

ADMINISTRATIVE PANEL DECISION

Tower Research Capital LLC v. alexia sophie
Case No. D2022-3879

1. The Parties

The Complainant is Tower Research Capital LLC, United States of America (“United States”), internally represented.

The Respondent is alexia sophie, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <latourtrading.org> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2022. On October 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 17, 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 (Privacy Service provided by Withheld for Privacy, ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 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 November 1, 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 23, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on November 29, 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 financial services corporation headquartered in New York City specializing in algorithmic and high-frequency trading. The Complainant, through its wholly owned subsidiary Latour Trading LLC provides a variety of financial services including trading in financial products such as securities, commodities, equities and futures.

The Complainant owns a registered trade mark in the United States for the words LATOUR TRADING registration number 6,778,187 for various financial services in class 36, registered on July 5, 2022, and claiming a first use in commerce date of on December 22, 2010. That trademark is referred to as the LATOUR TRADING trademark in this decision. The Panel accepts the Complainant's evidence that its use of the term LATOUR TRADING commenced in or about 2010.

The Domain Name was registered on April 25, 2022. It resolves to a website (the "Respondent's Website") which purports to be that of the "Latour Trading Group" and which purports to offer services similar to those offered by the Complainant. The Respondent's Website impersonates the Complainant – for example the Complainant's physical address is displayed as part of the contact information on the Respondent's website. Other links on the Respondent's Website link to *bona fide* material which relates to the Complainant not the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions.

The Disputed Domain Name is identical or confusingly similar to the LATOUR TRADING trademark.

There are no rights or legitimate interests held by the Respondent in respect of the Disputed Domain Name. The Respondent is not commonly known as the Disputed Domain Name nor has the Complainant provided a licence or authorization to use the LATOUR TRADING Trademark. There is no evidence, since the Respondent registered the Disputed Domain Name, of 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 for a legitimate noncommercial purpose.

The Disputed Domain Name was registered and is being used in bad faith. Given the reputation of the Complainant and the nature of the Respondent's Website the Respondent must have had knowledge of the LATOUR TRADING Trademark at the time of registration of the Disputed Domain Name. Such knowledge is an indication of bad faith registration as is the impersonation of the Complainant. All of this amounts to bad faith use under paragraph 4(b)(iv) of the Policy.

The Complaint says it believes the present case is the same as a previous decision in the case of *Tower Research Capital LLC v. Domain Administrator*, See [PrivacyGuardian.org / Ebuka Victor](https://www.privacyguardian.org/cases/2022-2555), WIPO Case No. [D2022-2555](https://www.privacyguardian.org/cases/2022-2555) concerning the domain name <latourtrdes.com> and given the content of the Respondent's Website believes it is likely that the Respondent in the present case is the same as or is acting together with the respondent in that previous case.

B. Respondent

No Response has been filed.

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel also notes this is a case where the named Respondent in the original Complaint (Privacy Service Provided by Withheld for Privacy ehf) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case the Panel considers the substantive Respondent to be alexia sophie and references to the Respondent are to that person.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the LATOUR TRADING trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the trademark is recognizable within the domain name, regardless of the other terms in the domain name. In the present case the only material difference is the omission of the space between the two words which is a trivial difference (and in any case domain names cannot include spaces for technical reasons).

It is well established that the generic Top-Level Domain (“gTLD”), in this case “.org”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

It does not matter for the purposes of this element that the Disputed Domain Name was registered before the LATOUR TRADING Trademark was registered – the Panel agrees with the consensus approach as explained in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) section 1.1.3:

“1.1.3 While the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed.

Registration of a domain name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity under the UDRP. The UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired rights. However, in such circumstances it may be difficult to prove that the domain name was registered in bad faith under the third element of the UDRP”. See below as to bad faith issues.

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the LATOUR TRADING trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use LATOUR TRADING trademark. The Complainant has prior rights in the term LATOUR TRADING (see further below) which precede the Respondent’s registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do*

The Hustle, LLC v. Tropic Web, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (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 the respondent's website or location (Policy, paragraph 4(b)).

While the Disputed Domain Name was registered prior to the registration of the LATOUR TRADING Trademark, it was registered over 10 years after the Complainant commenced its usage of the words LATOUR TRADING for services that are identical to those the Respondent purports to offer from the Respondent's Website. The Panel finds (given in particular the fact that the Respondent's Website impersonates the Complainant) that the Respondent was aware of the Complainant and its reputation in the term LATOUR TRADING at the time the Disputed Domain Name was registered. The Respondent has provided no explanation as to why the Respondent's Website impersonates the Complainant, and no *bona fide* reason is conceivable. The Respondent must have had an awareness of, and an intention to create a likelihood of confusion with, the Complainant and its LATOUR TRADING mark. In these circumstances, the Respondent's conduct in registering the Disputed Domain Name when it was aware of the Complainant's rights, and lacked rights or legitimate interests of its own, amounts to registration in bad faith.

The Panel does not consider that it matters that the Complainant did not have any registered trademark rights at the time the Disputed Domain Name was registered. The Panel reaches this view bearing in mind that the term LATOUR TRADING is a distinctive term with no independent meaning (see *FinanceMalta v. Adriano Cefai*, WIPO Case No. [D2011-1246](#)) and the Complainant commenced its business using this term ten years before the Respondent registered the Disputed Domain Name. See [WIPO Overview 3.0](#) section 3.8.2

"Domain names registered in anticipation of trademark rights. As an exception to the general proposition described above in 3.8.1, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to

significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.”

It seems to the Panel very clear that the Respondent registered the Disputed Domain Name because it corresponded to the Complainant's business name and with a view to impersonating that business. The Panel considers that amounts to bad faith registration and use. Further, the Panel notes that the Respondent did not provide a Response to establish any positive case as to good faith that he might have. The Panel infers that none exists.

So far as the Respondent's motivation is concerned it seems more likely than not that factor (iv) above applies as the Respondent was seeking to achieve some form of commercial gain by impersonating the Complainant. If for any reason financial gain was not the Respondent's motive the Panel would find that the Respondent's Website, which directly impersonates the Complainant's own website, disrupts the Complainant's business. The Panel also again notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Respondent has registered and is using the Disputed Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

Given the Panel's reasoning it does not need to reach a conclusion as to whether the present Respondent is the same as, or acting in concert with, the respondent in *Tower Research Capital LLC v. Domain Administrator*, See *PrivacyGuardian.org / Ebuka Victor* WIPO Case No. [D2022-2555](#), although the Panel agrees with the Complainant that the two cases involve very similar factual backgrounds.

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, <latourtrading.org>, be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: December 13, 2022