Decision for dispute CAC-UDRP-106792

Case number	CAC-UDRP-106792
Time of filing	2024-08-20 13:39:58
Domain names	parloaai.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Parloa GmbH

Complainant representative

Organization	Hildebrandt. Rechtsanwälte PartG mbB

Respondent

Name	Danny Gordon

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 WIPO Trademark Registration No. 1716485 for PARLOA, registered on December 5, 2022, in international classes 9, 35, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant is also owner of the domain name <parloa.com> where they advertise an AI-driven software-as-a-service-tool with which undertakings can automize and improve their customer service channels. The software is able to create and operate bots for a company's automated customer service. The Complainant is the owner of the German word trademark "PARLOA" on which an international registration is based with extension of protection to the EU, Great Britain, Norway, Switzerland, the US and Liechtenstein. "Parloa GmbH" is also the registered company name and the Complainant also owns the domain name <parloa.com>.

PARTIES CONTENTIONS

Complainant:

The disputed domain name <parloaai.com> was registered on July 4, 2024. The disputed domain name aims to attract consumers to an impersonation website displaying the PARLOA trademark in connection with AI software services in order to deceive members of the public into believing that the site is operated by the Complainant.

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

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences 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 GROUPE CANAL + v. Danny Sullivan, 102809 (CAC January 21, 2020) (“the Panel, based on the poorly supported and conclusory allegations of the Complainant, retains that the Complainant has not prevailed on all three elements of the paragraph 4(a) of the Policy and, therefore, rejects the Complaint.”)

1. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy requires that the Complainant demonstrate its ownership of trademark rights and that the disputed domain name is confusingly similar to such trademark. Boehringer Ingelheim Animal Health France / Merial v. S Jon Grant, 103255 (CAC September 30, 2020) (“it is imperative that the Complainant provides evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant’s trade mark(s).”).

The Complainant has submitted screenshots from the website of the World Intellectual Property Office (WIPO) as evidence that it owns registered rights to its asserted PARLOA trademark in multiple jurisdictions. Registration with such national and multi-national offices has been found sufficient to satisfy the threshold requirement of proving trademark rights under Paragraph 4(a)(i) of the Policy. Margaritaville Enterprises, LLC v. Neil Wein, FA 1916531 (FORUM November 9, 2020) (“It is well established by decisions under this Policy that a trademark registered with a national authority is evidence of trademark rights”). The disputed domain name adds the letters “ai” and the .com gTLD to the PARLOA trademark and thus the second level of the disputed domain name is

confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain name originates or is endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. Laura Ashley IP Holdings, LLC v. Carol Martin, 106385 (CAC April 28, 2024) (“The disputed domain name <lauraashleyeu.com> was registered in 2024 and contains the Complainant's trade mark LAURA ASHLEY in its entirety, together with the abbreviation 'eu' which has no material impact on the recognisability of the Complainant’s trade mark in the disputed domain name string.”).

Also, the extension “.com” typically adds no meaning or distinctiveness to a disputed domain name and may most often be disregarded in the Paragraph 4(a)(i) analysis. Novartis AG v. Wei Zhang, 103365 (CAC December 9, 2020) (“it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ‘.com’) is to be disregarded under the confusing similarity test”).

Accordingly, the Panel finds that the Complainant has rights to its claimed trademark and that the addition of two letters thereto in the disputed domain name is insufficient to avoid a finding that it is confusingly similar to the Complainant’s trademarks. Thus, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to Paragraph 4(a)(ii) of the Policy, the Complainant has the burden of making a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain name. Cephalon, Inc. v. RiskIQ, Inc., 100834 (CAC September 12, 2014). Once this burden is met, it then shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name. Paragraph 4(c) of the Policy offers the Respondent several examples of how to demonstrate its rights or legitimate interests in the disputed domain name.

