

ADMINISTRATIVE PANEL DECISION

Altarea v. alta rae, alta rae

Case No. D2022-3706

1. The Parties

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

The Respondent is alta rae, alta rae, Philippines.

2. The Domain Name and Registrar

The disputed domain name <altarae.shop> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 7, 2022 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 in English on October 7, 2022.

On October 7, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On October 7, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent in English and Japanese of the Complaint, and the proceedings commenced on October 19, 2022. In accordance with paragraph 5 of the Rules, the due date for Response was November 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2022.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on November 17, 2022. 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 paragraph 7 of the Rules.

4. Factual Background

The Complainant is the leading property developer covering all classes of real estate assets (residential, retail, offices, logistics, hotels, serviced residences, etc.) in France, which was founded in 1994.

The Complainant is the owner of several ALTAREA trademarks (the “ALTAREA Trademarks”), such as European Union Trademark No. 001148246 registered on November 8, 2000 and International Trademark No. 907441 registered on July 12, 2006.

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

The disputed domain name <altarae.shop> was registered on September 26, 2022 and redirects to an inactive page.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The inversion of the letters “e” and “a” in the ALTAREA Trademarks is not sufficient to escape the finding that the disputed domain name is confusingly similar to the ALTAREA Trademarks. This is thus a clear case of “typosquatting”, *i.e.*, the disputed domain name contains an obvious misspelling of the Complainant’s ALTAREA Trademarks. Moreover, the addition of the new generic Top-Level Domain suffix “.shop” does not change the overall impression of the designation as being connected to the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated.

The Respondent is not identified in the Whois database as the disputed domain name. Besides, the Respondent is not known by the Complainant’s name. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s ALTAREA Trademarks, or apply for registration of the disputed domain name by the Complainant. Finally, the disputed domain name resolves to an inactive page. The Respondent did not make any use of the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Respondent has registered the disputed domain name, which is confusingly similar to the Complainant’s ALTAREA Trademarks, many years after the Complainant had established a strong reputation and goodwill in its ALTAREA Trademarks. Moreover, a Google search on the expression “altarae” displays several results, all of them being related to the Complainant. Moreover, the Complainant states that this misspelling in the disputed domain name was intentionally designed to be confusingly similar with the Complainant’s ALTAREA Trademarks. Besides, the disputed domain name resolves to an inactive page. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that

would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. Finally, the fact that mail exchange (MX) servers are configured suggests that the disputed domain name may be actively used for email purposes.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides, "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". As the Registrar confirmed, Japanese is the language of the Registration Agreement for the disputed domain name.

However, the Complainant requests that the language in this case shall be English with the reasons that English is the language most widely used in international relations and is one of the working languages of the Center, the disputed domain name is formed by words in Roman characters (ASCII) and not in Japanese script, and 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 in order to proceed this case in Japanese.

Considering the circumstances of the administrative proceeding, including that the Respondent is located in Philippines, where English is commonly spoken, and the Respondent did not object to the Complainant's request, the necessity for conducting the proceeding in Japanese will not be so critical to justify the costs of translation and delay. Thus, the Panel determines to proceed and render its decision in English.

6.2 Substantive Elements of the Policy

According to paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel confirms that the Complainant registered several ALTAREA Trademarks including European Union and International trademark registrations. The disputed domain name consists of the letters "altarae" and a generic Top-Level Domain (gTLD) ".shop". The gTLD is usually disregarded under the first requirement of confusing similarity test as a standard registration requirement of the domain name (See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). The letters "altarae" are identical to the Complainant's ALTAREA Trademarks except for the inversion of the order of the letters "e" and "a" and can be produced by mistyping the ALTAREA Trademarks. The mere inversion of the vowel letter "e" with "a" at the end of the ALTAREA Trademarks, resulting "altarae", and the full reproduction of rest of trademark in the disputed domain name support the finding of confusing similarity (See *Altarea v. Loretta Zayas*, WIPO Case No. [D2020-2337](#) (<altaraecogedim.com>)).

Accordingly, the Panel finds that the first requirement of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

The Respondent used the privacy registration service provided by the Registrar's reseller, and the Respondent's name and organization have not been disclosed on the Whois database until October 6, 2022. According to the Registrar, both the Respondent's name and organization are "alta rae" and the Respondent's email address includes the letters "altarae" (without space). It would appear that "Alta Rae" is a name (perhaps rare, but) sometimes used as a given name.

As the Complainant asserts, the Respondent seems to be not known by the Complainant's name "Altarea", and also not affiliated with nor authorized by the Complainant.

However, the Complainant did not argue specifically why the Respondent has no rights or legitimate interests in respect of the disputed domain name which consist of letters "altarae" (without space) in the amended Complaint based on the information including the Respondent's name and organization disclosed by the Registrar to the Center and which was in turn provided to the Complainant. While the amended Complaint lists "alta rae" as the Respondent's name and organization (including a corresponding Gmail address), no arguments are made as to the Respondent's name and organization (e.g., whether these could be pretextual or false) under the second requirement.

Although the Respondent did not submit any Response, the Panel cannot conclude that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name which consist of letters "altarae" (without space).

Consequently, the Panel has reached the conclusion that the second requirement of paragraph 4(a) of the Policy is not satisfied.

C. Registered and Used in Bad Faith

The Complainant has established a strong reputation and goodwill in its ALTAREA Trademarks in European Union and some other countries. However, the Complainant is not operating its business around the world and then does not register the ALTAREA Trademarks at least in Philippines and in Japan.

Therefore, it is difficult to say based on the evidence provided by the Complainant that the Respondent who is located in Philippines must have known the Complainant and its ALTAREA Trademarks.

The Complainant owns several domain names including the ALTAREA Trademarks, such as the domain name <altarea.com>. However, no one including the Respondent did not registered the domain name <altarea.shop>, which incorporates the Complainant's exact ALTAREA Trademarks. It is inferred that the Respondent has not registered the domain name in order to prevent the Complainant from reflecting the ALTAREA Trademarks in a corresponding domain name (See paragraph 4(b)(ii) of the Policy) from the fact that the Respondent registered the disputed domain name (switching two letters "e" and "a" in the corporate name "altarea", which also corresponds to a personal name "altarae" (without space)) instead of the domain name <altarea.shop>.

The Complaint was filed just nine days after the registration of the disputed domain name, and thus it is not unnatural that the disputed domain name still resolved to an inactive page at the filing of the Complaint. The Respondent's bad faith registration and use of the disputed domain name is not established in this case by the fact that the webpage of the disputed domain name is inactive, and the disputed domain name seems to be used for email forwarding purposes.

If, however, the Complainant learns of infringing content that makes clear that its rights were being targeted by the Respondent, that may support grounds for a refiling.

For the reasons given above, the Panel concludes that the third requirement of paragraph 4(a) of the Policy is not satisfied.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Yuji Yamaguchi/

Yuji Yamaguchi

Sole Panelist

Date: December 1, 2022