

ADMINISTRATIVE PANEL DECISION

Pavan S.p.A. v. Massalfa Microwave
Case No. D2023-0979

1. The Parties

The Complainant is Pavan S.p.A., Italy, represented by Bugnion S.A., Italy.

The Respondent is Massalfa Microwave, China.

2. The Domain Name and Registrar

The disputed domain name <pavanmachine.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 March 3, 2023. On March 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 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 (Name Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 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 11, 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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 5, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on April 14, 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

According to the Complainant's undisputed allegations, the Complainant is an Italian company and one of the divisions of German GEA Group Aktiengesellschaft, through its Italian branch GEA Mechanical Equipment Italia S.p.A. since 2017. GEA Group is one of the world's largest systems suppliers for the food, beverage and pharmaceutical sectors supported by 18,000 employees located in 62 countries.

The Complaint is based amongst others on figurative European Union Trade Mark registration PAVAN GROUP, No. 015010572, filed on January 18, 2016, and registered on July 14, 2016 for goods and services classes 7, 11 and 42.

The disputed domain name was registered on August 1, 2022.

It results from the Complainant's undisputed and documented allegations that the disputed domain name resolves to a website that purports to advertise and promote machineries for the food, beverage and pharmaceutical sector. The Panel further notes, that this website shows the figurative trademark PAVAN in the header of the website and additionally uses product pictures, names (e.g. Pavan Pasta Machine, Pavan Lollipop Machine etc.) and descriptions taken from the Complainant's official Group website. Finally, the imprint of this website shows the Complainant's full company name, contact details and company history, as if the website were run by the Complainant.

Finally, the Complainant approached the Respondent with a formal cease and desist letter sent to the Registrar abuse contact email. The Registrar confirmed the receipt of the letter, but – also after a reminder – this communication remained unanswered.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant contends that the disputed domain name is confusingly similar to, the Complainant's registered company name and trademark. In this regard, the Complainant points out that the disputed domain name incorporates the entirety of the Company name and the trademark.

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name, since it is used for marketing and sales of identical / similar machines for food and chemical sector. Accordingly, the Respondent is attempting to make commercial use of the disputed domain name by misleadingly divert customers for commercial gain. Moreover, the product pictures, names, and descriptions used on the website linked to the contested domain name are clearly taken from official websites linked to the Complainant.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. In the Complainant's view, the Respondent is, for commercial gain, intentionally attempting to attract Internet users to its website under the disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the website, to make profit by selling products identical with or similar to those covered by the Complainant's trademark registrations.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and

documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Furthermore, paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

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

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of figurative European Union Trade Mark registration PAVAN GROUP, No. 015010572, filed on January 18, 2016, and registered on July 14, 2016 for goods and services classes 7, 11 and 42.

While each case is judged on its own merits, many UDRP panels have found that a domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing in cases where a dominant feature of the relevant mark is recognizable in that domain name (cf. section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel shares the same view and considers the element PAVAN to be the graphically and conceptually dominant feature of the Complainant’s registered trademark PAVAN GROUP. In particular, the fact that the trademark is a figurative trademark is to be disregarded for purposes of assessing identity or confusing similarity under the first element. It is acknowledged amongst UDRP panels that where design elements comprise the dominant portion of the relevant mark such that they effectively overtake the textual elements in prominence, or where the trademark registration entirely disclaims the textual elements (*i.e.*, the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant’s trademark registration is insufficient by itself to support standing under the UDRP (cf. [WIPO Overview 3.0](#) at section 1.10). In the Panel’s view, this is not the case here.

In the light of the above, the Panel rules that the dominant feature “PAVAN” remains recognizable within the dispute domain name. In particular, the Panel considers the addition of the term “machines” does not prevent a finding of confusing similarity under the first element ([WIPO Overview 3.0](#) at section 1.8).

Finally, the generic Top-Level-Domain (“gTLD”) “.com” is viewed as a standard registration requirement and is as such to be disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

It results from the Complainant's undisputed and documented allegations that the disputed domain name resolves to a website that purports to advertise and promote machineries for the food, beverage and pharmaceutical sector. The Panel further notes, that this website shows the figurative trademark PAVAN GROUP in the header of the website and additionally uses product pictures, names (e.g. Pavan Pasta Machine, Pavan Lollipop Machine etc.) and descriptions taken from the Complainant's official group website. Finally, the imprint of this website shows the Complainant's full company name, contact details and company history, as if the website were run by the Complainant. The Panel assesses this use as being commercial, so that it cannot be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

Furthermore, such use as described above cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that a registrant has no legitimate interest in a domain name that is similar to a third party's mark, where the composition of the domain name is associated to the business of the trademark holder, and that is being used to address consumers in the same business as the trademark holder operates.

In addition, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, previous UDRP panels have found that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

One of these circumstances is that the respondent by using the disputed domain name, 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. It results from the Complainant's undisputed and documented allegations that the disputed domain name resolves to a website that purports to advertise and promote machineries for the food, beverage and pharmaceutical sector. The Panel further notes, that this website shows the figurative trademark PAVAN GROUP in the header of the website and additionally uses product pictures, names (e.g. Pavan Pasta Machine, Pavan Lollipop Machine etc.) and descriptions taken from the Complainant's official group website. Finally, the imprint of this website shows the Complainant's full company name, contact details and company history, as if the website were run by the Complainant. For the Panel, it is therefore evident that the Respondent positively knew the

Complainant's trademark and business. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the dominant feature of the Complainant's trademark when it registered the disputed domain name, having registered it due to its similarity with the Complainant's trademark. Registration of the disputed domain name which contains a third party's mark, or its dominant feature, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are:

- (i) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the mail courier's inability to deliver the Center's written communications;
- (ii) the Respondent's failure to reply to the Complaint's warning letter;
- (iii) the Respondent's failure to submit a response to the Complaint;
- (iv) the Respondent's failure to provide any evidence of actual or contemplated good-faith use; and
- (v) the implausibility of any good faith use to which the disputed domain name may be put.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 <pavanmachine.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: April 28, 2023