Decision for dispute CAC-UDRP-106398

Case number	CAC-UDRP-106398
Time of filing	2024-03-28 09:48:49
Domain names	fr-lactailis.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Groupe Lactalis

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	unittyiexports

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 several trade marks registrations for its LACTALIS trade mark including European word mark registration number 1529833 registered on November 7, 2002. The Complainant also owns various domain names incorporating its LACTALIS mark including <lactalis.com> registered on January 9, 1999 and from which it operates its main website.

FACTUAL BACKGROUND

Founded in 1933, the Complainant is a French multi-national company, engaged in the food industry, particularly in the dairy sector. The Complainant has traded under the LACTAIS mark since 1999 and is the largest dairy products group in the world, with over 85,500 employees, 266 production sites, and a presence in over 51 different countries.

The disputed domain name was registered on March 5, 2024 and redirects to a page called an "index page" but which includes only two references. MX servers are configured from the disputed domain name.

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.

The Complainant´s contentions are summarised below.

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

As submitted by the Complainant, the Panel finds that the LACTALIS mark is wholly incorporated into the disputed domain name and is confusingly similar to it. The addition in the disputed domain name of the letters “FR” which appears to be an abbreviation for France and the addition of the letter “i” in the term “LACTALIS” does not change the recognition of the Complainant’s mark in the disputed domain name and does not prevent a finding of confusing similarity.

The Complainant has asserted that the Respondent is not identified in the WHOIS database. The Complainant has also contested that the Respondent is not affiliated with nor authorised by the Complainant in any way. The Complainant has further contested that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that it has no relation with and does not carry out any business with the Respondent. The Complainant has also submitted that it has granted no licence or authorisation to the Respondent to make any use of the Complainant’s LACTALIS trade mark, or to apply for registration of the disputed domain name.

The Complainant has pointed out that the disputed domain name resolves to a page that appears to be an index page but which does not appear to make any bona fide offering of goods or services and does not appear to amount to a legitimate non-commercial or fair use of the disputed domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name which case has not been rebutted by the Respondent and accordingly that the Complainant succeeds under paragraph 4(a)(ii) of the Policy.

As noted by the Complainant, the disputed domain name was registered in March 2024, many years after the Complainant’s trade mark registration in 2002 and after its registration of the Complainant’s domain name in 1999, which resolves to its main website. In light of the considerable degree of renown that appears to attach to the LACTALIS mark and the similarity of structure between the disputed domain name and the Complainant's email addresses in the form " @fr.lactalis.com" it is most likely that the Respondent registered the disputed domain name with full knowledge of the Complainant’s LACTALIS trade mark and business.

The disputed domain name resolves to a page which is headed as an “index” page but which appears to be a holding page that contains only two references, one of which is not accessible and the other which appears to lead to a log in screen for an email

system. This may, if the relevant factors are found to be present, amount to a case of passive holding.

Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine, as noted at section 3.3 of the WIPO Juruisprudential Overview 3.0, include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement) and (iv) the implausibility of the Respondent credibly making a bona fide use of the disputed domain name.

In this case the Complainant's mark is highly distinctive and appears to have developed considerable reputation as a consequence of use internationally. The Respondent has failed to submit a response and the Respondent has failed to provide any evidence of actual or contemplated good-faith use. The Respondent initially used a privacy service to mask its identity but even when the registrar confirmed details of its registered address it appears that the Respondent provided false contact details which were found to be false or insufficient to serve the Complaint on the Respondent via written notice. Finally, there is no evidence to suggest that the Respondent has made or will make a bona fide use of the disputed domain name. In any event the Respondent's use of the Complainant's very distinctive and well reputed LACTALIS mark without the Complainant's express permission is implausible. Accordingly, the Panel finds that the Respondent has registered and has made a passive use of the disputed domain name in bad faith.

The Panel notes in addition that the use, without permission, in a domain name of a very well reputed mark such as LACTALIS has been found by previous panels to amount to bad faith under the Policy. The fact that the structure of the disputed domain name reflects the particular format of the Complainant's email addresses in the form " @fr.lactalis.com" and is also set up for MX records further suggests that the Respondent registered the disputed domain name for the purpose of targeting the Complainant. In the absence of any credible explanation to the contrary, this is also indicative of the Respondent's bad faith, more particularly in light of the Respondent's attempt to mask its identity and to provide false physical address details.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fr-lactailis.com**: Transferred

PANELLISTS

Name	**Mr Alistair Payne**

DATE OF PANEL DECISION 2024-04-22

Publish the Decision