

ADMINISTRATIVE PANEL DECISION

Grand Large Yachting v. Maurizio Marzocca, STC ENGINEERING SRL
Case No. D2023-0474

1. The Parties

The Complainant is Grand Large Yachting, France, represented by Cabinet Lavoix, France.

The Respondent is Maurizio Marzocca, STC ENGINEERING SRL, Italy.

2. The Domain Name and Registrar

The disputed domain name <allureyachts.com> is registered with Register SPA (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2023, 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 (ALLURE YACHTS SRL) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 3, 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 February 6, 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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on March 10, 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 “Société par Actions Simplifiée” (SAS, a simplified stock company) incorporated under the law of France on February 21, 2003, and headquartered in Cherbourg, France. The Complainant manufactures and markets pleasure and professional boats and yachts and provides related services. It operates five shipyards in France, one of which is the Allures Yachting shipyard in Cherbourg, founded in 2003 and specializing in the construction of aluminum centerboard cruising dinghies with a shaped hull. The Complainant names models of yachts produced at the Allures Yachting shipyard with the “Allures” name and a model number, such as the current models ALLURES 40.9, ALLURES 45.9, and ALLURES 51.9. The Complainant also buys and sells older models of its “Allures” yachts, with model numbers in the 30s and 40s, and customizes models according to clients’ building plans.

The Complainant holds French trademark number 4512662 (registered January 4, 2019) and European Union trademark number 018082153 (registered October 19, 2019) for a figurative mark prominently featuring the name ALLURES YACHTING under a stylized drawing of a sail. The Complainant displays this ALLURES YACHTING mark in advertising media including its websites at “www.allures.com” (created in 1999) and “www.grandlargeyachting.com” (created in 2010) (both presented in English and French versions) and linked social media sites. The mark is also featured in promoting international sailing events and exhibitions that the Complainant sponsors, including the Cannes Yachting Festival, Salon Nautico de Barcelona, Grand Pavois La Rochelle, Grand Large Yachting World Odyssey 500, Milan Yachting Week, and Nautic Paris. The Complainant’s websites show that the Complainant and its ALLURE YACHTING products are mentioned in sailing and business publications such as *Giornale della vela* (Italy) and *Entreprendre* (France).

The Registrar reports that the disputed domain name was registered on October 1, 2020, and is registered in the name of the Respondent Maurizio Marzocca, showing the organization as “STC Engineering SRL”. The registration details list a postal address in Angri, Salerno Province, Italy. No response was submitted, and it is not evident in what capacity Mr. Marzocca acted for STC Engineering. The Panel notes that a Linked-In profile for Maurizio Marzocca in the Greater Salerno Metropolitan Area lists him as a naval engineer for “Allure yachts”.¹ “STC Engineering SRL”, as listed in the domain name registration details, appears to be the same legal entity that applied for trademark registration of ALLURE YACHTS shortly after registering the disputed domain name. As reported in the Complaint, S.T.C. Engineering SRL (“STC”), an Italian limited liability company headquartered in Naples, Italy, applied for registration of ALLURE YACHTS as a word mark in Italy on November 23, 2020. STC obtained Italian trademark registration number 2020000100548 on October 25, 2021. The Complainant has filed an action in the relevant Italian tribunal to nullify this trademark registration. That action is pending at the time of this Decision.

The Complaint attaches screenshots of the website to which the disputed domain name resolved prior to the Complainant launching this proceeding. Headed “Allure Yachts”, this Italian-language site (the “Respondent’s former website”) advertised three products for sale, the “ALLURE 35”, “ALLURE 38”, and “ALLURE 45” pleasure boats, with photos of each, similar in appearance and description to the Complainant’s current or prior ALLURES models. Screenshots available from the Internet Archive’s Wayback Machine show that the Respondent’s former website advertised that its products would appear at the Cannes Yachting Festival in 2022 and listed contact information for dealers in Italy, France, Spain, Germany, Austria, Switzerland, and the United States. A footer on the home page of the Respondent’s former website stated that the site was created by Wix.com (a website development services company).

At the time of this Decision, the disputed domain name resolves to a landing page operated by Wix.com, with this message:

¹ Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

“Looks Like This Domain Isn’t Connected To A Website Yet! Is this your domain? Connect it to your Wix website in just a few easy steps ...”

The Panel notes that content nearly identical to the Respondent’s former website is now published at “www.italyure.com”, a site headed “Italyure Yachts”, with a copyright notice by “Allure Yachts”. The pleasure boats that are advertised are now labelled only with model numbers 35, 38, and 45. According to the Whois database, the domain name <italyure.com> was created on February 3, 2023.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that the disputed domain name is “nearly identical” to the “distinctive and dominant verbal element” of the Complainant’s prior registered ALLURE YACHTS trademark.

