

ADMINISTRATIVE PANEL DECISION

Groupe Lactalis v. Kylie Kinna, Welturin LLC
Case No. D2023-1087

1. The Parties

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

The Respondent is Kylie Kinna, Welturin LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain names <es-lactalis.com> and <eslactalis.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on April 24, 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 family-owned dairy group based in Laval, in the west of France, which was established in 1933. It has 250 production sites in 50 countries around the world, with more than 80,000 employees in 94 countries and a turnover of EUR 20 billion. It has operated under the name or style "Groupe Lactalis" since 1999, and owns numerous trade mark registrations internationally that incorporate its LACTALIS trade mark including European Union combined logo and word mark 017959526 registered on May 22, 2019. It also owns various domain name registrations including <lactalis.com>.

The disputed domain name <eslactalis.com> was registered on January 31, 2023, and the disputed domain name <es-lactalis.com> was registered on January 23, 2023. Each of the disputed domain names resolves to a placekeeper page. According to the evidence provided by the Complainant, the Respondent sent fraudulent emails impersonating an employee of the Complainant based on the <es-lactalis.com> disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights for its LACTALIS mark as set out above. It says that each of the disputed domain names wholly incorporates its LACTALIS mark and that each of them is therefore confusingly similar to a trade mark for which it owns registered rights. The Complainant asserts that the addition of the letters "es", with or without a hyphen, is descriptive and designates the country of Spain and thus evokes a Spanish branch of the Groupe Lactalis. Therefore, says the Complainant, the inclusion of "es" only increases a likelihood of confusion and does not prevent a finding of confusing similarity.

The Complainant says that the Respondent owns no rights in the names or marks ESLACTALIS, ES-LACTALIS or LACTALIS. It further asserts that it has not authorised the Respondent to register the disputed domain names and neither has it authorised or permitted the Respondent to use any of its trade marks. Further, says the Complainant there is no business relationship existing between the Complainant and the Respondent.

The Complainant further submits that the disputed domain names are neither used in connection with a *bona fide* offering of goods or/and services nor in connection with a legitimate non-commercial fair use. The Complainant notes that the disputed domain names resolve either to a default inactive page or to a page that indicates that the account has been suspended and that no website has been activated since the reservation of each of the disputed domain names which indicates that the Respondent has not used them to date. In addition, says the Complainant, there is evidence of fraudulent emails in which the Respondent poses as an employee of the Complainant's company for the purpose of sending bank details to a third party in order to receive payment of funds. This says the Complainant is inconsistent with the Respondent having a legitimate right or interest in each of the disputed domain names.

As far as bad faith is concerned, the Complainant notes that its LACTALIS mark is a term that is highly distinctive, has no meaning in English or French and is neither a dictionary term nor a common name. It says that considering the degree of renown attributable to the LACTALIS mark internationally resulting from the very substantial size of its business and noting that this reputation has been recognised by panels in numerous prior decisions under the Policy, that the Respondent cannot have registered the disputed domain names coincidentally and must have been aware of the Complainant's LACTALIS mark and business when she registered each of the disputed domain names in 2023.

In terms of use of the disputed domain names in bad faith the Complainant reiterates that they resolve either to a default inactive page or to a page that indicates that the account has been suspended and that no website has been activated since the registration of each of the disputed domain names, even though they

are now several months old. It also says that three mail exchange records have been activated for the two disputed domain names which is potentially indicative of the Respondent intending to use the disputed domain names to send and receive email in bad faith. The Complainant says that this is confirmed by the fact that the Respondent has already created fraudulent emails from the disputed domain names by posing as an employee of the Complainant's company for the purpose of sending bank details to a third party in order to procure payment of funds and the Respondent has provided copies of these emails in evidence.

