

ADMINISTRATIVE PANEL DECISION

Groupe LACTALIS v. futai chu

Case No. D2022-3882

1. The Parties

The Complainant is Groupe LACTALIS, France, represented by Inlex IP Expertise, France.

The Respondent is futai chu, United States of America.

2. The Domain Name and Registrar

The disputed domain name <fr-lactalis.com> 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 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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 26, 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 October 26, 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 October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 22, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on December 2, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is a French multinational group created in 1933, a leader in the food industry and especially in the dairy industry. According to the information in the Complaint, the Complainant has 250 production sites in 50 countries around the world, more than 80,000 employees in 94 countries, and a turnover of EUR 20 billion.

The Complainant proved ownership of many LACTALIS trademarks, including the French trademark no. 4438490 for LACTALIS (figurative), registered on July 27, 2018 and the European Union Trade Mark no. 017959526 for LACTALIS (figurative), registered on May 22, 2019. The Complainant has registered many domain names that include LACTALIS, including <lactalis.com> registered on January 9, 1999, or <lactalis.fr> registered on February 23, 1999.

The disputed domain name was registered on August 11, 2022 and at the date of the Complaint it resolved to a webpage with a “cgi-bin” folder and clicking on this folder then redirected to an error page. At the date of the Decision the disputed domain name resolves to a warning page stating that the account has been suspended.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its registered trademarks, as it includes a typosquatted version of the Complainant's trademark LACTALIS in addition to “fr” designating France. This addition does not avoid confusion but, on the contrary, is likely to reinforce it because “fr” might refer directly to the Complainant, and to its French locations.

As regards the second element, the Complainant argues that it has not authorized, licensed, or permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating the Complainant's trademarks. Moreover, there is no business relationship existing between the Complainant and the Respondent. The Complainant contends that the disputed domain name redirects to a website with a “cgi-bin” folder and clicking on this folder then redirects to a page where access is denied. According to the Complainant, the Respondent has not made a legitimate or *bona fide* use of the disputed domain name. The fact that the disputed domain name was registered anonymously may be regarded as an indication that the Respondent is attempting to hide his identity because he has no rights or legitimate interests in respect of the disputed domain name.

With respect to the third element, the Complainant argues that it is one of the world's leading producers of dairy products and enjoys a strong worldwide reputation. Consequently, the Complainant argues that the registration of the disputed domain name cannot be a coincidence, and the Respondent could not have been unaware of the Complainant's existence, its activity and business. The typosquatted character of the disputed domain name supports an inference of bad faith. The Respondent's concealment of his identity is also indicative of bad faith. Moreover, three mail exchange (“MX”) records have been activated for the disputed domain name, which shows that the Respondent can send fraudulent emails to clients, suppliers, etc. by usurping the identity of the Complainant. The Respondent has not answered the cease-and-desist letters from the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant address disclosed by the Registrar, 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 can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules 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.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the LACTALIS trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. The Complainant's LACTALIS trademark contains figurative elements. Nevertheless, the textual element, LACTALIS, remains prominent. Given that the figurative elements cannot be reflected in a domain name, the Panel will not take them into consideration in the comparison between the disputed domain name and the trademark. See [WIPO Overview of 3.0](#), section 1.10.

The disputed domain name consists of an obvious misspelling of the textual element of the LACTALIS trademark of the Complainant, which albeit misspelt, remains recognizable within the disputed domain name. The misspelling in the disputed domain name also referred as typosquatting, is insufficient to avoid a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9). The addition of "fr" and the hyphen do not prevent a finding of confusing similarity with the Complainant's trademark.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark LACTALIS and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate non-commercial or fair use of the disputed domain name, within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Respondent has not replied to the Complainant's contentions to claim any rights or legitimate interests in the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith. According to the un rebutted assertions of the Complainant, its LACTALIS trademarks were widely used in commerce well before the registration of the disputed domain name in August 2022 and are well-known. The Respondent provided no explanations for why he registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The typo squatting nature of the disputed domain name further supports this inference.

The disputed domain name does not resolve to an active website. The Panel finds that the passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible. An additional element is the DNS setup of the disputed domain name (with active MX records). Considering all the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and 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 <fr-lactalis.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: December 22, 2022