Internet users to its website to offer them goods in competition with the Complainant for commercial gain.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lactaliscnf.com**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION **2023-07-24**

Publish the Decision