The Complainant states that the Respondent has no license to use the Complainant’s mark. The Complainant has brought a legal action in an Italian Court to nullify the Respondent’s registration of a junior mark corresponding to the disputed domain name.

The Complainant contends that the Respondent registered and used the disputed domain name in bad faith, in an attempt to engender confusion as to source or affiliation and attract Internet users to the Respondent’s website for commercial gain and to disrupt the business of a competitor. The Complainant argues that, “[s]haring the same sector of activity, the same public of consumers, marketing identical and similar products and services, the Respondent cannot claim to be unaware of the existence of the similar domain name of the holder ... and he could not ignore that he was infringing prior rights by registering the disputed domain name ...”. The Complainant points out the Respondent has a dealer in France, the Complainant’s home market, and both participate in the annual Cannes Yachting Festival. Indeed, the Complaint shows that the page on the festival website listing exhibitors at the September 2022 annual event displays the Respondent with the name “Allure Yachts” as a new exhibitor, immediately above the Complainant’s listing for “Allures Yachts”.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (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. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant holds trademark registrations for ALLURES YACHTING as a figurative mark in which the words “allures yachting” are dominant elements. The disputed domain name is similar, comprised of the

word “allure” in the singular (a dictionary word in Italian, French, and English) and the word “yacht” (an English word of Dutch and German derivation), with no intervening space, as this is not possible in the domain name system (“DNS”) for technical reasons. The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark in sight, sound, and sense. As usual, the addition of the generic Top-Level Domain “.com” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it 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 has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights and denies any association with the Respondent, which has used a confusingly similar domain name to sell directly competing products. Thus, the Complainant has made a *prima facie* case. The Respondent did not respond to the Complaint. However, the Respondent clearly used the disputed domain name in connection with a commercial offering in direct competition with the Complainant, as evidenced by the Respondent’s former website and its participation as an exhibitor at the Cannes Yachting Festival in 2022. The Respondent also applied for trademark registration in Italy within weeks after registering the disputed domain name and obtained registration about a year later, when it was actually marketing three models of pleasure boats.

Normally, a respondent’s possession of a registered trademark corresponding to a disputed domain name and offering associated goods or services before notice of the dispute would serve as compelling evidence of the respondent’s rights or legitimate interests in the disputed domain name for purposes of the Policy. In a case such as this, where the complainant had a pending legal challenge to the respondent’s trademark, the panel might deny the complaint without prejudice to refiling in the event that the complainant’s action to nullify the respondent’s trademark proved to be successful.

In this case, however, there are reasons to reject any hypothetical claims of rights or legitimate interests, which the Respondent has not presented. “Panels tend to assess claimed respondent rights or legitimate interests in the present, *i.e.*, with a view to the circumstances prevailing at the time of the filing of the complaint.” See [WIPO Overview 3.0](#), sec. 2.11. It is not evident that the Respondent continues to do business under a name corresponding to the disputed domain name or the Italian trademark. The Respondent’s former website has been taken down, and similar content now appears on a new website, not linked from the disputed domain name, under the name “Italyure Yachts”. The Panel notes that this website does not display a trademark symbol (neither did the Respondent’s former website). The models of the products have been renamed so that they do not include the word “Allure”. It appears that the Respondent has rebranded. Thus, even though the Complainant’s legal challenge to the Respondent’s mark is still

pending, it does not appear that the Respondent is actually using that mark (nor the name provided by the Complainant in the original Complaint) at the time of this Policy dispute, or that the disputed domain name is currently being used in connection with a *bona fide* offering of goods and services. Moreover, it is questionable whether the Respondent's former commercial use of the disputed domain name can be considered *bona fide*, as discussed further in the following section on bad faith.

The Panel finds that the Respondent has not met the burden of production and concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following cited by the Complainant (in which "you" refers to the registrant of the domain name):

"(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Respondent was almost certainly aware of the long-established ALLURES YACHTING mark when the Respondent launched a directly competing business, registered the confusingly similar disputed domain name, and applied for a corresponding Italian trademark. The Respondent introduced three models of pleasure boats that look like the Complainant's and are named similarly, distributing them in the same markets and exhibiting them in some of the same venues. After the Complainant initiated this Policy proceeding, the Respondent took down its former website and migrated to a rebranded website with another domain name. On the available record, it does appear that the Respondent sought to exploit the reputation associated with the Complainant's distinctive and well-established mark, competing in the same product and geographic markets, and shifted only when challenged. The Respondent has not come forward to offer an alternative explanation.

The Panel concludes that the Complainant has established the third element of the Complaint, 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 <allureyachts.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: March 24, 2023