

ADMINISTRATIVE PANEL DECISION

SEB S.A. v. Роман Ясель

Case No. D2024-4788

1. The Parties

The Complainant is SEB S.A., France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Роман Ясель, Belarus.

2. The Domain Name and Registrar

The disputed domain name <theimusa.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 20, 2024. On November 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 20, 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 (Registration Privacy, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 2024, 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 November 25, 2024.

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 December 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2024.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on January 15, 2025. 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.

On January 22, 2025, the Panel issued Procedural Order No. 1 in relation to the fact that in the Complaint it is stated that the Complainant SEB S.A. is the owner of the trade marks, while the evidence submitted showed that these are in fact owned by Groupe SEB Andean S.A. and Groupe SEB Colombia S.A. Furthermore, in the Complaint it was stated that the Complainant is the parent company of Groupe SEB, but no evidence thereof had been submitted. In the Procedural Order, the Complainant was ordered to provide an explanation or evidence of its relationship with the trade mark owners, to be submitted by January 27, 2025. Alternatively, the Complainant was allowed to add trade mark owners to the current proceeding as the co-Complainants through an amended Complaint to be submitted by January 27, 2025. Furthermore, the Panel Order allowed the Respondent to comment on the Complainant's submission to this Order by February 1, 2025. In response to the panel Order, the Complainant made a submission by January 23, 2025. The Respondent did not react to that submission.

4. Factual Background

The Complainant is the parent company of Groupe SEB, a manufacturer of small domestic appliances, such as kitchen electric goods, home and personal care together with cookware products. Its history goes back to 1857 and its current portfolio includes brands such as IMUSA, KRUPS, WMF, MOULINEX, and TEFAL. The Complainant employs 33,000 people and has a presence across 150 countries. Groupe SEB also maintains 40 industrial sites along with 1,300 retail stores and holds over 400 patents. In 2021, the Complainant reported sales of EUR 8,059 million and net income of EUR 454 million.

The Complainant has shown that Groupe SEB Andean S.A. is the owner of trade mark registrations across various jurisdictions, including (the "Trade Marks"):

- United States of America trade mark IMUSA, registered on October 29, 1985, under No. 1367707
- European Union trade mark IMUSA, registered on January 8, 1999, under No. 000547802
- United Kingdom trade mark IMUSA, registered on January 8, 1999, under No. 00900547802
- Canada trade mark IMUSA registered on February 4, 2010, under No. 758769.

The Domain Name was registered on May 21, 2024, and redirects to a website (the "Website") which shows the Trade Marks and contains, inter alia, the following texts:

"Discover Imusa cookware. Imusa is a trusted cookware brand enriches culinary experiences globally. From pots to signature pans. Founded on quality, innovation, and authenticity, it has consequently become a leader in cookware, offering both stainless steel and cast iron options. Moreover, it meets modern needs while honoring traditional methods."

and

"For over 50 years, Imusa has been producing high quality pots, pans, calderos and coffee makers that deliver reliable performance day after day. All principles and goals are deeply rooted in a commitment to quality, innovation and cultural heritage. You can choose a wide range of high quality kitchenware products. Whether you're looking for Imusa pots or a piece of Caldero Set, you'll find the perfect items to suit your needs. You can take advantage of great deals on products, including a Dutch oven with glass lid for versatile cooking and serving. The natural traditional Caldero 3-piece set is a popular choice for those who appreciate durable and reliable cookware. We invite you to experience the perfect blend of tradition and modernity in your kitchen".

The Website also contains descriptions of Imusa cookware with a “Check Price” button below. If clicked, this leads to offers of Imusa products on Amazon Prime (the website under the domain name <amazon.com>). The description of the offers contains a “Visit the Imusa store” link which, if clicked, leads to the Complainant’s webshop on <amazon.com>.

The Website also contains a description of the history of the Trade Marks under the heading “Brand history: from Iconic Pots to Traditional Calderos”. At the bottom of the Website the following disclosure appears: “Thelmusa.com is a participant in the Amazon Services LLC Associates Program, an affiliate advertising program designed to provide a means for sites to earn advertising fees by advertising and linking to Amazon.com”.

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, based on the following grounds.

The Domain Name can be considered as capturing, in its entirety, the Trade Marks, adding the generic term “the” to the beginning thereof. The mere addition of this generic term to the Trade Marks does not negate the confusing similarity between the Domain Name and the Trade Marks, and the Domain Name must be considered confusingly similar to the Trade Marks. The addition of generic or descriptive terms is not sufficient to overcome a finding of confusing similarity. When comparing a disputed domain name to a complainant’s trade marks, the extension is not taken into account.

The Respondent is not sponsored by or affiliated with the Complainant in any way, nor has the Complainant given the Respondent permission to use the Trade Marks in any manner, including in domain names. Furthermore, the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Trade Marks. The Respondent is not commonly known by the Domain Name, which evidences a lack of rights or legitimate interests. In the instant case, the Whois information identifies the Registrant as “Роман Ясель”, which does not resemble the Domain Name in any manner. Thus, where no evidence, including the Whois record for the Domain Name, suggests that the Respondent is commonly known by the Domain Name, the Respondent cannot be regarded as having acquired rights to or legitimate interests in the Domain Name. Furthermore, at the time of filing the Complaint, the Respondent was using a privacy Whois service, which also points to a lack of legitimate interest.

The Domain Name directs Internet users to a website that copies and attempts to duplicate the Complainant’s official website at <imusausa.com> by including the Trade Marks and copyright logo/images of the Complainant without authorization. As such, the Website has purposely been designed to serve as an exact replica of the Complainant’s website, as a means of deceiving Internet users into believing that the Domain Name and the Website are associated with the Complainant. The Respondent’s attempt to pass off the Domain Name as being affiliated with the Complainant, and in fact as being the Complainant, is in itself evidence of the fact that the Respondent does not have rights and legitimate interests in the Domain Name.

