Decision for dispute CAC-UDRP-106901

Case number	CAC-UDRP-106901
Time of filing	2024-09-30 09:34:27
Domain names	ALBAMILARGRO.COM

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Alba Milagro International S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Organization	freezing zone

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various registered trade marks that incorporate the terms "Milagro" and/or "Alba Milagro". They include:

(i) International trade mark registration No. 903693 filed on 29 September 2006, in class 1, which takes the form of "MILAGRO" in stylised text combined with device elements that according to the registration respresent "two stylized leaves". This registration has proceeded to grant in at least thirteen territories; and

(ii) Chinese trade mark registration No. 14126804 with an application date of 6 March 2014 and registered on 14 April 2015. with takes the form of the text "Albamilagro" combined with three Chinese characters.

The Complainant also claims "unregistered trademark rights in ALBAMILAGRO in the territories where the “long version” of the mark is not registered". One of the territories in which these rights appear to be claimed is Italy.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant is an Italian company founded in 1988, that produces biostimulants and fertilizers. It's annual turnover in the year ended 31 December 2023 was in the region of €19 million. The Complainant uses the name “ALBA MILAGRO”, or its short form, “MILAGRO" in respect of its business. This includes the use for the domain name <ALBAMILAGRO.COM>, registered on 5 December 2001 and linked to the Complainant's main website.

The Complainant products are also mentioned under these names on the websites of wholesalers and retailers of chemicals, fertilizers and products used in agriculture. The Complainant’s marks are also advertised in blogs and magazines related to agriculture, and on social media.

On 14 August 2024 the Respondent registered the Domain Name. Since registration the Domain Name has been used to defraud the customers of Alba Milagro International S.p.A. Specifically, the holder of the Domain Name falsely represented themselves as the Complainant, informing the customers of the Complainant, through a communication sent from the email address using the Domain Name, claiming that the Complainant had changed its banking details and, as a result, the payments for its services should be made to new account details. As a consequence, one customer has already made a transfer to an account other than the Complainant’s legitimate one, and others continue to receive communications from the fraudulent email address.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the Domain Name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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 Complainant has demonstrated rights in registered trade marks of which a prominent element is the text "ALBAMILAGRO" and "MILAGRO". The Domain Name can also most sensibly be read as involving a misspelling of each of those marks, with an additional letter "r", combined with the ".com" gTLD. Accordingly, the Complainant’s trade mark is clearly recognisable in each of the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy. Given this finding it is not necessary to consider the Complainant's claims of unregistered trade mark rights, or their equivalent.

The Panel accepts that the Domain Name has been deliberately registered to falsely impersonate the Complainant and at least one of its employees, in furtherance of fraudulent activity. In this respect, the Complainant has provided a copy of emails using an email address that incorporated the Domain Name, which purport to come from an employee of the Complainant when they do not, and the content of which sought to persuade a customer of the Complainant to pay an invoice to a different bank account than that operated by the Complainant.

There is obviously no right or legitimate interest in holding a domain name for the purpose of furtherance of a fraud through impersonation (see section 2.13 of the WIPO Overview 3.0), and the fact that a domain name is or has been used for such a purpose is evidence that no such right or legitimate interest exists. Further, the registration and use of a domain name for such a purpose involves registration and use in bad faith (see, section 3.4 of the WIPO Overview 3.0). Arguably such activities fall with the scope of the example circumstances evidencing bad faith registration set out in paragraph 4(b)(iv) of the Policy. However, whether or not this is so, it is difficult to conceive of a more clear-cut example of bad faith registration and use of a domain name.

The Complainant has, therefore, satisfied the requirements of paragraphs 4(a)(ii) and (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. **ALBAMILARGRO.COM**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2024-10-25

Publish the Decision