

## **ADMINISTRATIVE PANEL DECISION**

Alois Dallmayr Kaffee oHG v. Forrest Bailey  
Case No. D2023-1673

### **1. The Parties**

The Complainant is Alois Dallmayr Kaffee oHG, Germany, represented by df-mp Dörries Frank-Molnia & Pohlman Patentanwälte Rechtsanwälte PartG mbB, Germany.

The Respondent is Forrest Bailey, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <dallmayr.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 (privacy protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 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 amendment to the Complaint on April 21, 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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on June 6, 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 in this proceeding is one of the leading food consumer brands in Germany.

The Complainant is, *inter alia*, the owner of:

- German trademark registration number 30752341 for the DALLMAYR trademark, registered on October 1, 2007.
- European Union trademark registration number 003509759 for the DALLMAYR trademark, registered on April 14, 2005.
- International trademark registration number 654248 for the DALLMAYR trademark, registered on March 1, 1996.

The Complainant owns numerous domain names that comprise the “dallmayr” element, including <dallmayr.com> and <dallmayr-versand.de>.

The disputed domain name was registered on January 14, 2023.

The disputed domain name resolves to the website “www.dan.com/buy/domain/Dallmayr.xyz”, on which the disputed domain name is offered for sale.

The Complainant’s trademark registrations predate the registration of the disputed domain name.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the DALLMAYR trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

In order for the Complainant to obtain the transfer of the disputed domain name, paragraphs 4(a)(i)-(iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

##### **A. Identical or Confusingly Similar**

The Complainant has established rights in the DALLMAYR trademark.

The only difference between the DALLMAYR trademark and the disputed domain name is the addition of the generic Top-Level Domain (“gTLD”) “.xyz”.

The Panel considers that the use of the gTLD is irrelevant in assessing the confusing similarity between the Complainant's trademarks and the disputed domain name.

Therefore, the Panel finds the disputed domain name to be identical to the DALLMAYR trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. The Respondent has not formally replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name. Given that the disputed domain name is identical to the Complainant's distinctive DALLMAYR mark, the composition is such to carry a high risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel, on the basis of the evidence presented, finds that the disputed domain name was registered and has been used in bad faith.

The Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the DALLMAYR mark when it registered the disputed domain name.

Owing to the repute of the DALLMAYR trademark, the fact that it is a rare name, and the substantial presence established on the Internet by the Complainant, who has registered more than 300 gTLDs and country code Top-Level Domains ("ccTLDs") worldwide which incorporate the trademark DALLMAYR as a domain name, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering the disputed domain name identical to the Complainant's trademark.

Hence, the registration of the disputed domain name does not seem to be a coincidence, and thus indicates that the Respondent knew of the Complainant's mark and intentionally intended to create an association with the Complainant and its business at the time of the registration of the disputed domain name.

Further inference of bad faith can be found in the fact that the disputed domain name is offered for sale for USD 1,450, which is most likely in excess of the out-of-pocket costs related to the disputed domain name. This is further evidence of bad faith in accordance with paragraph 4(b)(i) of the Policy.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not responded to, let alone denied, the assertions of bad faith made by the Complainant in this proceeding.

Another factor supporting the conclusion of bad faith registration and use of the disputed domain name is given by the fact that the Respondent deliberately chose to conceal its identity by means of a privacy protection service. While the use of a privacy or proxy registration service is not in and of itself an indication

of bad faith, it is the Panel's opinion that in the present case the use of a privacy shield, combined with the elements discussed here, amounts to a further inference of bad faith registration and use.

Accordingly, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 name <dallmayr.xyz> be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: June 19, 2023