

ADMINISTRATIVE PANEL DECISION

Starbucks Corporation v. Астафьев Игорь Игоревич
Case No. DUA2024-0004

1. The Parties

The Complainant is Starbucks Corporation, United States of America (“United States” or “US”), represented by Baker McKenzie Ukraine B.V., Ukraine.

The Respondent is Астафьев Игорь Игоревич, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <starbucks.kiev.ua> is registered with Imena.ua (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 26, 2024. On March 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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 (Internet Invest, Ltd. dba Imena.ua), and contact information in the Complaint, and indicated that the language of the registration agreement was Ukrainian. In addition, the Registrar confirmed that there is no mirror domain name which is registered for the disputed domain name.

The Center sent an email communication to the Complainant on April 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email communication to the Parties in both Ukrainian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Ukrainian; or submit a request for English to be the language of the administrative proceedings.

The Complainant filed a request for English to be the language of the proceedings on October 20, 2023. The Respondent did not comment on the language of the proceedings. The Complainant in the email communication

of April 03, 2024, sent the amendment to the Complaint. On the same date, in the separate communication as to the language of proceedings, the Complainant informed they would not amend the Complaint as the argumentation as to the Language of Proceedings has been already included into the initial Complaint. The Respondent did not comment on the language of the proceedings. The Center acknowledged the receipt of the Complainant's both email communications on April 04, 2024.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of .UA Domain Name Dispute Resolution Policy (the ".UA Policy"), the Rules for .UA Domain Name Dispute Resolution Policy (the ".UA Rules"), and the WIPO Supplemental Rules for .UA Domain Name Dispute Resolution Policy (the "WIPO Supplemental Rules").

In accordance with the .UA Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint in both English and Ukrainian, and the proceedings commenced on April 10, 2024. In accordance with the .UA Rules, paragraph 5(a), the due date for Response was April 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 7, 2024.

The Center appointed Igor Alfiorov as the sole panelist in this matter on May 14, 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 .UA Rules, paragraph 7.

4. Further Procedural Considerations

Under paragraph 10 of the .UA Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the .UA Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should continue the proceedings. The Panel notes that the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar. There is no evidence that the case notification email to the email address was not successfully delivered.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant's business began in 1971 with the opening of its first store. The Complainant operates coffee shops and sells coffee and related products under the well-known STARBUCKS brand in the United States and abroad. The Complainant is a global coffeehouse and coffee company with nearly 38,000 stores in 85 markets around the world.

The Complainant owns many trademark registrations and applications for STARBUCKS around the world, including:

- the Ukrainian trademark No 107763 for IC 30, registered on June 10, 2009;
- the US trademark No 1372630 for IC 21, registered on November 26, 1985;
- the US trademark No 1444549 for IC 35, and 43, registered on June 23, 1987;
- the US trademark No 1452359 for IC 30, registered on August 11, 1987.

According to the provided evidence, over the long years of extensive use, promotion, and advertising, the STARBUCKS mark has enjoyed a good reputation and recognition and is well-known by consumers in many countries around the world.

The Complainant's trademarks obtained protection long before the disputed domain name's registration date, April 24, 2020.

The disputed domain name redirects to the inactive website "www.angrystar.com.ua". The Complainant provided evidence confirming that previously, the redirecting website included the use of the Complainant's trademarks, namely the STARBUCKS trademark, and product images offering the Starbucks coffee (whole-grain and grounded) for sale. There was no disclaimer stating that the online store is somehow affiliated (or not) with the Complainant. Instead, there was a wording in Ukrainian "Original coffee Starbucks buy in Ukraine, Kyiv". Moreover, the contact email was [Redacted]@gmail.com.

6. Parties' Contentions

A. Complainant

The Complainant contends the disputed domain name is identical to their trademark STARBUCKS. The country-code Top-Level Domain ("ccTLD") ".kiev.ua" does not impact the overall impression of the designation and does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademarks as it constitutes the standard registration requirement.

