

ADMINISTRATIVE PANEL DECISION

Alfa Laval Corporate AB v. Klimenko Vasiliy Viktorovich
Case No. D2023-4338

1. The Parties

The Complainant is Alfa Laval Corporate AB, Sweden, represented by Advokatbyrå Gulliksson AB, Sweden.

The Respondent is Klimenko Vasiliy Viktorovich, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <alfalaval.space> (the “Domain Name”) is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Not Applicable) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 26, 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 October 27, 2023.

On October 26, 2023, the Center informed the Parties in Russian and English, that the language of the registration agreement for the Domain Name is Russian. On October 27, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Russian, and the proceedings commenced on November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 29, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on December 7, 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 is a supplier of products and solutions for heat transfer, separation, and fluid handling. It was established in 1883.

The Complainant is the owner of numerous ALFA LAVAL trademark registrations, including:

- the United States Trademark Registration for ALFA LAVAL (word) No. 4408991, registered on October 1, 2013;
- the International Trademark Registration for ALFA LAVAL (figurative) No. 1557805, registered on June 2, 2020; and
- the European Union Trade mark for ALFA LAVAL No. 018170847, registered on June 24, 2020.

The Domain Name was registered on October 8, 2023.

At the time of submitting the Complaint, the Domain Name resolved to a website in Russian purportedly offering for sale the products of a third party – Siemens (the “Website 1”).

As of the date of this Decision, the Domain Name resolves to a website allegedly offering direct supplies of the Complainant's products from the warehouse located in the Russian Federation and the Commonwealth of Independent States (the “CIS”) (the “Website 2”).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

First, the Complainant contends that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters – Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons. First, the Complainant submits that its business is primarily conducted in English. The Complainant is unable to communicate in Russian. Thus, the Complainant would be put to a great expense and inconvenience to have to translate the Complaint and evidence, which would cause undue delay. Second, the Complainant believes that the registrant and contact information for the Domain Name is fake. Thus, in the Complainant's view, it is uncertain if the Respondent really is a Russian citizen. Thirdly, the Complainant notes that the Domain Name contains the generic Top-Level Domain ("gTLD") ".space" which constitutes an English term. Moreover, the Domain Name was previously used to allegedly sell Siemens products which are known globally. According to the Complainant, this further indicates that the Respondent is familiar with the English language.

The Respondent did not comment on the Complainant's request for the language of the proceeding be English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment or let alone object to the Complainant's arguments concerning the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

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

The requested remedy may only be granted if the above criteria are met. At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

Under the first element, the Complainant must establish that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid ALFA LAVAL trademark registrations. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The gTLD “.space” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element test. See section 1.11.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is identical to the Complainant's ALFA LAVAL trademark for purposes of the Policy. Thus, the Complainant has satisfied the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the Domain Name, even if it has not acquired any trademark rights; or
- (iii) that it 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant's ALFA LAVAL trademark registrations predate the Respondent's registration of the Domain Name. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the ALFA LAVAL trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. On the contrary, at the time of submitting the Complaint, the Domain Name resolved to the Website 1 purportedly offering for sale Siemens products. As of the date of this Decision, the Domain Name resolves to the Website 2 allegedly offering direct supplies of the Complainant's products from the warehouse located in the Russian Federation and the CIS. Such use of the Domain Name does not confer rights or legitimate interests on the Respondent.

The Respondent could make a *bona fide* offering of goods and services as a reseller or distributor of the Complainant's products, and thus have a legitimate interest in the Domain Name, if this use meets certain requirements as set out in *Ok! Data Americas, Inc. v ASD, Inc.*, WIPO Case No. [D2001-0903](#). While taking into consideration the identity of the Domain Name as compared to the trademark, which as expressed

below impersonates the Complainant and thus cannot constitute fair use, the Panel will for completeness analyze the “fair use” factors enumerated under the above-referenced “Oki Data test”. These requirements are that: (1) the Respondent must actually be offering the goods or services at issue; (2) the Respondent must use the Website 2 to sell only the trademarked goods, otherwise, it could be using the trademark to bait Internet users and then switch them to other goods; (3) the Website 2 must accurately disclose the Respondent’s relationship with the trademark owner; and (4) the Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in the Domain Name.

In the present case, the above referred requirements are not met. The Domain Name and the Website 2 suggest at least an affiliation with the Complainant and its ALFA LAVAL trademark. The Panel believes that the use of the Complainant’s trademark in the Domain Name and on the Website 2 misleads consumers regarding the relationship between the Respondent and the Complainant, as Internet users may falsely believe that the Respondent is an official/endorsed distributor of the Complainant’s products. At the same time, the relationship between the Respondent and the Complainant (or a lack thereof) is not disclosed on the Website 2. This further perpetuates the false impression of a relationship between the Respondent and the Complainant.

Finally, the composition of the Domain Name, wholly incorporating the ALFA LAVAL trademark by itself, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant’s *prima facie* case. The Panel concludes that the Complainant has also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainant must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. See section 3.1 of the [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

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

As indicated above, the Complainant's rights in the ALFA LAVAL trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration. This finding is supported by the content of the Website 2 allegedly offering direct supplies of the Complainant's products. Moreover, it has been proven to the Panel's satisfaction that the Complainant's ALFA LAVAL trademark is well known and unique to the Complainant. Thus, the Respondent could not reasonably likely ignore the reputation of services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's ALFA LAVAL trademark.

Furthermore, as previously noted, the Domain Name has been used in bad faith by the Respondent to resolve Internet users to the Website 1 and the Website 2. The Respondent presumably intended to earn profit from the confusion created with Internet users. In consequence, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to these websites by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Website 1 and Website 2.

For the reasons discussed above, the Panel finds that the Complainant has satisfied the requirements under 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 Domain Name, <alfalaval.space>, be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: December 21, 2023