

## **ADMINISTRATIVE PANEL DECISION**

Almas CHP SA v. Svitala Panova  
Case No. D2022-1423

### **1. The Parties**

The Complainant is Almas CHP SA, Switzerland, represented by McDermott Will & Emery LLP, France.

The Respondent is Svitala Panova, Ukraine.

### **2. The Domain Name and Registrar**

The disputed domain name <caviarhouse.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 2022 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 April 29, 2022.

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, and the proceedings commenced on May 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on June 8, 2022. 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Although the Respondent's mailing address is stated to be in Ukraine (though such fact is not possible to verify), which is subject to an international conflict at the date of this Decision which may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should; while it is noted that the courier was not able to deliver the written notice to the Respondent, the Panel notes that the Complaint together with the amended to Complaint were delivered properly to the Respondent's email address; the Registrar's contact form was also used.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar being in the United States of America. The Panel moreover notes that it is clear the Complainant has been targeted and that this is not a coincidental domain name registration, as is further described herein.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

The Complainant is Almas CHP SA, a Swiss company operating in the field of seafood products and services and owning several trademark registrations for CAVIAR HOUSE, among which:

- United States Trademark Registration No. 1468499 for CAVIAR HOUSE and design, in International Class 29, registered on December 8, 1987;
- Swiss Trademark Registration No. P-379195 for CAVIAR HOUSE and design, in International Classes 29, 30, and 33, registered on November 6, 1990;

- International Trademark Registration No. 579034 for CAVIAR HOUSE and design, in International Classes 29, 30, and 33, registered on November 12, 1991.

The Complainant also owns several the domain name registrations, among which: <caviar-house.com>, <caviarhouse.net>, <caviarhouse.org>, <caviarhouse-prunier.ch>, and <caviarhouse-prunier.com>.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on March 6, 2012 and, when the Complaint was filed, it resolved to a parking page displaying pay-per-click (“PPC”) links mainly related to caviar sellers, some of them being the Complainant’s competitors, and reproducing the verbal element of the Complainant’s semi-figurative trademark.

## 6. Parties’ Contentions

### A. Complainant

The Complainant states that the disputed domain name <caviarhouse.com> is substantially identical to its trademark CAVIAR HOUSE and design, as the disputed domain name consists of the verbal element of the Complainant’s trademark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name. The Respondent is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith, since it was registered with the only purpose of attracting Internet users for commercial gain by creating confusion with the Complainant’s trademark.

### B. Respondent

The Respondent has made no reply to the Complainant’s contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL INTERNATIONAL PLC v. MARK FREEMAN*, WIPO Case No. [D2000-1080](#); *ALTAVISTA COMPANY v. GRANDTOTAL FINANCES LIMITED et. al.*, WIPO Case No. [D2000-0848](#); and *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

## 7. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant is the owner of the trademark CAVIAR HOUSE and design both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark CAVIAR HOUSE and design, as it is reproducing the textual element of the Complainant's trademark.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.11.

The Panel finds that the Complainant has, therefore, met its burden of proving that the disputed domain name is confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

#### **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent's rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The disputed domain name was used for a parking page with sponsored links mainly to caviar sellers, some of them being the Complainant's competitors, and it reproduced the verbal element of the Complainant's semi-figurative trademark.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that “[...] for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the Respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

(iii) that [the Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent’s] website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent’s] website or location or of a product or service on [the Respondent’s] website or location”.

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark CAVIAR HOUSE in the field of seafood products and services is clearly established and the Panel finds that the Respondent likely knew of the Complainant and its trademark, and deliberately registered the disputed domain name in bad faith, especially because the content of the parking page, to which the disputed domain name resolved, consisted of providing PPC links mainly to caviar sellers, that is to the same market field as the Complainant.

The Panel further finds that the disputed domain name is also used in bad faith since in the relevant website there are PPC links, even in the case where they are automatically generated, mainly referring to the sale of caviar (including at least a competitor of the Complainant, namely Caviar de Neuvic) and the Respondent is therefore knowingly taking advantage from user confusion.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Finally, the Panel considers that the nature of the disputed domain name, which consists of the textual element of the Complainant’s trademark, further supports a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **8. 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 <caviarhouse.com> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: August 12, 2022