The Complainant firmly asserts that the Respondent has no legitimate interests in the disputed domain name. The Respondent is not associated with the disputed domain name, and the Complainant has no business dealings with them. Furthermore, the Respondent is not authorized by the Complainant to use the trademark STARBUCKS or any other of the Complainant's trademarks. The Respondent's distribution of STARBUCKS branded products on the website linked to the disputed domain name does not qualify as a bona fide offering of goods or services under the UA. Policy.

The Complainant also submits that the disputed domain name was registered and is being or used in bad faith, stating that the Respondent was fully aware of the famous STARBUCKS Mark at the time of registration of the disputed domain name and intentionally used it in the disputed domain name in an attempt to attract Internet users for commercial gain by creating the likelihood of confusion. The Complainant also states that the Respondent, for further confusion and misleading the consumers, unambiguously designed the website, connected to the disputed domain name, to look like an official website of the Complainant using the original marketing materials, graphics and images of the Complainant goods. The Complainant believes that the Respondent clearly attempts to make an impression that they are either subsidiaries or somehow affiliated with the Complainant when it is not true. Finally, the Complainant states that back in November 2020 they tried to approach the owner of the website "www.starbucks.kiev.ua", however, the person whom the Complainant approached did not disclose the "real identity of the domain name owner.

B. Respondent

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

7. Discussion and Findings

7.1. Procedural issue - Language of Proceedings

The Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Ukrainian.

According to the paragraph 11(a) of the .UA "unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement (which shall be in English, Russian or Ukrainian), subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The Complainant has submitted arguments and evidence that the Respondent must be familiar with English. According to the Complainant, choosing a language other than English will impose an additional burden on the Complainant and delay proceedings.

Whilst there is a language requirement in paragraph 11(a) of the .UA Rules, the Panel has to balance that against the other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay (see *Michael Kors (Switzerland) International GmbH. v. Minakova Maria*, WIPO Case No. [DUA2020-0002](#)).

Even though the Respondent is located in Ukraine, and the website redirected from the disputed domain name was in Russian and Ukrainian languages, the Panel concurs that the Respondent must be familiar with English, particularly agreeing with the arguments provided by the Complainant but also given the fact that the disputed domain name uses the Latin script whilst the Cyrillic script is available for the cctld ".kiev.ua". Also, the Respondent's website's contact email was likely created to be specifically read in English as "Starbucks in Ukraine" (despite the missing "r" letter in the word "starbucks"), which supports the idea of the certain level of knowledge of English by the Respondent. Moreover, despite being invited by the Center both in English and Ukrainian to respond to the Complaint and or object to the use of English as the language of proceedings, the Respondent has not replied to the email on the language of the proceeding nor has submitted any email communication in this proceeding.

The Panel here is proficient in both Ukrainian and English. Thus, the choice of Ukrainian as the language of proceedings here would not burden the Complainant or delay proceedings since there would be no need to translate the Complaint and/or materials specifically for the Panel's needs. At the same time, the Panel concludes that the Respondent was given a fair opportunity in this case to present their arguments regarding the Complaint and the language of proceedings, but they decided not to do so.

Respectfully, the Panel has decided to meet the Complainant's request and chosen English as the language of proceedings.

A. Identical or Confusingly Similar

The Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant owns several trademarks, with the protection obtained,

including Ukraine, granted, which enjoy a widespread reputation and predate the registration of the disputed domain name.

The ccTLD “.kiev.ua” in the disputed domain name is viewed as a standard registration requirement and may be disregarded for the purposes of the confusing similarity test.

The Panel finds that in the present case, the disputed domain name incorporates the entirety of the Complainant’s trademark. In the cases where a domain name incorporates the entirety of a trademark, the domain name will usually be considered identical or confusingly similar to that mark for purposes of UA-DRP standing (see, e.g., *Nestlé Products Company S.A. v. Ruslan Skripka*, WIPO Case No. [DUA2024-0003](#)).

