

ADMINISTRATIVE PANEL DECISION

Alois Dallmayr Kaffee oHG v. Michael Nava
Case No. DCO2023-0043

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 Michael Nava, United States of America (“U.S.”).

2. The Domain Name and Registrar

The Disputed Domain Name <dallmayr.co> 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 28, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. Also on April 28, 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 (Redacted for privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 1, 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 May 2, 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 May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 26, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on June 5, 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 delicatessen brand that operates various businesses across Europe and beyond, including its German coffee brand Dallmayr Coffee, its vending machine operator business Dallmayr Vending & Office, as well as delicatessen houses, catering, restaurants, café-bistros, shipping and gift service. The Complainant is headquartered in Munich, Germany, and claims to have a history of more than 300 years, although it only adopted its current name “Alois Dallmayr”, or “Dallmayr” for short, since around 1870 after a change of ownership.

The Complainant holds a number of trademark registrations for word and figurative trademarks for DALLMAYR in various jurisdictions (“the Complainant’s Trademark”). Some relevant registrations include, *inter alia*, German Trademark Registration No. DE1108149 in Class 30 registered on July 3, 1987, and DE30752341 in Classes 30 and 43 registered on October 1, 2007; European Union Trade Mark Registration No. 003509759 in Classes 30 and 33 registered on April 14, 2005; International Trademark Registration No. 654248 in Class 30 registered on March 1, 1996; International Trademark Registration No. 953493 in Classes 30 and 43 registered on December 14, 2007; International Trademark Registration No. 514060 in Class 30 registered on July 28, 1987; and U.S. Trademark Registration No. 1553903 in Class 30 registered on August 29, 1989.

The Complainant’s Trademark is also fully incorporated in various domain names claimed to be owned by the Complainant, including <dallmayr.com> which resolves to the Complainant’s website at “www.dallmayr.com” (the “Complainant’s Website”).

The Disputed Domain Name was registered on May 8, 2022, more than 34 years after the Complainant first registered the Complainant’s Trademark. The Disputed Domain Name resolves to an active website named “dan.com” which offers the Disputed Domain Name for sale at USD 1,988 or for lease at USD 100 per month.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. Apart from the Complainant’s Trademark, the only element in the Disputed Domain Name is the Country Code Top-Level Domain (“ccTLD”) .co which does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. There is no evidence to show that the Respondent used or has made preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Complainant’s Trademark. There is also no evidence suggesting that the Respondent is commonly known by the Disputed Domain Name.
- (c) The Respondent’s registration and use of the Disputed Domain Name, which fully incorporates the well-known Complainant’s Trademark, create a presumption of bad faith. Given the history of the

DALLMAYR brand and the goodwill and reputation that the Complainant has acquired in the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered the Disputed Domain Name. The Disputed Domain Name resolves to an active website offering the Disputed Domain Name for sale or for lease, which demonstrates the Respondent's intention to sell or lease it to the Complainant or a competitor, or to disrupt the business of the Complainant. In so doing, the Respondent's actions shall be considered as evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondents in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as, *inter alia*, the Germany, U.S. and International trademarks listed in Section 4. The Complainant's Trademark is also used as the domain name of the Complainant's Website and incorporated in the Complainant's various other domain names.

UDRP panels have consistently found that a domain name that wholly incorporates a complainant's trademark is identical or confusingly similar to the complainant's trademark (see *Societe Air France v. Indra Armansyah*, WIPO Case No. [D2016-2027](#); and *Icebug AB v. Domain Administrator*, WIPO Case No. [D2013-1823](#)). Further, it is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the ccTLD extension, ".co" in this case, may be disregarded. See section 1.11.1 of [WIPO Overview 3.0](#).

The Disputed Domain Name incorporates the Complainant's Trademark, *i.e.* DALLMAYR, in its entirety and does not contain any other element to set it apart from the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is identical to the Complainant's Trademark and paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent, which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has

rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a formal Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) The Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name. The Panel also notes the nature of the Disputed Domain Name, being identical to the Complainant's Trademark, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use as the Respondent appears to have registered the Disputed Domain Name solely for the purpose of selling the Disputed Domain Name for a sum likely above the out-of-pocket costs of registration.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety. After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "Dallmayr" are the Complainant's Website and third-party websites providing information about the Complainant and/or its products. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors support a finding that the Disputed Domain Name was registered and have been used by the Respondent in bad faith:

- (i) The Disputed Domain Name resolves to a website where it is offered for sale for a sum likely above the out-of-pocket costs of registration.
- (ii) The identical nature of the Disputed Domain Name, wholly incorporating the Complainant's well-known trademark.
- (iii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name solely contains the Complainant's Trademark in its entirety. The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and the website to which it resolves, which evidences a lack of rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc., v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

The Panel also notes that the Respondent failed to respond to the Complainant's contentions, and did not provide evidence of any actual or contemplated good faith use of the Disputed Domain Name. This further supports a finding of bad faith registration and use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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.co> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: June 19, 2023