

ADMINISTRATIVE PANEL DECISION

ALTAREA v. Андрій Кондратенко

Case No. DUA2023-0006

1. The Parties

The Complainant is ALTAREA, France, represented by Nameshield, France.

The Respondent is Андрій Кондратенко, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <altarea.com.ua> is registered with Imena.ua (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 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 (“Registrant information is not published”), and contact information in the Complaint, and indicated that the language of the registration agreement was Ukrainian. The Center sent an email communication to the Complainant on October 19, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email communication to the Parties in both Ukrainian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Ukrainian; or submit a request for English to be the language of the administrative proceedings. The Complainant filed a request for English to be the language of the proceedings on October 20, 2023. The Respondent did not comment on the language of the proceedings.

The Complainant filed an amended Complaint on October 20, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of .UA Domain Name Dispute Resolution Policy (the “.UA Policy”), the Rules for .UA Domain Name Dispute Resolution Policy (the “.UA Rules”), and the WIPO Supplemental Rules for .UA Domain Name Dispute Resolution Policy (the “WIPO Supplemental Rules”).

In accordance with the .UA Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint in both English and Ukrainian, and the proceedings commenced on October 25, 2023. In accordance with the .UA Rules, paragraph 5(a), the due date for Response was November 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2023. The Center appointed Igor Alfiorov as the sole panelist in this matter on December 4, 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 .UA Rules, paragraph 7.

4. Factual Background

The Complainant, founded in 1994, is one of the France’s leading property developing firms in France. The Complainant has developed unique real estate skills and a development platform covering all classes of real estate assets (residential, retail, offices, logistics, hotels, serviced residences, etc.).

The Complainant is the owner of several trademarks “ALTAREA”:

- European trademark No. 001148246, registered on November 8, 2000;
- International trademark No. 907441, registered on July 12 2006, with the designation to Ukraine;
- French trademark No. 4706407, registered on May 28, 2021.

The Complainant’s ALTAREA trademark is a distinctive coined term with no meaning in any language.

The Complainant’s trademarks obtained protection long before the disputed domain name’s registration date, August 16, 2023.

According to the provided evidence, the ALTAREA trademarks are well-established being in active use by the Complainant and associates with the Complainant and its services.

The Complainant also owns several domain names, including the trademark ALTAREA, such as <altarea.com>, registered and used for its official website since March 31, 1999.

At the date of the complaint was filed, the disputed domain name was not resolve to any active website but resolved to a blank test webpage. At the same time, the Complainant provided evidence confirming that the disputed domain name has been set up with mail exchanger (“MX”) records for email purposes.

5. Parties’ Contentions

A. Complainant

The Complainant contends the disputed domain name is identical to their trademark ALTAREA. The county-code Top-Level Domain (“ccTLD”) suffix “.com.ua” does not impact the overall impression of the designation and does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademarks as it constitutes the standard registration requirement.

The Complainant asserted that the Respondent has no rights or legitimate interests regarding the disputed domain name. Particularly, the Respondent is not known by the disputed domain name and has not acquired trademark rights on the altarea term. The Complainant asserts that it does not have any business with the Respondent, and the latter is not affiliated with nor authorized by the Complainant in any way to use the trademark ALTAREA. Moreover, the disputed domain name resolves to a blank test page, indicating that the Respondent has not used the disputed domain name and has no demonstrated plan to use it.

With regard to the third element, the Complainant concludes the Respondent has registered and is using the disputed domain name in bad faith. Particularly, the Complainant asserts that the disputed domain name is identical to the trademark ALTAREA, which has been registered at least since 2006 and given the Complainant's trademark's distinctiveness and reputation, it is reasonable to conclude that the Respondent had full knowledge of the prior ALTAREA trademark while registering the disputed domain name. The Respondent has not demonstrated any activity concerning the disputed domain name. At the same time, according to the Complainant, the Respondent's possible active use of the disputed domain name must likely be illegitimate, such as passing off, an infringement of consumer protection legislation or the Complainant's trademark rights. The Complainant asserts that incorporating a famous trademark into a disputed domain name along with an inactive website may be evidence of bad faith registration and use. Finally, the Complainant provided evidence that the disputed domain name has been set with MX records, suggesting it can be used for email purposes.

B. Respondent

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

6. Discussion and Findings

6.1. Language of Proceedings

The Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Ukrainian.

According to the paragraph 11(a) of the .UA "unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement (which shall be in English, Russian or Ukrainian), subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The Complainant has filed the Complaint in English and requests that English be the language of this proceeding due to the following reasons:

- The choice of language is related to the combined fact that the English language is the language most widely used in international relations and is one of the working languages of the Center;
- In order to proceed in Ukrainian, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Ukrainian in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings.

The disputed domain name is in Latin script. Having received the Center's communication regarding the language of the proceeding, both in English and Ukrainian, the Respondent has not replied to the email on the language of the proceeding nor has submitted any email communication in this proceeding.

Paragraph 10(c) of the .UA Rules sets out that the Panel shall ensure that the administrative proceeding takes place with due expedition.

The Panel studied all circumstances of this case, namely, the Complainant's reasonings as to the use of English as the language of proceedings; the Respondent's failure to object to the use of English as the language of the proceedings; the Respondent's decision not to respond to the Complaint, although being notified both in English and Ukrainian.

Whilst there is a language requirement in paragraph 11(a) of the .UA Rules, the Panel has to balance that against the other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay (see *Michael Kors (Switzerland) International GmbH. v. Minakova Maria*, WIPO Case No. [DUA2020-0002](#)).