Considering the above, the Panel finds that the disputed domain name is identical to the Complainant’s trademark in which the Complainant has rights, therefore, the Complainant has established under paragraph 4(a)(i) of the UA Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the .UA Policy, the Complainant has to establish that the Respondent has no rights or legitimate interests in the disputed domain name.

While the overall burden of proof in the proceedings is on the Complainant, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. If such a prima facie case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied the second element (see, e.g., *L’Oréal v. Артем Волук*, WIPO Case No. [DUA2023-0001](#)).

Particularly, the Complainant has been using the STARBUCKS trademarks since the late 1980s and obtained the protection for the STARBUCKS Mark in Ukraine in 2009, while the disputed domain name was registered in April 2020, well after the STARBUCKS trademark was registered and gained extensive good reputation and recognition among consumers around the world.

The Complainant has never authorized the Respondent to use the STARBUCKS trademarks in any manner, including in the disputed domain name or in the website redirected from the disputed domain name.

The Respondent’s use of the disputed domain name cannot be considered “fair”, particularly because of the previous use of the disputed domain name in connection to the commercial website displaying the Complainant’s trademarks, graphics and images of goods and offering Starbucks products for sale without the Complainant’s authorization along with the lack of the disclaimer that the online store should not be affiliated or associated with the Complainant and the use of the contact email which can be considered as the indirect attempt to present itself as the representative/distributor of the Starbucks coffee products in Ukraine and respectively create false associations and affiliations with the Complainant.

Respectively, the Panel finds that the Respondent is not commonly known by the disputed domain name, and neither of any other conditions under paragraph 4(c)(i)-(iii) of the .UA Policy are applicable.

Accordingly, considering the facts and allegations listed above, the Panel finds that the Complainant has established prima facie that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not rebutted the Complainant’s arguments nor provided relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The specific choice to incorporate the Complainant's trademark, STARBUCKS, in its entirety in the disputed domain name, indicates a clear awareness of the Complainant's trademark. Prior panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (See, e.g., *AB Electrolux v. Захаров Евгений*, WIPO Case No. [DUA2020-0006](#)).

Considering the above, the second element of paragraph 4(a)(ii) of the .UA Policy is therefore satisfied.

C. Registered or Used in Bad Faith

According to paragraph 4(a)(ii) of the .UA Policy, it should be established that the disputed domain name has been registered or is being used in bad faith.

As it was confirmed in previous decisions, bad faith is recognized when it appears that the Respondent was, or should have been, aware of the Complainant's trademark rights yet chose to register a domain name without any rights or legitimate interests in it (See, e.g., *Compagnie Générale des Etablissements Michelin v. Mishchenko Tetiana Mykhailivna / Міщенко Тетяна Михайлівна*, WIPO Case No. [DUA2023-0007](#)).

The Panel finds it very questionable and unlikely that the Registrant did not know about the Complainant's trademark.

First of all, Complainant's trademark is a global coffee brand that is well-known and recognized around the world, including Ukraine.

Also, the Complainant's trademarks significantly predate the registration of the disputed domain name.

Altogether, the presented evidence points to the fact that the Respondent was fully aware of the Complainant and its famous STARBUCKS trademark and had a clear intention to use the famous trademark and benefit from its reputation and potentially attract (redirect) Internet users to online store for commercial gains by creating confusion.

Moreover, the Panel believes if the Respondent had legitimate reasons and purposes in registering and using the disputed domain name, it would have filed a response in these proceedings.

Thus, the third element of paragraph 4(a)(iii) of the .UA Policy is also satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .UA Policy and 15 of the .UA Rules, the Panel orders that the disputed domain name, <starbucks.kiev.ua>, be transferred to the Complainant.

/Igor Alfiorov/

Igor Alfiorov

Sole Panelist

Date: May 28, 2024