

PANEL DECISION

Läderach (Schweiz) AG v. Euro Rent, Paul Raptis
Case No. DEU2023-0015

1. The Parties

Complainant is Läderach (Schweiz) AG of Switzerland, represented by Cosmovici Intellectual Property Sarl, Switzerland.

Respondent is Euro Rent, Paul Raptis, Poland.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <laderach.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”).

The Registrar of the disputed domain name is EURid vzw (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2023. On May 16, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On May 17, 2023, the Registry transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 7, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 27, 2023. Respondent sent an informal communication on June 7, 2023, however did not submit a compliant Response. Accordingly, the Center notified the commencement of panel appointment process on July 5, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on July 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 ADR Rules, Paragraph B(5).

4. Factual Background

Complainant is a company organized under the laws of Switzerland that is active in the chocolate industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand LÄDERACH, including, but not limited, to the following with protection also for the territory of Poland:

- Word mark LÄDERACH, European Union Intellectual Property Office (EUIPO), registration number: 005032371, registration date: April 18, 2007, status: active.

Moreover, Complainant has evidenced to own various domain names relating to its LÄDERACH trademark, *inter alia*, the domain name <laderach.com> which resolves to Complainant's main website at "www.laderach.com", promoting Complainant's chocolate products and related services worldwide, including in Poland.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Poland who registered the disputed domain name on January 20, 2023. By the time of the rendering of this decision, the disputed domain name resolves to a typical default page. Complainant, however, has demonstrated that on March 20, 2023, thus before the filing of the Complaint, the disputed domain name resolved to a website at "www.laderach.eu", promoting bags, shoes, belts and other fashion accessories of various well-known and third party trademark owners, but apparently lacking any functionality for actually purchasing the goods, and also lacking relevant information about the website owner.

Pursuant to the panel's decision of May 4, 2023 in *Läderach (Schweiz) AG v. Paul Raptis, Euro Rent*, WIPO Case No. [DEUL2023-0001](#), in which Complainant's request for the language of these ADR proceedings to be in English was granted by the panel and accordingly the language of the ADR proceeding shall be English.

Complainant further requests that the disputed domain name be revoked.

5. Parties' Contentions

A. Complainant

Complainant contends to be a leader in the manufacturing of fresh premium chocolate since 1962 and to have invested an important amount of resources in developing a large range of high-end fresh chocolate products which are now sold in more than 100 chocolateries stores with sales locations in 15 countries as well as via franchise partners across the world. Moreover, Complainant stresses that its LÄDERACH trademark has been intensively, seriously, uninterruptedly and highly publicly used in many countries at international level and has meanwhile become a well-known and respected brand.

Complainant submits that the disputed domain name is confusingly similar to Complainant's LÄDERACH trademark as it incorporates the latter in its entirety, while the missing umlaut accent is not a distinctive aspect and is hence not capable of differentiating the disputed domain name from Complainant's trademark. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks or to apply for or use any domain names incorporating the very same, and there is and

has never been any association between Complainant and Respondent, (2) “Läderach” is not a descriptive word and is not belonging to the basic vocabulary, but is the name of Complainant’s founder and its other family members and the general public is automatically associating this name “Läderach” with Complainant and its chocolate business, which is why it is unlikely that Respondent couldn’t have known about Complainant’s existence and probably registered the disputed domain name with Complainant in mind. Finally, Complainant argues that Respondent has registered or is using the disputed domain name in bad faith since (1) the disputed domain name incorporates Complainant’s well-known LÄDERACH trademark in its entirety, (2) Complainant’s LÄDERACH significantly predates the registration of the disputed domain name and given Complainant’s strong business position worldwide, Respondent must have been aware of this trademark at the time of registration of the disputed domain name, (3) there is no credible explanation for Respondent’s choice of the disputed domain name including the Top-Level Domain (TLD) “.eu” which corresponds to Complainant’s area of business activity or natural zone of expansion, (4) at the time of the dispute notice to Respondent, the disputed domain name does not seem to be in use, (5) at several times in the past, the website under the disputed domain name displayed advertisement for the sale of luxury goods from third party brands, but without any functionality for purchasing the goods, and an “About Us” section that provided no relevant information about the website’s owning organization, (6) the random contact and lack of functionality of said website suggest that it was created with a cybersquatting intent, and (7) merely possessing a domain name that incorporates a well-known trademark raises a presumption of bad faith which is up to Respondent to rebut.

B. Respondent

Respondent did not file a formal Response, but indicated in its informal communication sent to the Center on June 7, 2023, that it did “not agree to the revocation of our rightfully purchased domain”, which had “absolutely no connection to [the] Complainant whatsoever”, and was made use of “for internal testing purposes”, moreover, that Respondent “would sell the domain to [the] Complainant for EUR 500,000, with the possibility of slight negotiation”.

6. Discussion and Findings

Pursuant to Article 4(4) of European Union (“EU”) Regulation 2019/517 as well as Paragraph B11(d)(1) of the ADR Rules, it is for Complainant to establish that:

- (i) The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) The disputed domain name has been registered by Respondent without rights or legitimate interests in the name; or
- (iii) The disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law

The Panel concludes that the disputed domain name is almost identical, at least confusingly similar to the LÄDERACH trademark, of which Complainant has proven to be the registered owner, which enjoys protection for the territory of the European Union, and which was well registered before the disputed domain name.

