Decision for dispute CAC-UDRP-106517

Case number	CAC-UDRP-106517
Time of filing	2024-05-31 09:21:04
Domain names	alameed-coffeee.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Ameed Food Industries w.l.l.

Complainant representative

Organization	Zeusmark Limited

Respondent

Organization	Privacy service provided by Withheld for Privacy ehf

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 valid trademarks:

- AL AMEED COFFEE® & device, UAE Trademark Registration No. 261823, registered on January 18, 2018
- AL AMEED COFFEE® device, USPTO Trademark Registration No. 5,218,271, registered on June 6, 2017
- AL AMEED COFFEE® device, EUIPO Trademark Registration No. 10586279, registered on June 6, 2012

In addition, the Complainant owns different domain names with the terms ALAMEED COFFEE such as such as <alameedcoffee.com> registered since November 11, 1999 and <alameed-coffee.com> registered since April 3, 2022, among many other domain names.

FACTUAL BACKGROUND

FACTS PROVIDED BY THE COMPLAINANT:

The Complainant is an international coffee company engaged in the research, development, production, marketing and sale of coffee across the world. The Complainant began operating from a small coffee-roasting store in 1973. Today, the Complainant brand Al Ameed Coffee® is sold to more than 30 countries around the world including the USA, the UK, Austria, the Netherlands, the

United Arab Emirates, Egypt, Australia, Canada and many more benefiting from a solid and expansive supply chain network.

The Complainant is the owner of the different trademarks AL AMEED COFFEE®. In addition, the Complainant is the owner of different domain names including the term AL AMEED COFFEE® such as <alameedcoffee.com> registered since November 11, 1999 and <alameed-coffee.com>.

The disputed domain name <alameed-coffeee.com> (hereinafter, the “Disputed Domain Name”) was registered on June 13th, 2023 and it redirects to a website promoting the sale of coffee products using a misspelled variation of the Complainant's trademark.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and he is not related in any way to the Complainant’s business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

Respondent did not reply to the Complaint.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant confirms that the Disputed Domain Name <alameed-coffeee.com> is confusingly similar to its trademarks AL AMEED COFFEE®.

The Complainant states that the Disputed Domain Name consist of a misspelling of Complaint's AL AMEED COFFEE® mark and fully incorporates the Complainants registered and well-known trade mark and the only slight differences between the Disputed Domain Name and the Complainant’s trademark is the addition of a letter "E" to COFFEE, a hyphen “-“between “ALAMEED” and “COFFEE” and the gTLD suffix “.com”.

Furthermore, the Complainant indicates that the gTLD is not relevant in the appreciation of confusing similarity.

Second element: Rights or legitimate interest

The Complainant claims that the Respondent is not known as the Disputed Domain Name. Furthermore, the Complainant confirms that the Respondent has no right or legitimate interests in respect of the Disputed Domain Name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Moreover, the Disputed Domain Name points to a website promoting the sale of coffee products using a misspelled variation of the Complainant's trademark. Furthermore, the website does not offer any contact details, the 'Terms and conditions' and 'Privacy policy' pages of the website which the domain is pointing to are completely blank.

Finally, the Complainant indicates that the Respondent does not “make a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue” as stated in § 4 c of the UDRP, because the Disputed Domain Name is being used since its registration to convey users to a website promoting the Respondent’s commercial activity consisting in the sale of coffee products.

Third element: Bad faith

The Complainant asserts that the Disputed Domain Name that the Complainant’s well-known trade mark AL AMEED COFFEE® has been used for more than 20 years before the Respondent’s registration of the Disputed Domain Name and due to the fact that the Complainant´s trade mark is well-known and that the Respondent has registered the Disputed Domain Name incorporating the AL AMEED COFFEE® trademark together with the obvious misspelling of the term "coffee", it is inconceivable that the Respondent registered the domain name without prior knowledge as to the existence of the Complainant and the Complainant´s trade marks.

Further, the Respondent uses the domain name to divert Internet traffic to a site that sells coffee products which disrupts the Complainant´s business operations. By doing this the Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

RESPONDENT

The Respondent did not reply to the Complaint.

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

- THE DISPUTED DOMAIN NAME IS IDENTICAL TO THE TRADEMARKS AL AMEED COFFEE® OF THE COMPLAINANT.

The Uniform Domain Name Dispute Resolution Policy (the Policy) in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The Complainant has submitted evidence showing the ownership of the trademark AL AMEED COFFEE®.

From the Panel's perspective, the Disputed Domain Name <alameed-coffeee.com> is composed of almost all letters of the trademark "AL AMEED COFFEE®" with the inclusion of the letter "E" at the end of the term COFFEE plus the inclusion of a hyphen between the two names which composed the trademark; i.e. "AL AMEED" – "COFFEE". From the Panel's perspective, this an intentional misspelling of Complainant's trademark and a clear typosquatting case where internet users searching for "<alameedcoffee.com>" might wrongly type an additional letter "e" in the keyboard after the word COFFEE and by doing so, they would end up at Respondent's website "<alameed-coffeee.com>". (See, e.g., Sanofi. v. Domains By Proxy, LLC /domain admin, WIPO Case No. D2013-0368: "The Domain Name consists of the SANOFI Mark with the letter "o" replaced by the letter "i". The replacement of "o" with "i" does not operate to prevent a finding of confusing similarity between the SANOFI Mark and the Domain Name especially in circumstance where the letters "o" and "i" are right next to each other on a typical "qwerty" keyboard, meaning that a single slip of the fingers would result in an Internet user who intended to visit the Complainant's website at www.sanofi.com visiting the Respondent's Website instead").

