Decision for dispute CAC-UDRP-106986

Case number	CAC-UDRP-106986
Time of filing	2024-10-24 10:11:23
Domain names	alameed.net

Case administrator

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

Complainant

Organization	Ameed Food Industries w.l.l.

Complainant representative

Organization	Zeusmark Limited

Respondent

Name	Alameed Vending Machine Trading

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 multiple word, device, and combined registered trademarks for Al AMEED COFFEE, AL AMEED COFFEE and ALAMEEDCOFFEE in Latin and Arabic scripts including, for example:

European Union Registered Trademark Number 10586279, Al AMEED COFFEE, registered on June 6, 2012;

Jordanian Registered Trademark Number 28267, ALAMEED COFFEE, registered on November 12, 1990; and

United Arab Emirates Registered Trademark Number 210499, ALAMEEDCOFFEE, registered on May 11, 2015.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was originally established in 1973 and is a family-owned coffee manufacturer and supplier based in Amman, Jordan. The Complainant's coffee is sold under the AL AMEED COFFEE brand to more than 30 countries around the world including the United Arab Emirates. The Complainant owns multiple registered trademarks in respect of the said brand, including, for example, the registered trademarks noted above. The Complainant also operates via multiple domain names, many of which use the term

“alameed” in their respective Second-Level Domains.

According to WhoIs records, the disputed domain name was registered on March 31, 2015. However, the Registrar Verification document states that the disputed domain name was registered by the current registrant, the Respondent, on October 17, 2020. The website associated with the disputed domain name originally indicated that it was operated by a company engaged in selling coffee vending machines. However, by 2021, said website was showing a “fatal error”, after which, on March 28, 2022 and January 27, 2023, it displayed “Coming Soon” messages. At some point after the latter date, the website associated with the disputed domain name was developed and began to sell coffee products. Some of said coffee appears to be that which is manufactured by the Complainant, but the Complainant notes that it is in fact manufactured by or on behalf of the Respondent using both the names “Al Ameed Coffee”, and latterly “Beetar Coffee”. Furthermore, some of said coffee appears to be manufactured by a third party.

The Complainant asserts that the website associated with the disputed domain name was related to the website for a domain name <alameed-coffee.com>, which was the subject of a previous complaint brought by the Complainant under the Policy in respect of which the Complainant was successful (see: CAC Case No. 106062).

PARTIES CONTENTIONS

Complainant:

The disputed domain name is confusingly similar to the AL AMEED COFFEE trademarks in which the Complainant holds rights. The only difference between such marks and the disputed domain name is the subtraction of the term “coffee” in the latter, along with the addition of the domain name suffix.

The Respondent has not received any license or consent from the Complainant, express or implied, to use the Complainant´s trademarks in the disputed domain name, on any products or in any other manner. The absence of any such license or consent means that there is no actual or contemplated bona fide use of the disputed domain name that could be claimed. The Respondent is not an authorized reseller of the Complainant. Third party products are sold on the website associated with the disputed domain name alongside the Complainant’s products without an evident disclaimer as to the lack of affiliation with the Complainant, thus failing to pass the “Oki Data Test” (see: Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903). The Respondent’s website content shows that the inclusion of the Complainant’s trademark in the disputed domain name is deliberate, and specifically references said mark, despite the sale of third party products thereunder. Such use is commercial activity and not legitimate noncommercial or fair use within the meaning of the Policy.

The Complainant’s trademark has been in use for around 25 years before the disputed domain name was registered and 30 years before the Respondent’s acquisition of the disputed domain name. As the Respondent is referencing the Complainant’s product by way of an illegitimate product branded “Al Ameed Coffee” on said website, it is inconceivable that the Respondent registered the disputed domain name without prior knowledge of the Complainant and its marks. The association of the disputed domain name with the <alameed-coffee.com> domain name, demonstrated by a link to a Jordan-based e-commerce partner, strongly confirms the Respondent’s repetitive bad faith intent towards the Complainant.

By using the website associated with the disputed domain name to offer online sale of the Complainant’s products alongside third party coffee products and the Respondent’s own coffee brand, 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:

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

With regard to the first element of the Policy, the Complainant has demonstrated to the Panel's satisfaction that it has UDRP-relevant rights in its AL AMEED COFFEE trademarks by virtue of the various registered trademarks noted above. Most of the Complainant's trademarks are figurative in nature but the word elements (which are the only parts that could be compared with a domain name, since domain names are alphanumeric and do not contain graphical elements) are readily severable from the graphic design aspects for comparison purposes (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.10). The Complainant's various marks are sometimes expressed in both Latin and Arabic script. The Panel considers it reasonable to compare the Latin script version to the disputed domain name, and to disregard the Arabic script element, as the disputed domain name is itself in Latin script, being a non-internationalized domain name.

