

ADMINISTRATIVE PANEL DECISION

Groupe Lactalis v. DBA Construction
Case No. D2022-4818

1. The Parties

The Complainant is Groupe Lactalis, France, represented by Inlex IP Expertise, France.

The Respondent is DBA Construction, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <uslactalis.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 19, 2023, 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 December 23, 2023.

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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2023.

The Center appointed Gareth Dickson as the sole panelist in this matter on February 3, 2023. 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 operating in the food, and particularly the dairy, industry.

The Complainant is the owner of a number of trade mark registrations for LACTALIS (the "Mark") around the world, including:

- French trade mark registration number 4438490, registered on March 20, 2018; and
- European Union trade mark registration number 017959526, registered on May 22, 2019.

The Complainant also owns domain name incorporating the Mark, including <lactalis.com>, <lactalis.group>, and <uslactalis.com>.

The disputed domain name was registered on October 14, 2022. It does not point to any active website. MX records have however been configured for the disputed domain name and emails seeking payment from third parties have been sent using the disputed domain name, on the same day that it was registered.

5. Parties' Contentions

A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates a minor misspelling of the Mark (leaving the Mark recognisable within the disputed domain name) with the addition of the geographical identifier "US", which it says refers to the United States, under the generic Top-Level Domain ("gTLD") ".com".

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission, and that the Respondent is not a licensee of the Complainant nor do they have any business relationship.

The Complainant submits that there is no evidence to suggest that the Respondent has acquired any registered or unregistered trade mark rights in respect of the disputed domain name, has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services, and notes that the disputed domain name has been registered using a privacy service, with seemingly false contact information having been given to the registrar.

It also alleges that the Respondent has been using the disputed domain name to further a fraud, writing to third parties while imitating the Complainant, through the use of email signatures featuring the Mark and the Complainant's logos, to ask those third parties to send payments to a bank account nominated by the Respondent but unrelated in any way to the Complainant. The Complainant argues that use of a domain name for such *per se* illegal activity is manifest evidence of bad faith use of the disputed domain name.

The Complainant submits that the Respondent knew of the Complainant and the Mark when it registered the disputed domain name in bad faith, in part because the Mark is inherently distinctive in English and in French and has been recognised as being well-known in previous UDRP decisions, but mainly due to the use of the disputed domain name by the Respondent immediately upon registration to try to defraud third parties.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark. Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "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". Finally, section 1.9 of the [WIPO Overview 3.0](#) provides that: "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the Mark is recognizable within the disputed domain name and is a common, obvious or intentional misspelling of the Mark, comprising an inversion of the second and third letters "a" and "c" in the Mark, which is a minor difference to the Mark and does not alter the phonetic or conceptual similarity between the disputed domain name and the Mark. The use of the gTLD ".com" does not prevent a finding of confusing similarity nor does the addition of the geographical term "US".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Respondent is using the disputed domain name to further a fraud and there is no evidence

from the Respondent or otherwise to gainsay the cogent evidence provided by the Complainant on this point.

In case there should be any doubt, the use of the disputed domain name to send emails seeking the redirection and appropriation of funds properly intended by the payer to reach the Complainant does not constitute a *bona fide* sale of goods or services or a legitimate noncommercial or fair use within the meaning of the Policy. Section 2.13.1 of the [WIPO Overview 3.0](#) states that: “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. Such consideration applies here.

By not participating in these proceedings, the Respondent has failed to refute the Complainant’s *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), “a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed”. Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the Mark has already been found by previous UDRP panels to be distinctive and to have a reputation, rather than being a descriptive or generic term. It is obvious that the Respondent knew of the Mark and registered the disputed domain name because of it, in bad faith. Moreover, the Complainant operates at the domain name <uslactalis.com>, to which the disputed domain name only differs by the inversion of the letters “a” and “c” in the Mark element of the disputed domain name.

The disputed domain name is a clear example of a typo-squatting domain name, that is, one which was chosen with a trade mark owner in mind, usually after the relevant trade marks have been registered, and for the purpose of diverting traffic or money away from that trade mark owner by capitalizing on Internet users’ confusion.

The disputed domain name is also being used in bad faith. Section 3.1.4 of the [WIPO Overview 3.0](#) states: “[...] given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith”.

The Panel notes that the Respondent has used the disputed domain name as a means of communication in a manner that will inevitably confuse recipients of such communications as to the genuine origin of them. The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is also no conceivable justification for the Respondent’s use of the disputed domain name to defraud third parties in the name of the Complainant.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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 <uslcatalis.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: February 22, 2023