

ADMINISTRATIVE PANEL DECISION

Alfa Laval Corporate AB v. smlth candrew
Case No. D2024-1811

1. The Parties

The Complainant is Alfa Laval Corporate AB, Sweden, represented by Advokatbyrån Gulliksson AB, Sweden.

The Respondent is smlth candrew, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <alfalavail.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024. On April 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 30, 2024, 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 service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2024, 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, 2024.

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 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 4, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on June 12, 2024. 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 operates within the key technology areas of heat transfer, separation and gas and fluid handling across many industries, including but not limited to the marine, environment, pharma, hygienic, food and energy sectors. The business of the Complainant was established in 1883 under the company name AB Separator, which was changed to Alfa-Laval AB in 1963.

The Complainant is the owner of several trademarks for ALFA LAVAL (“ALFA LAVAL trademark”), including:

- US Trademark Registration ALFA LAVAL No. 0764251, registered on February 4, 1964; and
- European Union Trademark Registration ALFA LAVAL No. 003481702, registered on March 03, 2005.

The Complainant is also owner of several domain names including the ALFA LAVAL trademark, such as the domain name <alfalaval.com>, registered on May 12, 1997.

The disputed domain name was registered on April 24, 2024. The Complainant has provided evidence showing that the disputed domain name linked to a parked page that features links to other websites. At the time of the decision, the disputed domain name resolves to an inactive page. Further, the Complainant has provided evidence showing that the Respondent has used the disputed domain name to impersonate an employee of the Complainant and send a fraudulent email.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the Complainant’s ALFA LAVAL trademark. The Respondent has, in the disputed domain name, incorporated all of the nine letters of the Complainant’s trademark. The only difference is the disputed domain name has an added “l” between the letters “a” and “l”. The additional letter “l” does not differentiate the disputed domain name from the Complainant’s trademark. As the difference is almost unnoticeable and insignificant compared to the word element in the ALFA LAVAL trademark it must be considered as an obvious or intentional use of the Complainant’s well-known trademark.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name for the following reasons:

- The Complainant has found no evidence of any bona fide offering of goods and services under the disputed domain name, or any sign of any legitimate or fair use of the mark. The disputed domain name is linked to a parked page that features links to other businesses. It is therefore clear that the Respondent is not actively using the disputed domain name for their own business and there is no bona fide offering of goods or services. This can therefore not constitute legitimate use of the disputed domain name. Even after disclosure of the Respondent’s contact information, the information does not provide any indication or evidence that the Respondent is a bona fide actor who intends to use the disputed domain name for legitimate purposes.

- On the contrary, the Complainant has evidence that the Respondent is using the disputed domain name to defraud the Complainant's customers.
- The Respondent has through a Business Email Compromise ("BEC") attack infiltrated one of the Complainant's employee's email correspondence with one of the Complainant's customers. In the conversation between the Complainant's employee and customer, the Respondent has used the name of the employee and the disputed domain name and sent a fraudulent email. In the fraudulent email, the Respondent uses the disputed domain name, making it appear as if the employee of the Complainant, who the customer previously corresponded with in the same email thread, is the sender. In the fraudulent email the Respondent claims that the Complainant has changed banks and that future payments should be made according to the instructions in the email. The email contains an email signature of one of the Complainant's employees. None of the Complainant's employees have drafted or sent this email.
- The circumstance that the Respondent has taken deliberate steps to hide its identity shows that the Respondent has no intention of using the disputed domain name for either commercial or uncommercial use. The Complainant finds no evidence that the Respondent has created the disputed domain name with the intention to use it for a legitimate cause.
- Due to the Complainant's extensive and world-wide rights to the well-known and well-renowned ALFA LAVAL trademark, the Complainant has an exclusive right to the mark. Thus, the Respondent cannot conduct any activities under the almost identical disputed domain name without infringing the Complainant's trademark rights.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith, for the following reasons:

- The fact that the Respondent is using the disputed domain name to defraud the Complainant's customers, undoubtedly indicates that the disputed domain name is being used in bad faith for, not only illegitimate, but also illegal purposes.
- The Respondent is using the almost identical disputed domain name in order to defraud the Complainant's customer through phishing activities, which shows that the disputed domain name is created in bad faith. The Respondent created the disputed domain name in bad faith because it is virtually identical to the known and well-recognized domain name held by the Complainant and used in the Complainant's professional business activities aimed at customers.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (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 in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

The disputed domain name only differs from the Complainant's trademark by the addition of the letter "i" between the letters "a" and "l". It is likely to be an intentional misspelling of the ALFA LAVAL trademark. Therefore, the Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant has provided evidence showing that the disputed domain name linked to a parked page that features links to other businesses and further, that the Respondent has used the disputed domain name to impersonate an employee of the Complainant and has sent a fraudulent email.

Panels have held that the use of a domain name for illegal activity (as applicable to this case: phishing, including sending of fraudulent email) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Complainant has provided evidence showing that the disputed domain name linked to a parked page that features links to other websites and further, that the Respondent has used the disputed domain name to impersonate an employee of the Complainant and has sent a fraudulent email.

Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the ALFA LAVAL trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of services on the Respondent's website.

Further, Panels have held that the use of a domain name for illegal activity (as applicable to this case: phishing, including sending of fraudulent email) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third 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 name <alfalavail.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: June 26, 2024