

ADMINISTRATIVE PANEL DECISION

The a2 Milk Company Limited v. Thomas Formolo
Case No. D2023-0477

1. The Parties

The Complainant is The a2 Milk Company Limited, New Zealand, represented by SILKA AB, Sweden.

The Respondent is Thomas Formolo, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <a2millk.com> is registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 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 amendment to the Complaint on the same February 3, 2023.

The Center verified that the Complaint together with the amendment to the 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 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 24, 2023.

The Center appointed Selma Ünlü as the sole panelist in this matter on March 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 New Zealander company operating in dairy products, specifically made with milk from cows that produce milk naturally containing only the A2 protein type. The Complainant is a valuable company and distributes its products in various countries other than New Zealand, such as the United States, China, and Singapore.

The Complainant owns trademarks for A2 MILK, *inter alia*, as follows:

- European Union device mark no. 014406326 registered since September 12, 2016.
- United States word mark no. 3464046 registered since July 8, 2008.
- United States device mark no. 4693969 registered since March 3, 2015.

The Complainant is also the owner of the domain name including the trademark A2 MILK, <a2milk.com> registered in 2000.

The disputed domain name was registered on January 9, 2023, and redirects to a blank webpage where it is only stated that "This site is under development".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark and that it includes the trademark in its entirety. The Complainant also contends that a minor typographical variation/misspelling by an addition of the letter "L" in the middle of the mark does not avoid a finding of confusing similarity. Also, the Complainant states that the generic Top-Level Domain ("gTLD") ".com" does not affect the confusing similarity because it is a standard registration requirement and to be disregarded. Therefore, the Complainant asserts that the disputed domain name is confusingly similar to its prior trademark A2 MILK.

The Complainant asserts that the Respondent is not a licensee of the Complainant and the Respondent has not obtained any authorization from the Complainant to use the Complainant's A2 MILK trademarks in association with the registration of the disputed domain name. Also, the Complainant states that there is no evidence that the Respondent is known as the disputed domain name or by "a2milk". On the contrary, it is stated that the Google search results are mainly referred to the Complainant. The Complainant also contends that the Respondent does not hold any trademark rights on the "a2milk" term, which does not have any meaning in English language. It is also asserted that the addition of the letter "L" in the disputed domain name indicates that this is a case of typosquatting and that the Respondent has not used the disputed domain name in good faith or for a non-commercial activity, as the disputed domain name does not resolve to an active website. Lastly, the Complainant asserts that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use. Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant asserts that the disputed domain name reproduces the Complainant's trademark A2 MILK in full without consent and that there is extreme similarity. The Complainant also states that with a simple Internet search, the Respondent would have been informed about the Complainant's predated rights on A2 MILK trademarks. It is also noted by the Complainant that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark can by itself infer bad faith.

The Complainant also claims that all the results of searches of the terms "a2 milk" refer to the Complainant. Consequently, the Complainant contends that the Respondent knew about the Complainant's trademark, which evidences bad faith.

Moreover, it is claimed that the Respondent does not make any use of the disputed domain name and it resolves to an inactive page displaying a message of “This site is under development”. The Complainant claims that the Respondent fails to make an active use of the disputed domain name and passive holding would not prevent a finding of bad faith.

It is also demonstrated by the Complainant that MX servers are configured in the disputed domain name, which indicates a risk that the Respondent potentially uses the disputed domain name to create an email address with the suffix “@a2milk.com” (almost identical to the Complainant’s domain name <a2milk.com> and A2 MILK trademarks) for deceiving purposes, which is also in bad faith.

Consequently, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove that the three elements of paragraph 4(a) of the Policy have been met for the disputed domain name, namely:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not object to any of the contentions from the Complainant by not submitting a Response, the Panel will decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the explanations and evidence provided by the Complainant, the Panel is satisfied that the Complainant has valid trademark rights in the A2 MILK trademark, which is reproduced in its entirety in the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s A2 MILK trademark and the addition of the lower-case letter “l” next to the existing “i” does not prevent the confusing similarity. In particular, this case represents a clear example of typosquatting, where the disputed domain name is one letter less or more than the Complainant’s mark.

Furthermore, the addition of the gTLD “.com” does not prevent a finding of confusing similarity, since it is merely a technical registration requirement to be disregarded typically.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark and the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists non-exhaustively the relevant circumstances that could show the Respondent’s rights or legitimate interests in a domain name, as follows:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] 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) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] 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.”

The Panel notes that the Respondent has not filed a Response, and therefore, neither denied the Complainant’s claims, nor brought any information or evidence to prove any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. In particular, the Complainant asserted that the Respondent has no trademarks with “a2 milk” and that it did not provide any license or authorization for the Respondent to use its trademark as part of the disputed domain name.

Since the Complainant made out a *prima facie* case, the burden of production shifts to the Respondent to establish its rights or interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case.

In light of the Complainant’s assertions and evidence, the Panel finds that the Complainant has met the requirement under the Policy of *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain relevant non-exhaustive circumstances, which can be considered as the registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [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) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other on-line 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.”

Given the explanations in the Complaint and the evidence provided by the Complainant, the Panel finds that the disputed domain name was registered in bad faith.

The Panel concludes that the Complainant's A2 MILK trademark is of distinctive character. The addition of the letter lower-case letter "l" is barely recognizable and the "a2millk" term in the disputed domain name is read as "a2milk" at the first glance. The insertion of the repeated letter in the reproduction of the Complainant's trademark in the disputed domain name suggests that this is a typosquatting case. This fact by itself, creates a presumption of bad faith.

In addition, the configuration of the MX servers and "a2millk.com" email extensions also suggest that there is unlawful use or intention thereof, which indicates bad faith. Given the Complainant's existing domain name <a2milk.com>, the likelihood for confusion for any emails sent from the disputed domain name are high and reflects the likely intent of the Respondent to impersonate the Complainant via the disputed domain name.

Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the A2 MILK trademarks, the Respondent was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see *e.g.*, *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#), the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the disputed domain name is currently inactive. Regarding inactive domain names, section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides the following: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding". Here, given the notoriety of the Complainant's mark, the typosquatting nature of the disputed domain name, and the Respondent's failure to reply, the Panel finds that the totality of the circumstances support a finding of bad faith.

Consequently, the Panel decides that the third requirement is also met.

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, <a2millk.com> be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: March 17, 2023