Finally, the Complainant says that the disputed domain names disrupt its business by permitting Internet users to think that the disputed domain names lead to websites operated by the Complainant with the additional risk that the Respondent may be engaged in a phishing scheme which aims to deceive Internet users and make them believe that they are dealing with the Complainant when this is not the case.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns numerous trade mark registrations internationally that incorporate its LACTALIS trade mark, including in particular, European Union combined logo and word mark 017959526 registered on May 22, 2019. The Panel finds that the LACTALIS word mark is the primary and dominant element of this trade mark registration.

Each of the disputed domain names wholly incorporate the Complainant's LACTALIS trade mark and therefore each of them is confusingly similar to this mark. The fact that each disputed domain name also incorporates the abbreviation for Spain in French or Spanish being "ES" (with or without a hyphen) does not prevent a finding of confusing similarity.

As a result, the Panel finds that each of the disputed domain names are confusingly similar to the Complainant's LACTALIS mark in which it has registered trade mark rights and that the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that neither of the disputed domain names are used in connection with a *bona fide* offering of goods or/and services or in connection with a legitimate noncommercial fair use. The Panel notes that the disputed domain names resolve either to a default inactive page or to a page that indicates that the account has been suspended. It appears that no website has been activated since the reservation of each of the disputed domain names.

The Complainant has submitted evidence of what appear to be fraudulent emails sent from an email address based on the <es-lactalis.com> disputed domain name ostensibly by the Complainant group's employees using the Complainant's name and contact details and letterhead as if from the Complainant's Madrid office. These emails, including details of a bank account, were sent to a third party it appears as part of a fraudulent scheme to procure the payment of funds. The Respondent has failed to explain this conduct which is clearly not *bona fide* and is inconsistent with the Respondent having a legitimate right or interest in the disputed domain name concerned.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in each of the disputed domain names. The Respondent has failed to respond to or to rebut the Complainant's case or to explain her conduct and the Panel therefore finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain names were both registered in January 2023 several decades after the Complainant started using its LACTALIS name and mark in 1999 and several years after the registration of the Complainant's noted trade mark rights. The LACTALIS mark is highly distinctive and the Panel notes that the Complainant has submitted that it has no meaning in English or French and is neither a dictionary term nor a common name. The Complainant's business is very substantial with the Complainant submitting that its group has more than 80,000 employees in 94 countries and a turnover of EUR 20 billion. As a consequence it is more than likely that the Complainant's LACTALIS mark enjoys a very considerable degree of renown internationally and it is notable that this reputation has been recognised by panels in numerous prior decisions under the Policy, as reported in the Complaint. Taking all of this into account and also bearing in mind that it appears, as discussed under Part B above, that the Respondent has used at least one of the disputed domain names for fraudulent purposes, it is most likely that the registration of each of the disputed domain names was not coincidental and that the Respondent was well aware of the Complainant's business and of its LACTALIS mark when she registered each of the disputed domain names.

The disputed domain names do not resolve to an active website and there is no evidence that either of them have been used to date to resolve to an active website. Previous UDRP panels have found that factors that have been considered relevant in applying the passive holding in bad faith doctrine, where there is no apparent use of the disputed domain name, include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this case, the Complainant's LACTALIS mark is very distinctive and is likely to enjoy a considerable degree of repute as discussed above. The Respondent has failed to respond to the Complaint or to provide any evidence of contemplated good faith use and the evidence on the record suggests, as described under Part B, that it has used at least one of the disputed domain names in a fraudulent manner to attempt to procure payment from a third party. Although both the disputed domain names appear to have been registered by the same person and company, the physical address in the registration details proved to be a bad address for delivery of the proceedings. Finally, in circumstances of the considerable renown attaching to the Complainant's mark and business and in which the Respondent appears to have used an email address based on the <es-lactalis.com> disputed domain name to communicate with a third party while masquerading as if she was an employee of the Complainant in order to procure a payment fraudulently, the Panel finds that it is entirely implausible that the Respondent intends to use either of the disputed domain names in good faith.

Accordingly, the Panel finds that each of the disputed domain names has been registered and used in bad faith and that the Complaint also succeeds under this element of the Policy.

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 names <es-lactalis.com> and <eslactalis.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: May 8, 2023