

## **ADMINISTRATIVE PANEL DECISION**

### **Laboratoire Terravita v. Deo Gandara Wibawa Case No. D2023-0266**

#### **1. The Parties**

The Complainant is Laboratoire Terravita, France, represented by Coblence & Associés, France.

The Respondent is Deo Gandara Wibawa, Indonesia.

#### **2. The Domain Name and Registrar**

The disputed domain name <eyolabs.com> is registered with Google LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2023. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 20, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 2023, 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 amendment to the Complaint on January 24, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on January 30, 2023. The Respondent sent an informal communication to the Center on February 2, 2023. The Complainant requested the suspension of the proceedings to allow for settlement discussions between the parties. On April 7, 2023, the Complainant submitted a Supplemental Filing. On April 17, 2023, the proceedings were reinstated. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on May 1, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on May 5, 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 Rules, paragraph 7.

#### 4. Factual Background

The Complainant is a French producer of food supplements and is the owner of a several trademark registrations for EIYOLAB including the following, as per trademark certificates submitted as annexes D0 and D1 to the Complaint:

- French trademark registration No. 3716524 for EIYOLAB (word mark), filed and registered on February 25, 2010, in international classes 05, 29 and 32;
- European Union Trade Mark registration n. 009126971 for EIYOLAB (figurative mark), filed on May 24, 2010 and registered on November 2, 2010, in classes 05, 29 and 32.

The Complainant is also the owner of the domain name <eiylab.com>, which was registered on February 25, 2010 and is used by the Complainant to promote its products under the trademark EIYOLAB.

The disputed domain name <eyolabs.com> was registered on December 27, 2022 and is pointed to a blank page.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark EIYOLAB in which it has rights as it reproduces the trademark in its entirety with the mere deletion of the letter "i" and the addition of the letter "s" and the generic Top-Level Domain (gTLD) ".com".

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name as the Respondent is in no way affiliated with the Complainant and has not been authorized by the Complainant to use its trademark EIYOLAB or to proceed with the registration of the disputed domain name. The Complainant also states that, since the disputed domain name resolves to a blank page, the Respondent is not making a *bona fide* offering of goods or services without the intent of taking advantage of the notoriety of the Complainant's trademark. The Complainant further asserts that the Respondent lacks legitimate interests in the disputed domain name since, when a registrant uses a domain name with a trademark owner in mind, it usually intends to sell the domain name to the owner of the identified trademark or to create confusion in the public mind by developing a parking page.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent could not have been unaware of the Complainant's prior rights when it registered the disputed domain name and, indeed, registered and used the disputed domain name in bad faith because i) despite the two letter difference, the disputed domain name strongly suggests that the Respondent had the Complainant's prior rights in mind at the time of the registration of the disputed domain name; ii) the Complainant's trademark rights long predate the registration of the disputed domain name; iii) the Complainant has made longstanding and widespread use of its trademark EIYOLAB since 2010; iv) the Respondent's redirection of the disputed domain name to a blank page do not prevent a finding of bad faith registration and use under the Policy; and v) the Respondent deliberately registered the disputed domain name, almost identical to the Complainant's trademark, with the intent to sell it to the Complainant or to create confusion in the public mind by developing a parking page.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions but sent an informal communication to the Center, on February 2, 2023, asserting that he was unaware of the Complainant's trademark EIYOLAB when registering the disputed domain name and stating that the disputed domain name is pointed to a blank page since he is using the disputed domain name as the API Server of his application. The Respondent also indicated that he was willing to cease any use and transfer the disputed domain name to the Complainant to end the dispute.

## **C. Complainant's Supplemental Filing**

On April 7, 2023, during the suspension of the proceedings, the Complainant sent a supplemental filing by which it amended the bad faith registration section of its Complaint adding comments on the circumstance the Respondent had consented to the transfer of the disputed domain name to the Complainant in its informal communication to the Center, but then failed to follow up on the Complainant's subsequent communication and to provide the signed Standard Settlement Form required to enable the transfer of the disputed domain name. The Complainant submits that the Respondent's conduct further demonstrates his bad faith and his intent to benefit from, or harm, the Complainant's reputation.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Supplemental Filings**

Before entering into the merits of the case, the Panel addresses the issue of the unsolicited supplemental filing submitted by the Complainant to the Center.

No provision concerning supplemental filings are made in the Rules or Supplemental Rules, except at the request of the panel according to paragraph 12 of the Rules, which states the panel, in its sole discretion, may request any further statements or documents from the parties it may deem necessary to decide the case.

According to paragraph 10 of the Rules, the Panel has the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition, ensuring that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), unsolicited supplemental filings are generally discouraged - unless specifically requested by the panel - and the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response.

