

ADMINISTRATIVE PANEL DECISION

Laboratoire Terravita v. otto berzins

Case No. D2024-1606

1. The Parties

Complainant is Laboratoire Terravita, France, represented by Coblenche Avocats, France.

Respondent is otto berzins, Latvia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2024. On April 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 17, 2024, 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 (“Privacy service provided by Withheld for Privacy ehf”) and contact information in the Complaint. The Center sent an email to Complainant on April 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 24, 2024.

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 Respondent of the Complaint, and the proceedings commenced on May 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 27, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 3, 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

Based in France, Complainant manufactures and sells various beauty products and dietary supplements and drinks.

Complainant holds several trademark registrations for the mark TERRAVITA, including French trademark Reg. No. 4685665, registered on September 25, 2020 in International Classes 3, 4, 5, 29, and 32, in connection with, among other things, perfumery products, fragrances, beauty products, toiletries, food supplements, vitamin supplements, and energy drinks. Complainant also holds International Reg. No. 1601286, registered on March 10, 2021 in the same classes and in connection with the same products as are covered by the French mark noted above, and designating as jurisdictions the European Union, the United Kingdom, and the United States of America.

Complainant has owned the domain name <terravita.fr> since March 27, 2016, and Complainant uses that domain name to market and sell its various products.

The Domain Name was registered on March 21, 2024. The Domain Name currently resolves to an error page. Previously, however, the Domain Name resolved to a website which sold dietary supplements. According to Complainant, the products offered at Respondent's site competed with Complainant's products.

5. Parties' Contentions

A. Complainant

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

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

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 Complainant's trademark and the Domain Name. [WIPO Overview 3.0](#), section 1.7.

The Panel concludes that Complainant has rights in the trademark TERRAVITA through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The Domain Name entirely incorporates the TERRAVITA mark and adds the word "lux". The Panel concludes that the mark remains clearly recognizable within the Domain Name despite this additional word.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable 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; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 or service mark at issue.

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 often primarily within the knowledge or control of the respondent. Thus, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production 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.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to refute any of the plausible allegations made by Complainant, or challenge any of the evidence put forth by Complainant. The Panel concludes, from this undisputed record, that Respondent more likely than not targeted Complainant’s mark. The similarity of the Domain Name and Complainant’s mark, and the fact that Respondent’s site offered products similar to those offered by Complainant, leads the Panel to this conclusion. Such conduct obviously does not invest Respondent with rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

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

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section. On this record,

the Panel finds that Respondent targeted Complainant's mark when registering the Domain Name, and sought to divert Internet traffic for commercial gain by free-riding on Complainant's mark. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <terravitalux.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: June 11, 2024