Decision for dispute CAC-UDRP-106062

Case number	CAC-UDRP-106062
Time of filing	2023-12-18 09:29:28
Domain names	alameed-coffee.com

Case administrator

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

Complainant

Organization	Ameed Food Industries w.l.l.

Complainant representative

Organization	Zeusmark Limited

Respondent

Organization	ShopGo

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 trademark registrations for Al AMEED COFFEE, including but not limited to:

- European Union Trade Mark No. 010586279, Al AMEED COFFEE, registered on 6 June 2012;
- Jordanian Trademark Registration No. 28267, AL AMEED COFFEE, registered on 12 November 1990;
- United Arab Emirates Trademark Registration No. 261823, AL AMEED COFFEE, registered on 18 January 2018; and
- United States Trademark Registration No. 5218271, AL AMEED COFFEE, registered on 6 June 2017.

FACTUAL BACKGROUND

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First established in 1973, the Complainant is a Jordanian company engaged in the research, development, production, marketing and sale of coffee beans. The Complainant sells its products in some 30 countries throughout the world, with presence in Europe, the Middle East, and North America.

For use in connection with the sale of its coffee-related products, the Complainant is the owner of numerous trademark registrations for AL AMEED COFFEE, including those listed above.

The disputed domain name was registered on 3 April 2022. At the time of submission of the Complaint, the disputed domain name resolved to a website (the "Respondent's website") that purported to offer for sale products bearing the Complainant's AL AMEED COFFEE trademark, as well as coffee-related products from third parties. Prices on the Respondent's website were displayed in United Arab Emirates Dirhams. The contact information on the Respondent's website consisted of a United Arab Emirates telephone number for communications via WhatsApp.

At the time of this decision, the disputed domain name resolves to a blank web page.

PARTIES CONTENTIONS

Complainant

The Complainant asserts rights in the trademark AL AMEED COFFEE. The Complainant submits that the disputed domain name is confusingly similar to its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not authorized to make use of the Complainant's trademark, nor is the Respondent acting as a bona fide reseller of the Complainant's products; that the Respondent is not commonly known by the disputed domain name; and that the Respondent is not making any legitimate noncommercial fair use of the disputed domain name.

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The Complainant argues that the Respondent was well aware of the Complainant and its rights in the AL AMEED COFFEE trademark when registering the disputed domain name, and that the Respondent has used the disputed domain name to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source of the Respondent's website, in bad faith.

The Complainant requests transfer of the disputed domain name.

Respondent

The Respondent did not file a Response to the Complaint.

RIGHTS

The Panel finds that the Complainant has established rights in the trademark AL AMEED COFFEE. Registration details of the Complainant's AL AMEED COFFEE are provided above.

The disputed domain name comprises the Complainant's trademark AL AMEED COFFEE in its entirety, altered only by the omission of the space between the elements "AL AMEED" and the addition of a hyphen between the elements "AMEED COFFEE". The Panel

finds that such alterations do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, which remains clearly recognizable in the disputed domain name.

The generic Top-Level Domain ".com" may be disregarded for purposes of comparison under the first element.

The Panel finds the disputed domain name to be confusingly similar to the trademark AL AMEED COFFEE in which the Complainant has rights. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

As noted above, the disputed domain name previously resolved to a website purporting to offer products bearing the Complainant's trademark for sale, as well as coffee-related products produced by third parties.

Prior UDRP panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "Oki Data test", the following cumulative requirements will be applied in the specific conditions of a UDRP case:

i. the respondent must actually be offering the goods or services at issue;
ii. the respondent must use the site to sell only the trademarked goods or services;
iii. the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
iv. the respondent must not try to "corner the market" in domain names that reflect the trademark.

See Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903.

In the present case, the Panel notes that sales on the Respondent's website were not limited to products offered by the Complainant. Rather, the Respondent's website also offered third-party products. The Panel further notes that the Respondent's website did not appear to contain any clearly worded disclaimer or other statement that would serve to disclose the Respondent's non-affiliation with the Complainant. In the circumstances, the presence of the Complainant's trademark in the disputed domain name coupled with the Respondent's use of the disputed domain name as described above tended to suggest that the Respondent's website was either operated by the Complainant or was otherwise endorsed by the Complainant. Such use of the disputed domain name risked misleading consumers as to the source of the goods offered for sale on the Respondent's website. The Panel therefore finds that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services, as contemplated by paragraph 4(c)(i) of the Policy.

The Panel further finds that the Respondent is not commonly known by the disputed domain name, independent from the Complainant's rights in the AL AMEED COFFEE trademark, within the meaning of paragraph 4(c)(ii) of the Policy.

Nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name, pursuant to paragraph 4(c)(iii) of the Policy.

The Respondent has not come forward with any evidence of assertions that would otherwise justify its registration and use of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

BAD FAITH

It is clear from the contents of the Respondent's website that at the time of registering the disputed domain name the Respondent

had comprehensive knowledge of the Complainant and its pre-existing rights in the trademark AL AMEED COFFEE. The Panel infers that the Respondent registered the disputed domain name with the purpose of creating a misleading impression of association between the disputed domain name and the Complainant.

In light of the Respondent's use of the disputed domain name as described above, the Panel finds that Internet users viewing the disputed domain name and corresponding website would likely be misled into assuming that the disputed domain name and website were operated by or otherwise endorsed by the Complainant. The Panel finds that by using the disputed domain name the Respondent has sought to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the goods offered for sale therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The fact that the disputed domain name now resolves to a blank web page does not materially affect the Panel's findings above.

The Panel finds that the disputed domain name was registered and is being used in bad faith. The Complainant has satisfied the requirements 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.

After the case administrator filed the notification of delivery in this proceeding, the Complainant pointed out that the email address stated in this notification is incorrect. The case administrator reviewed the delivery of documents in this proceeding and edited the form stating that the incorrect email address was inserted to the notification by administrative fault and the documentation from this case was sent to the correct Respondent´s email address stated in the Registrar Verification.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has established rights in the trademark AL AMEED COFFEE. Despite minor alterations, the disputed domain name remains confusingly similar to the Complainant's trademark.

The Respondent's use of the disputed domain name to offer for sale coffee-related products including those bearing the Complainant's trademark alongside third-party goods and the lack of a clear disclaimer indicates a lack of bona fide intent. While the "Oki Data test" recognizes resellers as having legitimate interests, the Respondent failed to satisfy the Oki Data criteria.

The Respondent registered the disputed domain name with knowledge of the Complainant's rights. The Respondent used the disputed domain name in order to capitalize on the Complainant's rights in the trademark AL AMEED COFFEE by creating a likelihood of confusion between the disputed domain name and the Complainant's trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **alameed-coffee.com**: Transferred

PANELLISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2024-01-26

Publish the Decision