Therefore, the Panel concludes that English shall be the language of this proceeding. Translation of the Complaint and other materials would cause unnecessary delay in this proceeding.

6.2. Further Procedural Considerations

Under paragraph 10 of the .UA Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the .UA Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the courier was able to deliver the written notice to the Respondent's address in Ukraine, and the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar, and to a postmaster email address as specified by the .UA Rules. There is no evidence that the case notification email to the first email address was not successfully delivered.

Moreover, despite the ongoing international conflict in Ukraine, the Respondent appears to be capable of registering and controlling the disputed domain name as it was registered in August 2023 and MX records for email purposes were settled.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

6.3 Substantive Elements of the .UA Policy

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the .UA Policy, the .UA Rules, the WIPO Supplemental Rules, and other applicable legal authority pursuant to paragraph 15(a) of the .UA Rules.

Paragraph 15(a) of the .UA Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the .UA Policy, these .UA Rules and any rules and principles of law that it deems applicable.”

Considering that the Respondent did not reply to the Complainant’s contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the .UA Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the .UA Policy and the .UA Rules. Under paragraph 14(b) of the .UA Rules, where a Party does not comply with any provision of the .UA Rules, the Panel “shall draw such inferences therefrom as it considers appropriate.”

Paragraph 4(a) of the .UA Policy directs that the Complainant must prove each of the following: (i) the disputed 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 respect of the disputed domain name; and (iii) the disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

First, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant owns several trademarks, with the protection obtained, including Ukraine, granted, which enjoy a widespread reputation and predate the registration of the disputed domain name.

The country-code Top-Level Domain (“ccTLD”) “.com.ua” in the disputed domain name is viewed as a standard registration requirement and may be disregarded for the purposes of the confusing similarity test (see, e.g., *Nexans vs BV v. Yefremov Evgen*, WIPO Case No. [DUA2021-0019](#))

The Panel finds that in the present case, the disputed domain name incorporates the entirety of the Complainant’s trademark. In cases where a domain name incorporates the entirety of a trademark the domain name will usually be considered identical or confusingly similar to that mark for purposes of UA-DRP standing (see, e.g., *Payoneer, Inc. v. Korolenko Roman*, WIPO Case No. [DUA2021-0003](#)).

Considering the above, the Panel finds that the disputed domain name is identical to the Complainant’s trademark in which the Complainant has rights, therefore, the Complainant has established its case under paragraph 4(a)(i) of the .UA Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the .UA Policy the Complainant has to establish that the Respondent has no rights or legitimate interests in the disputed domain name.

According to prior decisions under the .UA Policy, while the overall burden of proof in .UA proceedings is on the Complainant, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied the second element. See, e.g., *Google LLC v. Александр Дмитриевич Бутенко*, WIPO Case No. [DUA2020-0009](#).

The Complainant has used its ALTAREA trademarks at least since 2006 and its domain name <altarea.com> since 1999, which is long before the Respondent registered the disputed domain name in August 2023.

Thus, the disputed domain name was registered by the Respondent well after the Complainant had registered the ALTAREA trademarks and had established extensive goodwill from its use.

The Complainant has never authorized the Respondent to use the ALTAREA trademarks, in any manner, including in the disputed domain name.

The Panel finds that the Respondent is not commonly known by the disputed domain name, and neither of any other conditions under paragraph 4(c)(i)-(iii) of the .UA Policy are applicable.

Accordingly, taking into account the facts and allegations listed above, the Panel finds that the Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds a right or legitimate interest in the disputed domain name.

Considering the above, the second element of paragraph 4(a)(ii) of the .UA Policy is therefore satisfied.

C. Registered or Used in Bad Faith

According to paragraph 4(a)(ii) of the .UA Policy, it should be established that the disputed domain name has been registered or is being used in bad faith.

The disputed domain name is identical to the Complainant's ALTAREA trademark and was registered long after the Complainant registered its ALTAREA trademark and its domain name <altarea.com>.

The Panel agrees that the Complainant's ALTAREA trademark is distinctive and constitutes a coined word that does not have any meaning in any language and is associated with the Complainant, its business and services. Moreover, the Panel is convinced that the Complainant and its ALTAREA trademark have acquired a good reputation and goodwill through long and widespread use.

Thus, the Panel finds it inconceivable, that the Registrant did not know about the Complainant's trademark. On the contrary, it seems more likely than not that the Respondent intentionally targeted it to benefit from the Complainant's reputation and potentially attract Internet users to the Respondent's website for commercial gains by creating confusion. Prior decisions under the .UA Policy state that domain names identical to a complainant's trademark carry a high risk of implied affiliation (See, e.g., *AB Electrolux v. Захаров Евгений*, WIPO Case No. [DUA2020-0006](#)).

Furthermore, the Panel finds that the Respondent's passive holding of the disputed domain name is being in bad faith, bearing in mind, particularly the following considerations:

- the Complainant's ALTAREA trademark is distinctive and well-established.
- the Respondent failed to submit a response or provide any evidence of a good-faith use or intentions of such use.
- There is no plausible good faith use to which the disputed domain name could be put by the Respondent.

(see *L'Oreal v. Артем Волик*, WIPO Case No. [DUA2023-0001](#)).

Moreover, the Panel believes if the Respondent had legitimate reasons and/or purposes in registering and using the disputed domain name, it would have filed a response in these proceedings.

The third element of paragraph 4(a)(iii) of the .UA Policy is therefore satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .UA Policy and 15 of the .UA Rules, the Panel orders that the disputed domain name <altarea.com.ua> be transferred to the Complainant.

/Igor Alfiorov/

Igor Alfiorov

Sole Panelist

Date: December 18, 2023