

ADMINISTRATIVE PANEL DECISION

Alois Dallmayr Kaffee oHG v. yangyang

Case No. D2023-5266

1. The Parties

The Complainant is Alois Dallmayr Kaffee oHG, Germany, represented by df-mp Dörries Frank-Molnia & Pohlman Patentanwälte Rechtsanwälte PartG mbB, Germany.

The Respondent is yangyang, China.

2. The Domain Name and Registrar

The disputed domain name <dallmayrcoffeeshop.com> (the “Disputed Domain Name”) is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2023. On December 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 20, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 amendment to the Complaint on December 21, 2023.

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 January 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on February 7, 2024. 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, Alois Dallmayr Kaffee oHG, is a German company operating in the coffee and tea business. The Complainant's group also holds Vending & Office, Delicatessen House, Catering, Restaurant, Café-Bistro, Mail Order and Gift Service businesses.

The Complainant is the owner of numerous trademarks including the following:

- DALLMAYR, German word mark registered under No. 1108149 on July 3, 1987 in class 30;
- DALLMAYR, European Union word mark registered under No. 003509759 on April 14, 2005 in classes 30 and 33;
- DALLMAYR, International word mark registered under No. 953493 on December 14, 2007 in classes 30 and 43, covering China where the Respondent is located.

The Complainant appears to operate through various domain names including the domain name <dallmayr.com>.

The Disputed Domain Name was registered on July 29, 2023. The Disputed Domain Name appears resolve to a website displaying sexual content.

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 Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is identical to a trademark in which it claims to have rights. According to the Complainant, the Disputed Domain Name identically contains the Complainant's well-known trademark DALLMAYR and the descriptive element "coffeeshop" does not have a distinctive character.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that it has not authorized the Respondent nor anyone else to use its trademarks. According to the Complainant, neither the Respondent, nor anyone else within this context:

- is commonly known by the Disputed Domain Name;
- has used, or undertaken any demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services;
- is making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, due to the repute of the DALLMAYR trademarks and its rare name, it is inconceivable that the Respondent would not be aware of the trademark. The Complainant also claims that the fact that the Disputed Domain Name is offered for sale shows that the Disputed Domain Name is primarily registered for the purpose of selling it to the Complainant or a competitor. Further, the Complainant contends that the registration of the Disputed Domain Name targets at disturbing the Complainant's business

and constitute “cybersquatting”. According to the Complainant, the fact that the DALLMAYR trademark is well-known and that the Disputed Domain Name and the DALLMAYR trademark are identical can create by itself a presumption of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel observes that the entirety of the mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of other terms – here, “coffee” and “shop” – does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.com”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “yangyang”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant’s mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant’s DALLMAYR trademark in its entirety and merely adds the descriptive terms “coffee” and “shop”. In the Panel’s view, both terms can be easily linked to the Complainant’s coffee and tea business. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Disputed Domain Name refers to a website displaying sexual content. Given the above, the Panel finds that this does not amount to a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the Disputed Domain Name.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Disputed Domain Name appears to resolve to a website displaying sexual content. In the Panel’s view, the circumstances of this case indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trademark. [WIPO Overview 3.0](#), section 3.2.4.

Other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- some of the Complainant’s trademarks predate the registration of the Disputed Domain Name by more than 35 years. The Complainant’s international mark covering China, where the Respondent appears to be located, predates the registration of the Disputed Domain Name by more than 15 years;
- the Disputed Domain Name incorporates the Complainant’s distinctive trademark in its entirety, and combines it with terms directly referring to the Complainant’s coffee and tea business;
- the Panel finds that the Complainant’s DALLMAYR trademark is distinctive and well-known, especially in the coffee business;

- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use.

As mentioned above, the Disputed Domain Name resolves to a website displaying sexual content. According to the Panel, such use may tarnish the Complainant's trademarks and constitutes further indication of bad faith use. See *CHRISTIAN DIOR COUTURE v. Paul Farley*, WIPO Case No. [D2008-0008](#) (holding that sexually tinted links on a website related to a domain name that is confusingly similar to a complainant's trademark could reasonably be supposed to tarnish that mark and does constitute bad faith use).

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <dallmayrcoffeeshop.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: February 16, 2024