

ADMINISTRATIVE PANEL DECISION

Almirall, S.A. v. Grau Bauset Jose

Case No. D2023-3820

1. The Parties

The Complainant is Almirall, S.A., Spain, represented by Ubilibet, Spain.

The Respondent is Grau Bauset Jose, Norway.

2. The Domain Name and Registrar

The disputed domain name <almiralltd.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 September 18, 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 September 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on October 23, 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 global pharmaceutical company founded in 1943 in Barcelona, Spain and active in various therapeutic areas, including dermatology and respiratory, gastrointestinal, and central nervous system disorders. It has been publicly listed on the Spanish stock exchange since 2007.

The Complainant owns trademark registrations in multiple jurisdictions consisting either exclusively or predominantly of the term “almirall”, including United Kingdom trademark registration for ALMIRALL (figurative) No. 00900014340 in classes 1, 3, 5, 10, 35, 39, 42 registered on July 19, 1999; United Kingdom trademark registration for ALMIRALL No. 00900014332 in classes 1, 3, 5, 10, 35, 39, 42 registered on November 20, 2001; and International trademark registration ALMIRALL No. 803212 in classes 5, 35, 42 registered on December 19, 2002.

The disputed domain name was registered on March 11, 2023, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that in accordance with section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), it is a matter of fact that the disputed domain name is confusingly similar to the Complainant's trademark as it incorporates the ALMIRALL trademark in its entirety and prominently. Numerous UDRP panels are said to have recognized that the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. The Complainant contends that the addition of “Ltd” is very likely to lead Internet users into believing that the disputed domain name is related to the Complainant's business activities. In any case, the Complainant says, the addition of other terms does not impact upon a finding of confusing similarity.

The Complainant also says that the Respondent has no rights or legitimate interests in the disputed domain name. If the Respondent is unable to sufficiently substantiate its rights or interests, the Complainant meets the second requirement of the Policy. The Complainant asserts that it has not authorized, licensed or allowed the Respondent to use its trademarks in the disputed domain name or in any other way that would confer validity or legitimacy upon such usage. The Complainant says that there is no evidence of any previous use of the disputed domain name by the Respondent or a name corresponding to it, in connection with a *bona fide* offering of goods or services. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name. There has in fact, the Complainant points out, been no use at all of the disputed domain name, and it does not resolve to an active website. The Respondent also never answered the communications of the Complainant via the Registrar. Despite repeated efforts, the Respondent never contacted the Complainant although he then had the opportunity to offer support for its legitimacy.

In terms of bad faith registration, the Complainant maintains that it is implausible to suggest that an individual might be unaware of the Complainant's mark. Coincidental choice of the disputed domain name is highly unlikely. The Complainant points out that the term “almirall” holds significance only in the Catalan language, which is primarily spoken in the northeastern region and the Balearic Islands of Spain. It translates to the word “admiral” and also commonly serves as a surname in this region. The Complainant says that there is no evidence suggesting the existence of a company or entity operating under this name, let alone achieving

a level of prominence that would warrant engagement in activities within territories where the legal designation “ltd” accompanies the name. The Complainant adds that from a global perspective, the construction of the term “almiralltd” appears entirely abstract, making the likelihood of coincidence extremely remote, especially considering the presence of a triple “l,” a rarity in linguistic construction.

In any case, the Complainant says, the Respondent has a duty to check the disputed domain name before registering it. There is bad faith pursuant to the Policy when a Respondent “knew or should have known” of the Complainant’s trademark rights at the time he registered the domain name.

The Complainant adds that due to the reputation and distinctiveness of the ALMIRALL trademark, it is difficult to believe that the Respondent was not aware of that trademark, so it either knew or ought to have known of the Complainant’s trademark at the time of registration. In any case, the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can itself create a presumption of bad faith. Therefore, the Complainant contends, considering the reputation of the Complainant’s trademark, both as a business itself and within the industry, this presumption can be applied.

According to the Complainant, the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. The disputed domain name currently resolves to a website without content, which disrupts the business of the Complainant in the sense that it is depriving the Complainant of the opportunity of reflecting its own trademark, in a fully matching configuration in the generic Top-Level Domain (“gTLD”) “.com”, which is the most widely used gTLD by businesses in all fields. Moreover, the Complainant says, it is disrupting the business of the Complainant in the sense that it is creating a likelihood of confusion among Internet users and consumers.

The intent behind the Policy, the Complainant says, is to deter individuals from opportunistically exploiting domain names closely resembling or associated with a registered and well-known trademark. The Complainant concludes that this is what has happened with the present disputed domain name, making it a clear illustration of the kinds of behaviors that the Policy aims to address.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name is not identical to the ALMIRALL mark that the Complainant used and registered in several jurisdictions well before the registration of the disputed domain name. However, the Panel notes that it incorporates that mark clearly and recognizably, which is sufficient to satisfy the first element. It is the major part of the disputed domain name and the addition of “.ltd” does nothing to disassociate the disputed domain name from the ALMIRALL trademark. See sections 1.7 and 1.8 of the [WIPO Overview 3.0](#).

Therefore, the Panel holds that the disputed domain name is confusingly similar to the registered trademark ALMIRALL of the Complainant.

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not replied to any contentions of the Complainant and did not respond to the cease-and-desist communications of the latter in the present proceeding. The Respondent has thus not proffered any argument or basis for the recognition of rights or legitimate interests in his behalf. There is nothing before the Panel to indicate that the Respondent is known by or made a prior

legitimate or fair use of the term “almirall” or anything similar. The Respondent was not authorized to use that registered trademark in any shape or form. The disputed domain name does not in fact resolve to any active website that might provide some justification for the adoption by the Respondent of the disputed domain name. It incorporates a distinctive trademark, easily identified by a basic search, that has been in long use and has a widespread reputation in the field of activity of the Complainant.

Therefore, the Panel holds that the Complainant has made out an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

ALMIRALL is a distinctive trademark, used and registered by the Complainant for a long time before the Respondent registered the disputed domain name. The composition of the disputed domain name including the Complainant’s trademark with “ltd” suggests that the Respondent was well aware that the mark points to a commercial entity. The fact that the disputed domain name does not resolve to an active website does not assist the Respondent as it has been long established that passive holding of a domain name, in particular where it contains a distinctive trademark with a considerable reputation, amounts to bad faith use. That is in part because it is very difficult to envisage a legitimate use of such a domain name by a party other than the trademark owner.

Therefore, the Panel holds that the disputed domain name was registered and used in 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 <almirallltd.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: November 6, 2023