Further, the disputed domain name incorporates the LÄDERACH trademark almost in its entirety, simply not including the umlaut accent on the first letter “ä”. Numerous UDRP panels have recognized that incorporating a trademark in its entirety is normally sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see WIPO Overview on WIPO Panel Views on Selected

UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7).¹

Therefore, the Panel holds that the requirements of Paragraph B11(d)(1)(i) of the ADR Rules are met.

B. No Rights or Legitimate Interests

The Panel is further convinced, on the basis of Complainant’s undisputed contentions, that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Pursuant to the ADR Rules, Paragraph B11(d)(1)(ii), it is up to Complainant to plead and prove accordingly that the disputed domain name has been registered by Respondent without rights or legitimate interests therein. The ADR Rules contain in Paragraph B11(e) a non-exhaustive list of case scenarios suitable to prove rights or legitimate interests of a respondent. Inasmuch as it is typically difficult to prove a negative fact (here the absence of rights or legitimate interests), it is in line with the majority view of UDRP panels as well as in ADR proceedings that it is sufficient if Complainant establishes a so-called *prima facie* case.

This results in a shifting of the burden of production and it is then up to Respondent to present and prove that there are corresponding rights or legitimate interests in the disputed domain name (see for example: *Lidl-Stiftung & Co. KG v. Name Redacted*, WIPO Case No. [DEU2018-0012](#)).

Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its LÄDERACH trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term “Läderach” (which is not a descriptive word and is not belonging to the basic vocabulary, but is the name of Complainant’s founder and its other family members) on its own. To the contrary, Respondent, at some point before the filing of the Complaint, e.g. in March 2023, obviously ran a website under the disputed domain name, promoting bags, shoes, belts and other fashion accessories of various well-known and third party trademark owners, but apparently lacking any functionality for actually purchasing the goods, and also lacking relevant information about the website owner. Such making use of the disputed domain name obviously neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the ADR Rules. In this context, the Panel has also taken note of Respondent’s allegation that it used the disputed domain name “for internal testing purposes” which, however, is obviously a protective assertion given that (1) Complainant provided screenshots taken in March 2023 of the website under the disputed domain name which, therefore, was publicly accessible by that time and (2) Respondent did not explain at all why it needed to rely on the designation “Laderach” as it is reflected in the disputed domain name if not to somehow profit from the recognition that is undisputedly connected to Complainant’s well-known LÄDERACH trademark.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has not submitted a formal Response and that it has not put forward any information which would have allowed the Panel to conclude that the disputed domain name, which is almost identical to Complainant’s well-known LÄDERACH trademark, is not targeting the latter, it has not met that burden.

Therefore, the Panel finds that the disputed domain name was registered by Respondent without any rights or legitimate interests therein, which is why the requirements of Paragraph B11(d)(1)(ii) of the ADR Rules are met, too.

¹ Due to the numerous parallels between the UDRP and the ADR rules, the Panel can also draw on the established award practice in UDRP proceedings in relevant cases.

C. Registered or Used in Bad Faith

For the sake of completeness, the Panel, in addition, holds that the disputed domain name also has been registered or is being used in bad faith.

As described above, Respondent at some point used the disputed domain name, which is almost identical to Complainant's undisputedly well-known LÄDERACH trademark, to resolve to a website promoting bags, shoes, belts and other fashion accessories of various well-known third party trademark owners, but apparently lacking any functionality for actually purchasing the goods, and also lacking relevant information about the website owner. Doing so, allows no other conclusion but that the disputed domain name was intentionally used by Respondent to attract Internet users, for commercial gain, to Respondent's own website, by creating a likelihood of confusion with Complainant's LÄDERACH trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website, which is a clear indication of bad faith within the meaning of Paragraph B11(f)(4) of the ADR Rules.

Respondent's explanation given in its email communication to the Center of June 7, 2023, that the disputed domain name had "absolutely no connection to [the] Complainant whatsoever", and was made use of "for internal testing purposes" only, cannot be qualified other than as a pretext for not having used the disputed domain name in bad faith, given that the disputed domain name is almost identical to Complainant's well-known LÄDERACH trademark and that the content of Respondent's website under the disputed domain name was clearly of such nature as to somehow take unfair advantage of or otherwise abuse Complainant's LÄDERACH trademark, which exactly is understood to be the broader meaning of bad faith (see [WIPO Overview 3.0](#), section 3.1). Such picture of Respondent's bad faith acting is rounded up by the information in Respondent's communication of June 7, 2023, that it was willing to "sell the domain to [the] Complainant for EUR 500,000, with the possibility of slight negotiation", which must be considered evidence of the registration and use of the disputed domain name in bad faith within the meaning of Paragraph B11(f)(1) of the ADR Rules.

In this context, it finally also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated June 7, 2023 could not be delivered due to an incorrect taddress. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding

Accordingly, the Panel finds that the requirements of Paragraph B11(d)(1)(iii) of the ADR Rules are met, too.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name, <laderach.eu>, be revoked.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: July 20, 2023