

ADMINISTRATIVE PANEL DECISION

Laboratoire Terravita v. Sasha Antanasov, Terra Vita
Case No. D2023-3130

1. The Parties

The Complainant is Laboratoire Terravita, France, represented by Coblence Avocats, France.

The Respondent is Sasha Antanasov, Terra Vita, Switzerland.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on July 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 24, 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 July 24, 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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on August 21, 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 producer of food supplements which it has sold for fifteen years under the TERRAVITA and TERRANATURA brands, notably through its website at “www.terravita.fr”.

The Complainant owns various trade mark registrations for its TERRAVITA mark, including International Trade Mark Registration No. 1601286 TERRAVITA designating, amongst others, Switzerland, in classes 03, 04, 05, 29 and 32, with registration date March 10, 2021.

The Domain Name was registered on June 20, 2023, and resolves to a parking page of the ecommerce platform Shopify.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to its registered and well-known TERRAVITA mark and that the Respondent has no rights or legitimate interests in the Domain Name. The Complainant further contends that the Respondent deliberately registered a domain name identical to the Complainant's well-known and registered TERRAVITA mark with the intention to divert Internet users from the Complainant's website to the Respondent's, rendering the Respondent's registration and use of the Domain Name in bad faith under the doctrine of passive holding.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

As the Domain Name is plainly identical to the Complainant's registered mark, the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In light of the Panel's findings below in relation to bad faith, it is not necessary to consider the issue of rights or legitimate interests.

C. Registered and Used in Bad Faith

The Domain Name resolves to a parked Shopify page and has apparently not been used for an active website. The Complainant therefore relies upon the doctrine of passive holding. The factors that panels typically consider under the doctrine of passive holding are set out in section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”):

(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.

Factor (ii) is in the Complainant's favour. The rest are not, with factor (iii) not being applicable.

The Panel's own limited Internet searches for "terravita" reveal that there are many third parties that use TERRAVITA as a trade mark, including within the Complainant's own supplements and related products industry. This is so globally and in the Respondent's country of Switzerland specifically. Some global examples found by the Panel include, e.g., (i) an Indian supplements provider. See "www.terravita.in", (ii) a range of medicinal teas and supplements sold by an American company, ZooScape LLC. See "www.amazon.com/s?k=TerraVita", (iii) an American band. See "en.wikipedia.org/wiki/Terravita", (iv) a golf club in Arizona. See "www.terravita.com", and (v) a Spanish landscaping company. See "terravita.eu".

There are numerous others. In fact, when the Panel searched for "terravita", unrestricted to any particular region, the Complainant did not feature on the first few pages of search results at all.

If such searches are limited to pages published in Switzerland, where the Respondent is ostensibly based, none of the results featured on the first few pages of search results relate to the Complainant.

Based on the Panel's trade mark searches limited to European trade mark registries, there are also many trade mark registrations consisting of or incorporating "terravita" in the names of parties ostensibly unconnected to the Complainant, including in classes relevant to the Complainant's business.

The Panel is not therefore convinced that the evidence in the record establishes, on balance of probabilities, the Respondent's targeting of the Complainant.

The Domain Name resolves to a generic parking page offered by the ecommerce platform Shopify. There is nothing on that page, or otherwise in the record, that indicates any targeting of the Complainant specifically. The parking page does not relate to the Complainant's industry, or any specific industry for that matter. It is not targeted at users in the Complainant's territory of France. None of the Complainant's other branding elements have been adopted. The Domain Name is not flagged in the databases of any information security vendors. The Domain Name is also not configured for email, as mail exchange (MX) records are not set, thus its potential usage for email-based fraud is excluded.

Without more, the Respondent's website could just as conceivably be targeted at any of the other "terravita" offerings listed above as it could at the Complainant, or at none of them for that matter. In the circumstances, factors (i) and (iv) of the passive holding doctrine are against the Complainant. Given that the onus is on the Complainant to prove its case on balance of probabilities regardless of the Respondent's default, the Panel finds that there is insufficient evidence of bad faith targeting of the Complainant.

The Complainant has not satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: September 4, 2023