Decision for dispute CAC-UDRP-106111

Case number	CAC-UDRP-106111
Time of filing	2023-12-27 08:37:13
Domain names	lactalis.shop

Case administrator

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

Complainant

Organization	Groupe Lactalis

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	MEI WANG

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 owns:

- European trademark LACTALIS, n° 1529833 registered on February 28th, 2000;
- International trademark LACTALIS, n° 900154 registered on July 27th, 2006;
- Chinese trademark LACTALIS, n° 9221146 registered on March 21st, 2012;
- International trademark LACTALIS, n° 1135514 registered on September 20th, 2012.

FACTUAL BACKGROUND

Founded in 1933, the Complainant is one of the world's leading producers of dairy products and enjoys a strong worldwide reputation. In addition to the trademarks set out above, the Complainant owns the domain names <lactalis.com> registered on January 9th, 1999 and <lactalis.net> registered on December 28th, 2011.

The disputed domain name <**lactalis.shop**> was registered on December 15th, 2023 and redirects to a Dan.com page where it is offered for sale for 1450 USD.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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).

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

As to the first element, the Complainant has shown that it has rights in the LACTALIS mark and that the mark is well-known. The Panel finds the disputed domain name <**lactalis.shop**> to be identical to the Complainant’s trademark LACTALIS because it incorporates the mark in its entirety and the inconsequential top-level domain “.shop” may be ignored. The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name; is not identified in the WHOIS database as the disputed domain name; is not affiliated with nor authorized by the Complainant in any way and is not related in any way to the Complainant's business. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark LACTALIS nor to apply for registration of the disputed domain name. The Respondent's general offer to sell the disputed domain name for 1450 USD is evidence of the Respondent's lack of rights or legitimate interest in the disputed domain name.

As noted above, disputed domain name <**lactalis.shop**> was registered on December 15th, 2023 and redirects to a Dan.com page where it is offered for sale for 1450 USD.

These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established this element.

As to the third element, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

(i) Circumstances indicating that the 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 the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the 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 the Respondent has engaged in a pattern of such conduct;

(iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the Respondent's website or location or of a product or service on its website or location.

The Complainant contends that, given the distinctiveness of the Complainant's trademark and reputation, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark LACTALIS and therefore could not ignore the Complainant; the disputed domain name redirects to a Dan.com page where it is offered for sale for 1450 USD; and the Respondent fails to make an active use of the disputed domain name. Furthermore, the Respondent registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use.

The circumstances set out above in relation to the second element, together with the Complainant's assertions, satisfy the Panel that the Respondent was fully aware of the Complainant's well-known LACTALIS mark when the Respondent registered the <lactalis.shop> domain name and that the Respondent did so in bad faith with intent to take advantage of the goodwill and reputation of that mark or to sell it to the Complainant or a competitor of the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

Further, the Respondent has failed to contest any of the Complainant's assertions and has not provided any evidence of actual or contemplated good-faith use. The Panel finds there is no plausible good faith use to which the disputed domain name may be put.

Under these circumstances the Panel finds that the Respondent registered and is using the disputed domain name in bad faith. The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lactalis.shop**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2024-01-19

Publish the Decision