

ADMINISTRATIVE PANEL DECISION

Andros v. Milen Radumilo

Case No. D2022-1209

1. The Parties

The Complainant is Andros, France, represented by Dreyfus & associés, France.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <andros.asia> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 2022 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 April 12, 2022.

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 April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on May 23, 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 is a family owned and privately run company, headquartered in the southwest countryside of France, known as a global leader in fruit processing, frozen desserts, dairy and confectionery. The Complainant currently owns and operates more than 30 factories worldwide including in the United States of America ("US"), the European Union ("EU") U and Asia. Since it was founded in 1910, the Complainant was active in addition to the EU market also on the Asian market. Indeed, the Complainant operates in 11 countries in Asia, has two factories in Viet Nam and one in China, as well as three offices in China, one in Japan and one in Viet Nam.

The Complainant has registered a number of ANDROS trademarks worldwide, including in Romania, for a broad range of goods in classes 29, 30, 32 related to the activities of the Complainant. Some of the ANDROS trademark registrations are indicated below:

- International registration for ANDROS No. 1363658 registered on June 2, 2017 for the goods in class 29, 30, 32;

- European Union ("EU") Trademark for ANDROS No. 002383636 dated February 7, 2003, for the goods in classes 5, 29, 30 and 32.

The Complainant actively promotes its activities online on the websites corresponding to domain names <andros.fr> registered on June 19, 1997, <androsna.com> registered on April 9, 2014, and <andros-asia.com> registered on December 16, 2014.

In addition to promoting its activities on the official websites, the Complainant also has a substantial amount of followers on its social media accounts.

The Respondent appears to be an individual located in Romania. According to the WhoIs, the disputed domain name was registered in the name of the Respondent on August 4, 2021. The disputed domain name resolves to a number of pages randomly provided with advertising and on the bottom of the front page there is an indication that the disputed domain name is likely for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has strong rights in ANDROS trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world. Also, the Complainant indicates that its activities and initiatives receive attention on social media worldwide.

The Complainant claims that the ANDROS trademark is well-known around the world, in particular in relation to fruit-based products.

The Complainant argues that the disputed domain name is identical or confusingly similar to the Complainant's ANDROS mark as it incorporates the Complainant's registered ANDROS trademark entirely.

The Respondent has no rights or legitimate interests in the disputed domain name as the ANDROS trademark precede the registration of the disputed domain name for years.

The Complainant has not authorized the Respondent to use the ANDROS mark in the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent was fully aware of the Complainant's reputation and the Complainant's trademark rights on the ANDROS mark when the Respondent registered the disputed domain name. The Complainant sent corresponding notifications to the Registrar on October 27, 2021 and to hosting provider of the disputed domain name on February 28, 2022 requesting termination of the trademark infringement, however, the request was not satisfied.

The Complainant put the Respondent on notice additionally by submitting the trademark infringement notice through the Registrar's online form on November 29, 2021, however, the Respondent did not respond.

The disputed domain name was registered in bad faith by the Respondent for the purpose of creating confusion with the Complainant's marks to divert or mislead third parties for the Respondent's illegitimate profit.

The website to which the disputed domain name resolves to exhibits Pay-Per-Click ("PPC") links that redirect users to other web pages, which are likely to generate revenue.

Therefore, the disputed domain name has been registered by the Respondent in an unfair manner and in bad faith. It is also inconceivable that the Respondent had any good faith intentions at the point of registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has proved its rights in the ANDROS mark through the EU Trademark dating back to 2003 covering *inter alia* Romania, the country where the Respondent is apparently located, and international registrations extending protection to numerous countries worldwide including a number of countries in the Asian region.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having relevant trademark rights.

The disputed domain name is comprised of the word "andros" and combined with the generic Top-Level Domain ("gTLD") ".asia".

Thus, the Panel finds that the disputed domain name incorporates the Complainant's ANDROS trademark entirely.

Furthermore, the Panel considers that the disputed domain name is identical to the Complainant's ANDROS trademark.

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Therefore, the Panel disregards the TLD for the purposes of this comparison.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the disputed domain name. Once the complainant establishes a *prima facie* case against the respondent under this ground, the burden of production shifts to the respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant's *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent's rights or legitimate interests to the disputed domain name, and that the complainant frequently address to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not making a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

The Panel finds that because the disputed domain name is identical to the Complainant's ANDROS trademark, any use of such domain name by the Respondent carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

According to the Complainant, the Respondent is not an authorized or licensed to use the Complainant's ANDROS trademark in the disputed domain name, as well as not in any way affiliated with the Complainant.

The Panel also notes that the Respondent failed to come forward with any relevant evidence confirming use or demonstrable preparations to use of the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The use of the disputed domain name to resolves to a page exhibiting PPC links does not represent a *bona fide* offering in this case, because the Respondent clearly intended to capitalize on the reputation and goodwill of the Complainant's ANDROS mark and official domain name <andros-asia.com> and mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Taking into account the reputation and long period of use of the Complainant's ANDROS trademark, and in the corresponding Complainant's domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities does not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy).

According to the Registrar's information, "Milen Radumilo" is the registrant of the disputed domain name. The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name. The Panel concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

As the Panel established above, the Complainant's ANDROS trademark was used in commerce well before the registration of the disputed domain name on August 4, 2021. The Complainant's ANDROS trademark predates registration of the disputed domain name for at least 19 years.

The Panel finds that the Respondent knew of the Complainant's ANDROS trademark and reputation when registering the disputed domain name. This conclusion is supported by the fact that the disputed domain name is identical to the Complainant's ANDROS trademark, and that the Complainant actively works in many countries in the world, including Romania.

Several previous UDRP panels found that the Respondent has shown a pattern of registering and using domain names incorporating the marks of third parties in bad faith: "The UDRP cases that the Complainant identifies show that the Respondent is a serial cybersquatter, who has cynically and systematically engaged in the business of registering domain names that incorporate the well-known trade marks of others for commercial advantage. The Panel is satisfied that this is yet another example of that modus operandi." See *American Airlines, Inc. v. Super Privacy Service LTD c/o Dynadot / Milen Radumilo* WIPO Case No. [D2021-1242](#), also see *Accenture Global Services Limited v. Contact Privacy Inc. Customer 0157756560, Contact Privacy Inc., Customer 0157756560 / Milen Radumilo*, WIPO Case No. [D2020-1507](#).

The Panel concludes that 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 is identical to the Complainant's ANDROS mark and confusingly similar to the official domain name <andros-asia.com>, and resolves to a PPC page advertising various websites. Any use of the disputed domain name would likely mislead Internet users into believing the disputed domain name is associated with and/or endorsed by the Complainant and have the effect of redirecting visitors to websites operated by the Complainant's competitors or other third parties, thereby causing harm to the Complainant.

Furthermore, the Respondent's use of the gTLD ".asia" in the disputed domain name only strengthens a potential to mislead the Internet users that the disputed domain name is operated by the Complainant or the Complainant's authorized agent or representative of the Complainant in the Asian region.

The Panel finds here as well that the Respondent's intention has always been to use the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location (see paragraph 4(b)(iv) of the Policy).

The Respondent failed to submit a response or provide any evidence of a good-faith use or to show rights or legitimate interests in the disputed domain name.

Therefore, under the totality of the circumstances, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <andros.asia> be transferred to the Complainant.

/Oleksiy Stolyarenko/

Oleksiy Stolyarenko

Sole Panelist

Date: June 8, 2022