

ADMINISTRATIVE PANEL DECISION

Laboratoire Terravita v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-3564

1. The Parties

The Complainant is Laboratoire Terravita, France, represented by Coblenche Avocats, France.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <touteslanutrition.com> (the “Domain Name”) 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 September 27, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 27, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 amendment to Complaint on October 10, 2022.

The Center verified that the Complaint, together with the amendment to 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 1, 2022.

The Center appointed Olga Zalomiy as the sole panelist in this matter on November 4, 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.

4. Factual Background

The Complainant is a French company that sells food supplements. The Complainant owns a French trademark registration No. 4366645 for the TOUTELANUTRITION trademark registered on June 7, 2017, in classes 05, 92, 30 and 32.

The Respondent registered the Domain Name on September 13, 2022. The Domain Name used to direct to a parked page comprised of pay-per-click links. Currently, the Domain Name does not resolve to an active page.

It appears that the Respondent has been a respondent in some 260 UDRP disputes involving over 400 domain names administered by the Center.

5. Parties' Contentions

A. Complainant

The Complainant's allegations can be summarized as follows:

The Complainant contends that it is a well-known French company that sells food supplements. The Complainant claims that it owns a trademark registration for the word trademark TOUTELANUTRITION in France. The Complainant alleges that it also owns the domain name <toutelanutrition.com> that it has been using since May 27, 2004.

The Complainant argues that the Domain Name is identical or confusingly similar to its TOUTELANUTRITION trademark because the only difference between the Domain Name and the Complainant's trademark is the addition of the letter "s" appearing between the word "toute" and the word "lanutrition", and of the generic Top-Level Domain ("gTLD") ".com", which should be disregarded.

The Complainant claims that the Respondent has not rights or legitimate interests in respect of the Domain Name because the Respondent 1) is not affiliated with the Complainant; 2) has not been authorized by the Complainant to use its TOUTELANUTRITION; 3) is not a licensee of the Complainant or a third party authorized to use the Complainant's trademark; 4) is not using the Domain Name in connection with *bona fide* sale of goods or services because the Domain Name directs to a parking page that contains a number of sponsored links, including links to competitors of the Complainant.

The Complainant submits that the Domain Name was registered and is being used in bad faith. The Complainant argues that the Respondent could not have been unaware of the Complainant's prior rights when it registered the Domain Name because the Domain Name reproduces the Complainant's trademark in its entirety except for the added letter "s" and the Complainant's registration of its trademark predates registration of the Domain Name. The Complainant contends that the Respondent deliberately registered the Domain Name virtually identical to the Complainant's trademark with the intent to divert Internet users from the Complainant's website to the Respondent's parking page which contains sponsored links associated to the Complainant's activities.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

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

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns a trademark registration for the TOUTELANUTRITION trademark in France. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

The Domain Name consists of the Complainant’s TOUTELANUTRITION trademark, the letter “s” appearing between the words “toute” and “lanutrition”, and the gTLD “.com”. “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”¹ It is well-established that the applicable gTLD should be disregarded under the confusing similarity test as a standard registration requirement.²

Because the Complainant’s TOUTELANUTRITION trademark is recognizable within the Domain Name, the addition of the letter “s” does not prevent finding of confusing similarity. The gTLD “.com” is disregarded from the assessment of confusing similarity. Therefore, the Domain Name is confusingly similar to the Complainant’s TOUTELANUTRITION trademark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the respondent’s 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) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

¹ Section 1.8., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

² Section 1.8., [WIPO Overview 3.0](#).

(iii) the respondent is 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.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant's TOUTELANUTRITION trademark in domain names, or for any other purpose. There is no evidence that the Respondent has ever been commonly known by the Domain Name. There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name.

It is well-established that "the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users"³. Here, the Respondent used to use the Domain Name to direct to a parked page comprised of pay-per-click links of the Complainant's competitors. Therefore, the Respondent did not use the Domain Name in connection with a *bona fide* offering of goods or services.

The Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent⁴. Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

Currently, the Domain Name does not point to a website. It is well-established that non-use of a domain name does not prevent finding of bad faith.⁵ In similar situations, UDRP panelists look into the totality of circumstances in a specific case. Prior UDRP panels found that "the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking, such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights... (iii) a pattern of abusive registrations by the respondent... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, (viii)"⁵. "A pattern of abuse has ... been found where the respondent registers, simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners."⁶

First, the Domain Name was registered five years after the Complainant obtained its trademark registration for TOUTELANUTRITION trademark and 18 years after the Complainant started using the mark in connection with its own domain name coupled with the composition of the Domain Name, thus, it is likely that the Respondent knew of the Complainant's trademark rights and registered the Domain Name with the intent to exploit the goodwill of the Complainant's trademark. This conclusion is confirmed by the Respondent's prior use of the Domain Name in connection with a parked page comprised of pay-per-click links of the Complainant's competitors. Second, the Respondent has been a Respondent in over two hundred sixty prior UDRP cases involving over 400 domain names that contain third party marks to which she is not entitled⁶. Third, the Respondent failed to provide any evidence-backed rationale for registering the Domain Name. Therefore, it is likely that the Respondent registered and is using the Domain Name in bad faith.

The Complainant has satisfied the third element of the UDRP.

³ Section 2.9, [WIPO Overview 3.0](#).

⁴ Section 2.1, [WIPO Overview 3.0](#).

⁵ Section 3.3, [WIPO Overview 3.0](#).

⁶ *Sodexo v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-3571](#); *Carvana, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-3526](#); *Balanced Health Botanicals, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-3283](#) and etc.

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 Domain Name, <touteslanutrition.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: November 22, 2022