The Respondent registered the Domain Name on May 21, 2024, which is significantly after the Complainant filed for registration of the Trade Marks. By the time the Respondent registered the Domain Name, the Complainant already had a worldwide reputation in the Trade Marks which is fully adopted in the Domain Name. Therefore, it is evident that the Domain Name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the Domain Name.

The Complainant and the Trade Marks are known internationally, with trade mark registrations across numerous countries. The IMUSA name and trade mark was first created in 1934 and has been used continuously since then, which is well before the Respondent’s registration of the Domain Name. By registering a domain name that incorporates the Trade Marks, the Respondent has created a domain name

that is confusingly similar to the Trade Marks. As such, the Respondent has demonstrated a knowledge of and familiarity with the Trade Marks and the Complainant's business. In light of the facts set forth within the Complaint, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Trade Marks at the time the Domain Name was registered.

The Respondent creates a likelihood of confusion with the Complainant and the Trade Marks by using the Trade Marks in the Domain Name, attempting to profit from such confusion by displaying without authorization the Complainant's copyrighted logo on the Website. As such, the Respondent is attempting to cause consumer confusion and to profit from such confusion. The impression given by the Domain Name and the Website would cause consumers to believe the Respondent is somehow associated with the Complainant when, in fact, it is not. The Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Domain Name, and the Respondent is thus using the fame of the Trade Marks to improperly increase traffic to the Website for the Respondent's own commercial gain. Furthermore, the Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity, which past Panels have held serves as further evidence of bad faith registration and use.

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 trade mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

As provided in section 1.4 of [WIPO Overview 3.0](#), a trade mark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trade mark licensee, is considered to have rights in a trade mark under the UDRP for purposes of standing to file a complaint. This applies equally to the parent company of a trade mark owner. The Complainant has provided evidence that the owner of the Trade Marks, Groupe SEB Andean S.A., is a subsidiary. Therefore, the Complainant has shown that it has rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates IMUSA, of which the Trade Marks consist, in its entirety. The addition of the prefix "the" does not prevent a finding of confusing similarity between the Domain Name and the Trade Marks (see [WIPO Overview 3.0](#), section 1.8; see also, *inter alia*, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

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.

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has rights or legitimate interests in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the Trade Marks in their entirety with a descriptive term, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name. The Domain Name directs Internet users to the Website, which (1) includes the Trade Marks, (2) contains information on the Complainant's products which, if clicked, (3) connects to the Complainant's webshop on <amazon.com>. This use of a domain name may, under circumstances, constitute a bona fide offering of goods or services, in particular if the respondent were a bona fide service provider of the Complainant's products. The criteria therefore are set out in the *Oki Data* decision (*Oki Data Americas, Inc., v. ASD Inc.*, WIPO Case No. [D2001-0903](#)). *Oki Data* concerned an authorised reseller of spare parts for the Oki Data products, but the criteria have also been applied to unauthorised resellers of products or services. In line with that decision, a reseller may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name only if the following conditions are satisfied: (1) the respondent must actually be offering the goods at issue; (2) the respondent must use the site to sell only the trade marked goods (otherwise, there is the possibility that the respondent is using the trade mark in a domain name to bait consumers and then switch them to other goods); (3) the site itself must accurately and prominently disclose the respondent's relationship with the trade mark owner; and (4) the respondent must not try to "corner the market" in all relevant domain names, thus depriving the trade mark owner of the ability to reflect its own mark in a domain name. Therefore, the question arises whether the Respondent could be considered a legitimate reseller of the Complainant's products.

The Complainant has not contested that the Respondent on the Website offers the Complainant's products, be it indirectly, through a link with the Complainant's webshop on <amazon.com>. Furthermore, the Website does not offer services in relation to services or products from other companies and, therefore, does not appear to use the Trade Marks to bait and switch customers to other goods or services.

However, the question is whether the Respondent meets the third *Oki Data* requirement that it must accurately disclose its relationship with the Complainant in a prominent manner. Such a disclaimer should be effective in that it makes clear to visitors of the Website that it is not affiliated with or authorized by the Complainant. This criterion has not been met by the Respondent as the Website does not feature a clearly visible disclaimer and so neither accurately nor prominently discloses the Respondent's lack of relationship with the Complainant. In fact, by featuring the Trade Marks and texts on the Complainant's products and the history of the Trade Marks, the Website suggests that the Respondent is affiliated with the Complainant, which is not the case.

As the Respondent therefore has not demonstrated that it meets all the criteria of the *Oki Data* decision, the Respondent's use of the Domain Name prior to the notice of the dispute cannot be considered to be in connection with a bona fide offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

Finally, as set out in the disclosure at the bottom of the Website, the Respondent is a participant in Amazon's affiliate advertising program to earn advertising fees by advertising and linking to Amazon.com. Therefore, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

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.

Based on the undisputed information and evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Name, the Respondent was or should have been aware of the Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred 39 years after the registration of the earliest of the Trade Marks;
- the Respondent has incorporated the Trade Marks in the Domain Name;
- the Respondent's intent to target the Complainant when registering the Domain Name may be inferred from the content of the Website, as described above;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

Since the Respondent has no authorization from or other affiliation with the Complainant and was or should have been aware of the Complainant's rights at the time of registration, the Domain Name was registered in bad faith.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the use of the Trade Marks on the Website;
- the texts on the Website referring to the Complainant's products and the history of the Trade Marks;
- the lack of a disclaimer accurately disclosing the (non-existent) relationship with the Complainant;
- the lack of a formal Response to the Complaint.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith.

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 <theimusa.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: February 6, 2025