With reference to Paragraph 4(c)(ii) of the Policy the Complaint states that “the Respondent has no connection with the Complainant.” The Respondent has not participated in this case and so it does not contest this. As such, the Panel concludes that the Respondent is not affiliated with the Complainant, nor is it authorized or licensed to use the Complainant’s trademark or to seek registration of any domain name incorporating the asserted trademark. Furthermore, the Registrar for the disputed domain names identifies the Registrant only as “Danny Gordon”. There is no evidence that the Respondent is known otherwise and its use of the Complainant’s trademark on its website does not, alone, support a different conclusion. Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com", D2000-0847 (WIPO October 16, 2000) (“use which intentionally trades on the fame of another” should not be considered. “To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy.”) Based upon the available evidence in this case, the Panel cannot conclude that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name resolves to a website that copies much of the Complainant’s own legitimate site. Using a confusingly similar domain name to impersonate and pass oneself off as a Complainant is not a bona fide offering of goods or services or a legitimate non-commercial or fair use per Paragraphs 4(c)(i) or (iii) of the Policy. See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund, FA 1790949 (FORUM July 9, 2018) (no right or legitimate interest found where “the Domain Name, deliberately and inherently impersonates the Complainant and its trade marks.”). Here, the Complainant claims that “[t]he respondent hosts a website identical to the complainant's” including copyrighted material. The Complainant provides screenshots of its legitimate <parloacom> website as well as of the Respondent’s resolving website and the Panel notes that the latter is, in fact, a nearly identical copy of the former including display of the Complainant’s PARLOA mark in connection with its graphic logo. The Complainant’s assertion that this use of its trademark is for the purpose of impersonation and illicit commercial gain appears well-founded and the Respondent has not filed a Response or made any other submission in this case to offer an alternative explanation for its actions. As the Complainant has made out a prima facie case that has not been rebutted by the Respondent, upon a preponderance of the evidence before it the Panel finds that the Respondent fails to make a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name per Paragraphs 4(c)(i) or (iii) of the Policy.

3. The disputed domain name was registered and used in bad faith

Under Paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate both that the disputed domain name was registered and is being used in bad faith. Further guidance on that requirement is found in Paragraph 4(b) of the Policy, which sets out four examples of possible actions by the Respondent that may satisfy this burden of proof.

Inherently prerequisite to a finding of bad faith under Paragraph 4(a)(iii) of the Policy is some attribution of knowledge of the Complainant's claimed trademark, whether actual or based upon a conclusion that the Respondent should have known of the trademark. See, Domain Name Arbitration, 4.02-C (Gerald M. Levine, Legal Corner Press, 2nd ed. 2019) ("Knowledge and Targeting Are Prerequisites to Finding Bad Faith Registration"); USA Video Interactive Corporation v. B.G. Enterprises, D2000-1052 (WIPO December 13, 2000) (claim denied where "Respondent registered and used the domain name without knowledge of Complainant for a bona fide commercial purpose."). See also, WIPO Overview 3.0, par. 3.1.1 (when examining whether "circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark", Panels may consider such issues as "the respondent's likely knowledge of the complainant's rights"). Here, the Complainant asserts that "[t]he copying of the complainant's website clearly shows that respondent is aware of complainant's earlier rights in the PARLOA-trademarks and company name.". The Panel agrees and finds that the Respondent had actual knowledge of the Complainant's mark and registered the disputed domain name in bad faith.

Next, the Complainant argues that the Respondent registered and uses the disputed domain name in bad faith as the Respondent fraudulently impersonates and passes itself off as the Complainant. Using a confusingly similar domain name to pass oneself off as a complainant can demonstrate bad faith under Paragraphs 4(b)(iii) and (iv) of the Policy. See Abbvie, Inc. v. James Bulow, FA 1701075 (FORUM November 30, 2016) ("Respondent uses the <abbuie.com> domain name to impersonate Complainant's CEO. Such use is undeniably disruptive to Complainant's business and demonstrates bad faith pursuant to Policy Paragraph 4(b)(iii), and/or Policy Paragraph 4(b)(iv)"). As noted above, the Complainant provides screenshots of its own and the Respondent's websites and the two are nearly identical including the appearance of buttons labelled "Contact Sales" and "Get in touch" which presumably lead to the Respondent in the case of its website. The Complainant also notes that much of its website is copyright protected and infringement of such material has been held to reinforce a finding of bad faith. philipp plein v. gueijuan xu, 101584 (CAC August 22, 2017) (Bad faith supported by "copyrighted pictures taken from the Complainant's official website".). The Respondent has not participated in this case to explain its actions and so, based upon a preponderance of the available evidence, the Panel finds it highly likely that the Respondent registered and uses the disputed domain name in bad faith by seeking commercial gain through impersonation of the Complainant and confusion with its trademark, per Paragraph 4(b)(iv).

In light of the above, the Panel finds firm ground upon which to conclude that the Respondent both registered and uses the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **parloaai.com**: Transferred

PANELLISTS

Name	**Steven Levy**

DATE OF PANEL DECISION 2024-09-16

Publish the Decision