

ADMINISTRATIVE PANEL DECISION

Olayan Financing Company v. Kris Nandalal
Case No. D2023-0874

1. The Parties

The Complainant is Olayan Financing Company, Saudi Arabia, represented by DLA Piper UK LLP, United Kingdom.

The Respondent is Kris Nandalal, Suriname, self-represented.

2. The Domain Name and Registrar

The disputed domain name <العليان.online> [xn--mgb7c0bbn0a.online] is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2023, 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 March 1, 2023 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 March 6, 2023.

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 March 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2023. The Response was filed with the Center on March 20, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on March 24, 2023. 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, established in 1969, is a parent company of The Olayan Group. An enterprise founded in 1947 operating under the name of The Olayan Group. The Complainant owns many trademark registrations for OLAYAN and العليان such as:

- Benelux trademark registration No. 1107361/0797214 for OLAYAN registered on April 4, 2006;
- Bahraini trademark registrations for OLAYAN together with transliteration into Arabic (العليان) No. BH/T/1/086407 registered on November 5, 2011.

The Olayan Group also owns the domain name <olayan.com>.

The disputed domain name was registered by the Respondent on December 16, 2022 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark OLAYAN and has registered it in many countries. The Complainant's trademark OLAYAN has been recognized by prior UDRP panels as distinctive. It is established that Punycode domain name and the translated Unicode domain name are equivalent. The generic Top-Level Domain ("gTLD") ".online" should be disregarded. The disputed domain name consists entirely of "العليان", a transliteration of "Olayan".

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to use its trademark in the disputed domain name nor is there any relationship between the Respondent and the Complainant. The disputed domain name resolves to an inactive page.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. Passive holding does not prevent a finding of bad faith. The circumstances surrounding this case indicate bad faith as the Complainant is a large and well-known organization, particularly in the Arab world, and has been trading under the OLAYAN name since 1969. The Respondent must have been aware of the Complainant and its activities. No response has been provided by the Respondent to the pre-action letter. The Respondent has concealed its identity. The Respondent has registered other inactive domain names incorporating third-party trademarks.

B. Respondent

The Respondent contends that it was never contacted by the Complainant, that the Complainant is not "Olayan" but "Olayan Financing Company" and that the Complainant has not proven its claims including any rights in العليان.

The Respondent contends that his client, a church, will use in Arabic "Nun of God" in connection with a monastery. العليان was chosen as it consists of العلييا, which means God and the letter ن for "nun". The relevant website will be developed in the future. Accordingly, there is a legitimate noncommercial and fair use of the

disputed domain name without intent for commercial gain to mislead consumers. The Respondent contends that العليان means supreme. In any case, any potential rights the Complainant might have do not cover Surinam.

The Respondent contends that the Respondent is a web development company and the client decides on the domain name to use. There is no evidence that the Respondent was aware of the Complainant's trademark or had the intention to target it.

While the Panel notes that the Respondent claims to have registered the disputed domain name for a client, the Respondent did not provide any evidence on the existence and identity of such client. The Panel notes that certain obligations arise from the registration of a domain name (and the acceptance of the registration agreement), and in the circumstances of the case the Panel will consider the Registrar-confirmed registrant of the disputed domain name (*i.e.*: Kris Nandalal) as the Respondent. The Panel further notes that references to the registration and use by the Respondent shall be construed to include the final holder of the disputed domain name (if any). *Hays plc v. Privacy service provided by Withheld for Privacy ehf / George Smith*, WIPO Case No. [D2021-2564](#).

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for OLAYAN and the Arabic version of it, which is (العليان). The Panel is satisfied that the Complainant has established its ownership of the trademark OLAYAN, and العليان.

The disputed domain name incorporates the Complainant's trademark العليان in its entirety. العليان is a well-known trademark in many countries where the Complainant has its operations. It is established that the incorporation of a trademark is sufficient to establish confusing similarity. The gTLD ".online" should typically be ignored when assessing confusing similarity as established by prior UDRP decisions. Noting in particular the global nature of the Internet, the jurisdiction where the trademark is valid is not considered relevant to the Panel's assessment under the first element. See section 1.1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the disputed domain name is identical to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its trademark.

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name. The explanation submitted by the Respondent on the meaning of the word "العليان" and the addition of the letter "n" for "nun" does not make sense from a linguistic perspective. Accordingly, the argument that the disputed domain name will be used in connection with a monastery is not compelling. In addition, the Respondent did not provide reasonable supportive evidence to show demonstrable preparations for such use. Consequently, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark as the Complainant's trademark has been registered years before the disputed domain name was created, is not a dictionary word in English or Arabic, and is well-known. The disputed domain name resolves to an inactive website. Prior UDRP

panels have found that passive holding does not prevent a finding of bad faith if the totality of circumstances supports an inference of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Noting the Respondent's failure to provide any reasonable good-faith explanation for its registration and use of the inherently misleading disputed domain name and the absence of a plausible use of the disputed domain name that would be legitimate, the Panel finds that the current passive holding of the disputed domain name does not prevent the Panel's bad faith finding.

In addition, in the circumstances of the case, the Panel finds that the Respondent likely registered the disputed domain name due to its significance as the Complainant's trademark. The Respondent's argument that the Complainant does not have trademark rights in Suriname is not sufficient to alter the Panel's conclusion in the circumstances of the case, noting the global reach of the Internet and search engines, and particularly that the Complainant's trademark is highly specific and well known. The Panel finds that the Respondent cannot credibly claim to have been unaware of the Complainant's trademark noting the nonsensical explanation for the registration of the disputed domain name, while being the disputed domain name identical to the Complainant's trademark in Arabic. See section 3.2.2 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied 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 <العليان.online> [xn--mgb7c0bbn0a.online] be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: April 7, 2023