

ADMINISTRATIVE PANEL DECISION

Cereal Docks S.P.A. v. Domains By Proxy, LLC, Alex Anastasis
Case No. D2022-1068

1. The Parties

The Complainant is Cereal Docks S.P.A., Italy, represented by De Gaspari Osgnach s.r.l., Italy.

The Respondent is Domains By Proxy, LLC, United States of America ("United States") / Alex Anastasis, United States.

2. The Domain Name and Registrar

The disputed domain name <cerealdocks.net> 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 March 29, 2022. On March 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that 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 April 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 28, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on May 9, 2022. 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, Cereal Docks S.p.A, is the parent company of the Italian Cereal Docks Group, operating in the feeds and foods primary processing sector, producing ingredients including meals, oils and lecithin, derived from oil seeds and grains intended for applications in the foods, pharmaceutical, cosmetics, animal feeds, technical and energy sectors.

The Complainant was founded 36 years ago and processes over 2.5 million tons of grains and seeds annually, with the participation of more than 14,000 agricultural companies in Italy. The activity has been carried out under the figurative trademarks CEREAL DOCKS and CEREALDOCKS.

Among many others, the Complainant owns several trademark registrations, including the following:

European Union Trademark Registration No.13332903 CEREAL DOCKS & Device, filed on October 7, 2014, and registered on March 2, 2015, in classes 4, 29, 30, 31 and 40;

European Union Trademark Registration No. 018514156 CEREALDOCKS & Device, filed on July 14, 2021, and registered on November 27, 2021, in classes 1, 4, 29, 30 and 40;

Italian Trademark Registration No. 302013902123450 CEREAL DOCKS & Device, filed on January 31, 2013, and registered on September 18, 2013, in classes 4, 11, 29, 30 and 40;

United Kingdom Trademark Registration No.UK 00913332903 CEREAL DOCKS & Device, filed on October 7, 2014, and registered on March 2, 2015, in classes 4, 29, 30, 31 and 40; and

United Kingdom Trademark Registration No. UK00003671968 CEREALDOCKS & Device, filed on July 22, 2021, and registered on December 3, 2021, in classes 1, 4, 29, 30, 31 and 40.

The Complainant is also owner of the domain name <cerealdocks.it> registered on June 3, 2011, and the Complainant's official website is "www.cerealdocks.it".

The disputed domain name <cerealdocks.net> was registered by the Respondent on February 7, 2022.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is identical to the trademarks CEREALDOCKS and CEREAL DOCKS in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent registered the disputed domain name without authorization from the Complainant and has used it to create fake email addresses to mislead clients with bank details to be used for payment of fraudulent invoices.

Unfortunately, the fraud has been successful as one of Cereal Docks S.p.A's. clients used one of the fake bank details provided in the fraudulent invoices for a bank wire transfer to transfer the amount of EUR 96.500,00.

On February 23, 2022, a cease-and-desist letter was sent to the Respondent, which remained unanswered.

Consequently, the Complainant decided to initiate this administrative proceeding requesting the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's CEREAL DOCKS and CEREALDOCKS trademarks.

The disputed domain name incorporates the Complainant's trademark CEREALDOCKS in its entirety with the addition of the ".net" generic Top-Level Domain ("gTLD"), which is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the CEREAL DOCKS and CEREALDOCKS trademarks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- 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
- the respondent (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial 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 Complainant has proved that they are the owners of the CEREAL DOCKS and CEREALDOCKS trademarks. There is no indication that they have licensed or otherwise permitted the Respondent to use any of their trademarks, nor have they permitted the Respondent to apply for or use any domain name incorporating their marks.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry [...] Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation.”

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademarks CEREAL DOCKS and CEREALDOCKS mentioned in section 4 above (Factual Background) when it registered the disputed domain name on February 7, 2022.

The Respondent when registering the disputed domain name has targeted the Complainant’s trademarks with the intention to confuse Internet users and capitalize on the fame of the Complainant’s name and trademark for its own monetary benefit.

Furthermore, the Complainant has proved that the disputed domain name has been used to create fake email addresses, such as [...]@cerealdolcks.net to impersonate the sales manager of one of Complainant’s subsidiary companies Cereal Docks Organic S.R. L. to mislead clients, recipients of the emails, with alleged, revised bank details to be used for payment of invoices.

Another email was sent from another fake email address using [...]@cerealdocks.net to impersonate an employee of Cereal Docks Organic S.R.L.’s Stock Accounting Department.

The fraud was successful as one of the Complainant’s clients used one of the fake details for a transfer of the amount of EUR 96.500,00.

Clearly, the use of the disputed domain name to perpetuate fraud constitutes bad faith under paragraph 4(b)(iv) of the Policy ([WIPO Overview 3.0](#) at section 3.4).

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 <cerealdocks.net> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: May 23, 2022