

ADMINISTRATIVE PANEL DECISION

Luigi Lavazza S.p.A. v. Berk Şener, Lavazza Coffee
Case No. D2024-0639

1. The Parties

The Complainant is Luigi Lavazza S.p.A., Italy, represented by Studio Barbero S.p.A., Italy.

The Respondent is Berk Şener, Lavazza Coffee.

2. The Domain Name and Registrar

The disputed domain name <lavazzacoffee.app> is registered with Squarespace Domains II LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 16, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 16, 2024.

On February 16, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On February 16, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint both in English and Turkish, and the proceedings commenced on February 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2024. The Respondent sent email communications to the Center on February 26, 27, 28, and 29, 2024 as well as on March 6, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 21, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a long-standing and widely known Italian company that is specialized in the manufacturing and offering of coffee and related products. It operates in over 140 countries with more than 4.000 employees worldwide. Its roots date back to the year 1895.

The Complainant is the owner of the trademark LAVAZZA, which is registered in a large number of jurisdictions, including in Türkiye, where the Respondent is reportedly located. Among many others, the Complainant is the registered owner of the International Trademark No. 317174, registered on July 18, 1966, for LAVAZZA, designating also Türkiye and covering protection for various goods and services (Annex 4.2 to the Complaint).

Furthermore, the Complainant holds more than 600 domain names comprising its LAVAZZA trademark and operates its main company website at “www.lavazza.com” (Annex 6 to the Complaint).

The disputed domain name was registered on February 22, 2023.

Based on the case file, the disputed domain name previously resolved to a website in mainly Turkish language, purportedly offering coffee products of the Complainant by prominently using the Complainant’s word and figurative LAVAZZA trademark and the Complainant’s product pictures without a visible and accurate disclaimer describing the (lack of) relationship between the Parties (Annex 8.1 to the Complaint).

Also, the Respondent configured a Mail Exchange (“MX”) email server for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 9 to the Complaint).

At the time of the Decision, the disputed domain name resolves no longer to an active website.

On March 10, 2023, the Complainant sent a cease-and-desist letter to the Respondent (followed by various reminders), and tried to solve the dispute amicably by requesting a transfer of the disputed domain name (Annex 10.1 to the Complaint). On March 21, 2023, the Respondent confirmed that he will resolve the issue, followed by another confirmation on the same day that he “closed the domain address” (Annex 10.2 and 10.3 to the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

The Respondent did not substantively reply to the Complainant's contentions. Instead, the Respondent repeatedly wrote in its email communications to the Center that he is willing to transfer the disputed domain name to the Complainant. In his email communications to the Center on February 27, 2024, he literally stated that the "domain shall be yours" and "take the domain", while also confirming that that he has deleted the disputed domain name and the associated website. In his email communication of February 29, 2024, the Respondent additionally stated that he will not renew the disputed domain name and that the code for the transfer of the disputed domain name will be shared once received.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Turkish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant has no knowledge of Turkish and that requested translation would be time and costs intensive.

The Respondent did not make any specific submissions with respect to the language of the proceeding, even though communicated by the Center in Turkish and English. In addition, some of the Respondent's email communications to the Center were in English language only. Also, the Respondent's email communication to the Complainant's cease and desist letter prior to the proceeding was entirely drafted in English language, all of which indicates that the Respondent has knowledge of English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

A. Consent to Transfer

The Panel notes that even without a formal settlement between the parties, a consent for the transfer of the disputed domain name by the Respondent can provide sufficient basis for an order for transfer without the need for substantial consideration of the UDRP grounds and the further merits of the case. In view of [WIPO Overview 3.0](#), section 4.10, a panel may “order the requested remedy solely on the basis of such consent”.

In his email communications to the Center, the Respondent unambiguously and repeatedly acknowledged the trademark rights of the Complainant and expressed his willingness and consent to transfer the disputed domain name to the Complainant.

The Panel finds that the email communications of the Respondent to the Center undoubtedly demonstrate his consent to have the disputed domain name transferred. Furthermore, the Panel notes that the content at the disputed domain name impersonating the Complainant is no longer supported as the disputed domain name no longer resolves to an active website.

The fact that no settlement agreement has been concluded between the Parties does, in view of the Panel, not affect the effectiveness of the Respondent’s unilateral consent to the transfer of the disputed domain name.

B. Conclusion

The Panel notes that despite the willingness of the Respondent to transfer the disputed domain name, the Complainant did not request suspension of the proceedings, and hence wished to proceed on the merits of the case, particularly as the Respondent was already given the opportunity to settle the case prior to the administrative proceeding and that meanwhile the Complainant was obliged to incur the costs of filing the Complaint. Nevertheless, the Panel also notes the ongoing interest of both Parties in a quick resolution of this case.

As a consequence, the Panel orders the transfer of the disputed domain name based on the Respondent’s consent to transfer and exceptionally renders its Decision in summary form only.

Just for the sake of completeness and without the need to go into details, the Panel finds that even if the Respondent would not have provided his consent to transfer the disputed domain name, the disputed domain name is confusingly similar to the Complainant’s LAVAZZA trademark, the Respondent does not have rights or legitimate interests in the disputed domain name, and the disputed domain name was registered and is being used in bad faith, even if it no longer resolves to an active website.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <lavazzacoffee.app> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: April 8, 2024