Furthermore, previous panels have found that special attention should be taken with domain names where the difference in spelling is so insignificant that it is hardly noticeable and does not change the distinctive character of the mark in question. See, e.g., BOURSORAMA SA v. francois goubert , CAC Case No. 104595: " This also applies to domain names where the difference in spelling is so insignificant that it is hardly noticeable and does not change the distinctive character of the mark in question. Most readers would be hard put to quickly spot the difference between "BOURSORAMA" and "BOUSORAMA". This takes some analysis, especially at the mind reads what it expects to see from previous experience. In this case, that expectation would be to read the well-known word "BOURSORAMA").

Lastly, the addition of the Top-Level Domain Name ".com" in a domain is considered as a standard registration requirement and, therefore, it should be disregarded under the first element confusing similarity test (see paragraph 1.11 WIPO Overview 3.0).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to Complainant's mark.

- RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate

interests in the Disputed Domain Name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Jurisprudential Overview, version 3.0., paragraph 2.1).

The Complainant indicates that the Respondent is not affiliated nor authorized in any way to use the trademarks AL AMEED COFFEE®.

Furthermore, the Complaint argues that it does not carry out any activity for, nor has any business with the Respondent. Finally, the Complainant has not granted a license or authorization to the Respondent to make any use of the trademarks.

From the information provided by Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name. The Respondent's name "Ahmed Hamzawy" provided in the Registrar's verification is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant also mentioned that the Disputed Domain Name is a typosquatted version of the trademark AL AMEED COFFEE®. In this regard, UDRP panels have confirmed in different decisions that when typosquatting is occurring then this can be considered as additional evidence that Respondent has no right or legitimate interest under the Policy. (See, e.g., Pentair Flow Services AG v. Scott Fisher, CAC Case No. 103931. "Since typosquatting is a practice of registering a domain name in an attempt to take advantage of internet user's typographical errors, this circumstance is also evidence that the Respondent lacks rights and legitimate in the disputed domain name").

Moreover, the website associated with the Disputed Domain Name resolves to a website promoting the sale of coffee products using the Complainant's trademark. Past Panels have agreed that the use of a trademark plus an additional term with a domain name cannot constitute fair use if it effectively impersonates or suggest sponsorship or endorsement by the trademark owner (see WIPO Jurisprudential Overview, version 3.0., paragraph 2.5.1). In this sense, the evidence provided by the Complainant confirms that the Respondent is using the Disputed Domain Name to offer services which look similar to those offered by the Complainant. In the absence of Respondent's reply, this Panel is of the opinion that the registration of the Disputed Domain Name was with the intention to confuse consumers about the origin of the services as well as to generate a commercial gain. This behavior cannot be supported as fair use (see WIPO Jurisprudential Overview, version 3.0., paragraph 2.5.2).

Past 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 provided the following cumulative requirements ("Oki Data test") are taken into account:

(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.

From the evidence presented by the Complainant and not contested by the Respondent, it is clear that the Respondent is offering coffee products using the Complainant's trademark without disclosing the Respondent's relationship via a disclaimer of explanation with the Complainant and the Respondent is also using the Complainant's trademark without proper authorization. This use does not meet the criteria laid down in the Oki Data Test and, therefore, the Respondent cannot be considered as acting with goodwill since the current use makes the Panel to believe that the Disputed Domain Name was registered with intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Therefore, the Panel neither finds a bona fide offering of goods and service nor legitimate non-commercial or fair use of the Disputed Domain Name.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the Disputed Domain Name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

- THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH IN ACCORDANCE WITH THE POLICY.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that 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 Disputed Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Disputed Domain Name, provided that Respondent has engaged in a pattern of such conduct;

or

(iii) The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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.

The evidence submitted by Complainant confirms that its trademarks AL AMEED COFFEE® are distinctive and they have a strong reputation in the coffee industry. Absent of Respondent's reply, the Panel finds that Respondent, prior to the registration of the Disputed Domain Name was aware of Complainant's trademark, in particular since the Disputed Domain Name was registered on June 13, 2023 and Complainant's trademarks were registered long before the registration of the Disputed Domain Name.

As indicated by Complainant, the website associated with the Disputed Domain Name resolves to a website offering similar services similar as Complainant. Past panels have found that the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use.

See WIPO Jurisprudential Overview, version 3.0., paragraph 3.1.4

The current use of the Disputed Domain Name not only creates confusion but rather it hosts a website promoting the sale of coffee products – similar to this offered by the Complainant.

In light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Name in bad faith and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-07-08

Publish the Decision