The disputed domain name consists of the first two elements of said mark, absent the space included in the textual aspects of some of the Complainant's trademarks, coupled with a domain name suffix. The absent space is of no significance, given that spaces cannot be included in domain names for technical reasons. Likewise, the absence of the word "coffee" in the disputed domain name does not mean that the Complainant's mark is not recognizable therein. The COFFEE element of said mark is the most descriptive aspect thereof, while the AL AMEED element is the first, most distinctive, and strongly recognizable aspect.

It should be noted that the website associated with the disputed domain name has previously been used to promote a version of the Complainant's product that the Complainant says (and the Respondent does not deny) is illegitimate. While the content of the website associated with the domain name concerned is usually disregarded by panels when assessing confusing similarity under the first element, in some instances, panels have taken note of such content to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see WIPO Overview 3.0, section 1.15). The domain name suffix can be disregarded for the purposes of the comparison (see WIPO Overview 3.0, section 1.11.1). Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's AL AMEED COFFEE trademark.

With regard to the second element of the Policy, the Complainant asserts that the Respondent has not received any license or consent from the Complainant, express or implied, to use the Complainant´s trademarks in the disputed domain name, that there is no actual or contemplated bona fide use of the disputed domain name that could be claimed, that third party products are sold on the website associated with the disputed domain name alongside products bearing to be those of the Complainant without an evident disclaimer as to the lack of affiliation with the Complainant (thus failing to pass the "Oki Data Test") and that such use is commercial activity and not legitimate noncommercial or fair use within the meaning of the Policy.

Section 2.8.1 of the WIPO Overview 3.0 notes that panels have recognized that resellers using a domain name containing the complainant's trademark to undertake sales 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. Outlined in the "Oki Data test", the following cumulative requirements will be applied in the specific conditions of a UDRP case:

(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.

In the case at hand, the Panel notes that the website associated with the disputed domain name fails the test according to at least items (ii) and (iii) above. There is also some doubt as to whether the Respondent is actually offering the Complainant's goods for sale in terms of item (i).

There is no evidence that the Respondent is commonly known by the disputed domain name (according to a review of the corresponding WhoIs information). Furthermore, as the website associated with the disputed domain name is commercial in nature, it could not be argued that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent has not replied to the Complainant's allegations and evidence in this case and has failed to set out any alleged rights or legitimate interests which it might have claimed in the disputed domain name. There are no submissions or evidence on the record which might serve to rebut the Complainant's case on this topic, as outlined above. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. The appropriate date for registration in bad faith is the date of acquisition by the Respondent of the disputed domain name (see WIPO Overview 3.0, section 3.9). By that date, the Complainant's trademark registrations were long-established. The Complainant has registered trademarks in the territory where the Respondent is based that pre-date the Respondent's acquisition of the disputed domain name by a considerable number of years. The Respondent appears to deliberately reference the Complainant's mark on the website associated with the disputed domain name by way of a coffee product that the Complainant says (and the Respondent does not deny) is illegitimate, which the Panel takes to mean is not the Complainant's genuine product. In any event, such product is sold alongside third party coffee products under the disputed domain name, which itself references the Complainant's trademark. It is entirely reasonable, both in these circumstances and in the absence of any countervailing submissions or evidence, to infer that the disputed domain name was registered by the Respondent with an awareness of the Complainant and its rights, and with an intent to target these. In terms of paragraph 4(b)(iv) of the Policy, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of such website.

Consequently, the Panel considers that the Complainant has made out a sufficient case of registration and use in bad faith within the meaning of the Policy. The Respondent has not filed a Response in this case and therefore has not sought to address the Complainant's allegations of bad faith registration and use or to contradict in any way the substantial evidence that the Complainant has presented. The Respondent has not offered any explanation that might have suggested that its actions regarding the disputed domain name were in good faith, and the Panel has been unable to identify any conceivable good faith explanation which the Respondent might have put forward in the present case. In all of these circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **alameed.net**: Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2024-11-22

Publish the Decision