

## **ADMINISTRATIVE PANEL DECISION**

Läderach (Schweiz) AG v. Registration Private, Domains By Proxy, LLC /  
ning wang  
Case No. D2022-2033

### **1. The Parties**

The Complainant is Läderach (Schweiz) AG, Switzerland, represented by Cosmovici Intellectual Property Sarl, Switzerland.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / ning wang, China.

### **2. The Domain Name and Registrar**

The disputed domain name <laderachshop.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 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 June 9, 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 amendment to the Complaint on June 14, 2022.

The Center verified that the Complaint together with the amendment to 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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2022. The Respondent’s informal communication was received by email on July 7, 2022 by the Center.

The Center appointed Daniel Peña as the sole panelist in this matter on July 22, 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 Swiss company, manufacturing fresh premium chocolate since 1962.

The Complainant has invested an important amount of resources in developing a large range of high-end fresh products and its premium chocolate is now sold in more than 100 stores with sales locations in 15 countries such as Switzerland, Germany, Austria, the United Kingdom, the United States of America and Canada, as well as via franchise partners in the Middle East and Asia.

The Complainant is the owner of several trademarks:

- European Union Trade Mark 005032371 LÄDERACH, registered on April 18, 2007;
- United Kingdom Trademark UK00905032371 LÄDERACH, registered on 18 April 2007;
- Swiss Trademark P-567864 LÄDERACH CHOCOLATIER SUISSE, registered on February 11, 2008;
- International Trademark 983800 LÄDERACH CHOCOLATIER SUISSE, registered on October 10, 2008;
- Swiss Trademark 654825 LÄDERACH PROFESSIONAL, registered on February 14, 2014;
- International Trademark 1196728 LÄDERACH PROFESSIONAL, registered on February 14, 2014;
- Swiss Trademark 683217 LÄDERACH CHOCOLATIER SUISSE, registered on January 22, 2016;
- Benelux Trademark 981349 LÄDERACH, registered on September 9, 2015;
- International Trademark 1297259 LÄDERACH CHOCOLATIER SUISSE, registered on January 20, 2016;
- International Trademark 1297373 LÄDERACH CHOCOLATIER SUISSE, registered on January 22, 2016;

The disputed domain name was registered on September 28, 2021 and resolves to the Registrar's parking page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain name comprises the mark LÄDERACH in its entirety. The additional word "shop" is likely to augment the risk of confusion and association with the Complainant's products, in the sense that it ostentatiously misleads the general public that it is the Complainant's official online store.

In the Complainant's online shop, chocolate consumers can order specialties from Switzerland and have them delivered to their homes.

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks, nor has it licensed or otherwise permitted the Respondent to apply for or use any domain names incorporating any of those marks.

The Complainant has never been any association between the Respondent and the Complainant.

The word "läderach" is not a descriptive word or belonging to the basic vocabulary. It is the name of the Complainant's founder, Rudolf Läderach, and the family members who later developed and successfully internationalized the company.

The Respondent holds no legitimate and/or *bona fide* interests in the use of the disputed domain name.

The Respondent bought the disputed domain name to misleadingly associate its business with the

Complainant, hence deceiving the general public into believing that the disputed domain name is the online shop where the Complainant's chocolate products can be bought.

The disputed domain name does not show an active and valid website, but it displays the following message from the Registrar: "This domain is available for sale! Get a price in less than 24 hours. Fill out the form below. One of our domain experts will have a price to you within 24 business hours."

## **B. Respondent**

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

After the Response due date, on July 7, 2022, the Respondent sent an informal communication: "I have released the domain name. What do I need to do".

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Considering these requirements, the Panel rules as follows:

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks LÄDERACH on the basis of its multiple trademark registrations in several countries. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.2.1).

The Respondent's incorporation of the almost identical Complainant's LÄDERACH trademark in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark. Mere addition of the term "shop" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark because the Complainant's LÄDERACH mark remains clearly recognizable in the disputed domain name. As noted in [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element." Furthermore, the addition of the generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent is not known under the disputed domain name.

Accordingly, the Panel finds that the Complainant satisfied the requirements of paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent “knew or should have known” of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the widespread commercial recognition of the trademark LÄDERACH is such that the Respondent must have had knowledge of the trademark before registering the disputed domain name.

The Panel incorporates here the findings made above under the second element and notes that the disputed domain name seems to have been used to display a message related to its sale. The Panel finds that Internet users would be misled by the disputed domain name into the expectation that they would reach a website operated by the Complainant. Accordingly, the holding and use of the disputed domain name in

these circumstances do not prevent a finding of bad faith. The Respondent has not replied to the Complainant's contentions and has not provided any evidence of actual or contemplated good-faith use of the disputed domain name.

Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

Thus, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

## **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 <laderachshop.com> be transferred to the Complainant

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: August 3, 2022