

## Decision for dispute CAC-UDRP-107058

Case number **CAC-UDRP-107058**

Time of filing **2024-11-14 09:39:57**

Domain names **ALBAMILARGO.COM**

### Case administrator

Name **Olga Dvořáková (Case admin)**

### Complainant

Organization **Alba Milagro International S.p.A.**

### Complainant representative

Organization **Perani Pozzi Associati**

### 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 relate to the disputed domain name.

#### IDENTIFICATION OF RIGHTS

The Complainant has adduced evidence showing that it is the owner of the following trademarks:

- Italian trademark No. 302020000035686 for the figurative mark MILAGRO registered on 7 October 2020 in Nice Classification class 1;
- International trademark No. 903693 for the figurative mark MILAGRO registered on 29 September 2006 in Nice Classification class 1;
- International trademark No. 1547819 for the figurative mark MILAGRO registered on 4 June 2020 in Nice Classification class 1;
- Chinese trademark No. 14126804 for the mark ALBAMILAGRO with Chinese characters registered on 14 April 2015 in Nice Classification class 1.

The Respondent has further adduced evidence that it registered the disputed domain name <albamilagro.com> on 5 December 2001.

The Complainant requests the Panel to note that in Italy, where the Complainant is based, a principle of "unity of distinctive signs" applies. The Complainant avers that, under this principle, it has the right to bar use and registration of identical or confusingly similar distinctive signs and that unregistered marks, domain names, company names and trade names can be considered among such signs.

The Respondent registered the disputed domain name <albamilargo.com> on 6 November 2024, according to the Registrar Verification performed by the CAC Case Administrator.

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## FACTUAL BACKGROUND

The Complainant is an Italian company, which was founded in 1988 and has pioneered and remains a leader in the production of innovative bio-stimulants and fertilizer solutions. Its products aim to meet the needs of modern agricultural markets, which call for more sustainable crops and yields. Brand identity plays a key role in differentiating the Complainant from competitors. Its product promotion as “The Italian Fertilizer Loved Worldwide” underlines the Complainant’s fertilizers as being 100% made in Italy with a quality recognized globally. Alba Milagro in addition relies internationally on a strong network of local partners whose cooperation is crucial to generating new business opportunities.

The Complainant adduced in evidence its sales catalogue and screenshots of its website. The marks ALBA MILAGRO and MILAGRO are used there interchangeably, and the Complainant avers that it refers to itself by both names in its activities more broadly. It also avers that its other domain names are linked to the main website of the Complainant that resolves to its domain name <albamilagro.com>.

The Complainant adduced screenshots of a Google search that it performed, to show the notoriety online of its brand, as well as of an e-mail forwarded to the Complainant. The e-mail was sent from the disputed domain name and was dated 7 November 2024. Its content purported to be from the Complainant and to inform the Complainant’s customers of a change to its banking details, so that payments for its services should thenceforth be made to new account details.

During the Panel’s routine scrutiny of the Case File in this proceeding, the Panel reviewed the Respondent’s contact details upon registration and determined that the name given consists solely of the two English words “how” (first name) and “far” (last name) and that the postal address given is for a street in a locality in north-western Germany but without a house address being given in that street.

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## PARTIES CONTENTIONS

### COMPLAINANT:

The disputed domain name <albamilargo.com> is identical, or at least confusingly similar, to the Complainant’s well-known trademarks ALBAMILAGRO and MILAGRO. It exactly reproduces them, except for inversion of the letters “G” and “R”, making this a clear case of typosquatting. As such, it cannot be doubted that the disputed domain name refers to the Complainant, ALBA MILAGRO International S.p.A., and induces confusion with the Complainant’s <albamilagro.com> domain name in particular. Inversion of the letters “G” and “R” is likely to pass unnoticed by consumers.

The Respondent has no rights to the disputed domain name, while use of the Complainant’s trademarks in it must be authorized by the Complainant, and has not been. The disputed domain name does not correspond to the Respondent’s name, and, to the best of the Complainant’s knowledge, the Respondent is not commonly known as MILAGRO or ALBA MILAGRO or variants of either. There is no indication of any fair or non-commercial use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The fact that the Respondent registered a domain name that is confusingly similar to the Complainant’s trademarks, which are well-known globally, indicates that the Respondent had knowledge of them at the time of registering it. If the Respondent had carried out even the basic Google search the Complainant performed (see Factual Background), it would have yielded references to the Complainant; this raises a clear inference of the Respondent’s knowledge of the Complainant’s trademarks. Therefore, it is more than likely that the disputed domain name would not have been registered if it were not for the Complainant’s trademarks, so clearly establishing that registration of the disputed domain name was in bad faith.

The disputed domain name is not used for any bona fide offer, whereas the circumstances indicate that the Respondent registered or acquired the disputed domain name primarily for the purpose of sending misleading emails to the Complainant’s customers in order to solicit payments from them illegitimately.

**RESPONDENT: NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.**

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## RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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## NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interest in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

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#### BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that 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).

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#### PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that its résumé of the Parties' contentions includes for the Complainant only its arguments pertinent to reaching a decision in this proceeding; it omits in particular references to past ADR Panels' Decisions.

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#### PRINCIPAL REASONS FOR THE DECISION

This is a clear case of phishing perpetrated by the Respondent. It consists in typosquatting, through registration of a domain name with a variation in it of a well-known commercial brand, and then misusing a facility that a domain name allows so as to deceive internet users for illicit financial gain.

The brand concerned here is ALBA MILAGRO. The Complainant has proved that it holds trademark rights in it and has incorporated the brand in its domain name <albamilagro.com>.

As the Case File shows, far from itself possibly having any rights or legitimate interest, the Respondent at registration of the disputed domain name hid its tracks with patently inaccurate contact details.

The variant the Respondent introduced with respect to the Complainant's protected brand upon registering the disputed domain name <albamilargo.com> was a switching of the least number of characters in the least obtrusive way. As the evidence presented by the Complainant shows, the Respondent then on the very next day after registering the disputed domain name proceeded to use its e-mail facility to undertake a financial scam based on impersonating the Complainant.

The Panel hence finds that the Complainant's rights have been established, the lack of any right or interest on the Respondent's part irrefutably so, and the Respondent's bad faith registration and use equally so, thereby fulfilling all of the UDRP's requirements.

The Panel thus has no hesitation in ORDERING the transfer of the disputed domain name to the Complainant.

A final aspect that calls for the Panel's attention is the Complainant's invitation to take note of (1) the Italian-law doctrine of "unity of distinctive signs" (see Identification of Rights) and (2) a Google search that the Complainant made (see Factual Background). As regards (1), the Panel rules that this doctrine must be disregarded. The ICANN UDRP creates an administrative regime of its own, with a specific policy background that informs it, and the doctrine the Complainant invokes does not form part of it. As regards (2), the Panel similarly disregards the Google search the Complainant made. Performing such a search is not a prerequisite for <.com> registration, while the technical conditions under which the Complainant's search was performed were inadequate to assure probative value. By contrast with developing such contentions, the Panel is of the view that focusing instead more closely on the actual facts of the proceeding is to be preferred.

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#### FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALBAMILARGO.COM**: Transferred
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#### PANELLISTS

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| Name | <b>Kevin Madders</b> |
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| DATE OF PANEL DECISION | 2024-12-26 |
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Publish the Decision

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