Decision for dispute CAC-UDRP-106539

Case number	CAC-UDRP-106539
Time of filing	2024-05-16 10:20:42
Domain names	uslactelis.com

Case administrator

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

Complainant

Organization	Groupe Lactalis

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Tell you later

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 registered owner of several trademarks for "LACTALIS", including US trademark registration no. 6,824,877 "LACTALIS", registered on 23 August 2022 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

Founded in 1933, the Complainant is today the largest dairy products group in the world, with more than 85,500 employees, 266 production sites, and a presence in 51 different countries. It also has a strong presence in the United States through its subsidiary LACTALIS AMERICAN GROUP. The Complainant provides information about its company on the Internet, inter alia, at <lactalis.com> (first registered on 1 January 1999) and, as regards its US subsidiary, at <lactalisamericangroup.com>.

The disputed domain name was registered on 29 April 2024 and is not used in connection with an active website.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant alleges that the disputed domain name is confusingly similar to the Trademark as the substitution of the letter “A” by the letter “E” and the addition of the letters “US” (for “United States”) do not prevent a finding of confusing similarity.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant asserts that the Respondent is not commonly known by the disputed domain name, that the Respondent is not affiliated with or authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither licence nor authorization has been granted to the Respondent to make any use of the Trademark, or apply for registration of the disputed domain name by the Complainant. Finally, the Complainant asserts that the disputed domain name is not being used in connection with an active website and that the Respondent therefore cannot rely on bona fide use of the domain name.

Finally, the Complainant alleges that the disputed domain name was registered and is being used in bad faith. Concerning bad faith registration, the Complainant alleges that the Respondent has registered the disputed domain name with full knowledge of the Trademark and therefore in bad faith. The Complainant argues that the Trademark is well-known, as confirmed in previous UDRP cases, that the Complainant is one of the world’s leading producers of dairy products and enjoys a strong reputation worldwide, and that the addition of the term “US” in the disputed domain name refers to the Complainant’s activities in the United States. As to bad faith use, the Complainant relies on the passive holding doctrine and contends that the Respondent has not demonstrated any activity with respect to the disputed domain name and that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be unlawful, such as passing off, infringement of consumer protection laws, or an infringement of the Complainant’s trademark rights.

RESPONDENT:

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 4(a) of the Policy requires the Complainant to establish each of the following three elements:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark because the Trademark is recognizable in the disputed domain name. It is well established that a domain name that fully incorporates a trademark may be confusingly similar to such a trademark within the meaning of the Policy despite the addition of generic terms such as "US". Similarly, replacing the letter "a" with the letter "e" does not eliminate the similarity between the Trademark and the disputed domain

name in question.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent has not denied these allegations and has therefore failed to establish any rights or legitimate interests in the disputed domain name.

Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the disputed domain name is inactive and the Respondent has not provided any evidence of use or demonstrable preparations for use of the disputed domain name. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is highly distinctive and very well established.

Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith under the principles of passive holding. It is consensus view that the lack of an active use of a domain name does not as such prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, the respondent's concealment of identity, and the impossibility of conceiving a good faith use of the domain name (cf Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574; Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131).

The Panel is convinced that the Trademark is highly distinctive and well-established. Furthermore, the Respondent failed to file a Response and therefore did not provide evidence of any actual or contemplated good faith use of the disputed domain name. In the view of the Panel, the facts of this case do not allow for any plausible actual or contemplated active use of the disputed domain name by the Respondent in good faith. The Panel is therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent's non-use of the disputed domain name equals to use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **uslactelis.com**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2024-06-10

Publish the Decision