Accordingly, UDRP panels generally accept supplemental filings only when they provide material new evidence or a fair opportunity to respond to arguments that could not reasonably have been anticipated. See, along these lines, *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#).

In the case at hand, the Panel notes that the initial part of the Complainant's Supplemental Filing merely reiterates the statements regarding the bad faith requirement already included in the Complaint and is thus disregarded.

The second part is instead focused on commenting the Respondent's conduct in the proceedings as he indicated to the Center his availability to transfer the disputed domain name to the Complainant after being notified of the Complaint, but then failed to follow up on the Complainant's further communication and to provide the signed Standard Settlement Form required to enable the transfer of the disputed domain name to

the Complainant. Since the Complainant could not have been aware of the above-mentioned conduct of the Respondent at the time of the filing of the Complaint, the Panel has decided to admit this second part of the Complainant's Supplemental Filing (see section 5C above).

In addition, since said part of the Supplemental Filing is limited in scope to a comment that the Respondent failed to transfer the disputed domain name to the Complainant after having declared his availability to do so to the Center, and the Respondent already had a fair opportunity to present its case submitting any documents to substantiate its allegations, bearing also in mind the need for procedural efficiency, the Panel does not deem appropriate to request the Respondent to submit additional comments with regard to the Complainant's Supplemental Filing.

## 6.2. Substantive Issues

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark EIYOLAB based on the trademark registrations cited under section 4 above and the related trademark certificates submitted as annexes D0 and D1 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the [WIPO Overview 3.0](#)).

The disputed domain name reproduces the trademark EIYOLAB in its entirety with the deletion of the letter "i" and the addition of the letter "s" and the gTLD ".com".

The Panel finds that the mere deletion of the letter "i" and addition of the letter "s" to the trademark EIYOLAB is not sufficient to distinguish the disputed domain name from the Complainant's trademark and may be interpreted as a misspelled version of EIYOLAB. Therefore, considering that the gTLD ".com" can be disregarded under the first element confusing similarity test (section 1.11.1 of the [WIPO Overview 3.0](#)), the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

See, along these lines, *ACCOR v. I&M Raamatupidamise O/Accora Consult OÜ*, WIPO Case No. [D2006-0650](#), where the panel stated that the addition of "the single letter "a" is an obvious attempt to "typosquat" the Domain Name and is insufficient to avoid confusion", and *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#), finding that "this is clearly a "typosquatting" case where the disputed domain name is a slight misspelling of a registered trademark to divert internet traffic". See also Section 1.9 of the [WIPO Overview 3.0](#): "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- “(i) before any notice to you 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 (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 are making a legitimate non-commercial 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.”

In the case at hand, the Panel finds that the Complainant has made a *prima facie* case and the Respondent has failed to raise any convincing circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademark.

Furthermore, there is no indication, based on the Whois records and on the case file, that the Respondent might be commonly known by the disputed domain name.

The Complainant submitted that the Respondent, by pointing the disputed domain name to a blank page, has not made use or preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate, non-commercial or fair use.

In its informal email communication of April 2, 2023, the Respondent asserted to have registered the disputed domain name to use it as an API Server for his application but has not provided any additional details on his alleged application nor explanations as to the reasons why he registered the disputed domain name encompassing the wording “eyolabs”. Moreover, the Respondent, besides failing to provide any comment on the rationale for his registration and use of the disputed domain name, initially indicated his availability to transfer the disputed domain name to the Complainant but then failed to follow up on the Complainant’s subsequent communication and to sign the Standard Settlement Form as required to execute the transfer of the disputed domain name.

In view of the foregoing and in the absence of any evidence on record of a good faith use to which the disputed domain name may be put by the Respondent, the Panel finds that the Respondent’s use of the disputed domain name in connection with a blank page does not amount to a legitimate noncommercial or fair use.

Therefore, the Panel finds that the Complainant has proven that, on balance of probabilities, the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of the prior registration and use of the Complainant's trademark EIYOLAB in connection with the promotion and sales of the Complainant's food supplement products, also online via the Complainant's website at "www.eiyolab.com", the Respondent could have been aware of the Complainant's trademark at the time of registration of the disputed domain name.

Moreover, considering the confusing similarity of the disputed domain name with the Complainant's prior trademark, from which it differs only by two letters, and in the absence of any convincing explanation provided by the Respondent as to the reason why he selected the disputed domain name, the Panel finds that the Respondent, on balance of probabilities, registered the disputed domain name having the Complainant's trademark in mind.

As to the use of the disputed domain name, the Panel notes that it resolves to a blank page. According to Section 3.3 of the [WIPO Overview 3.0](#), "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding".

In the case at hand, the Respondent stated to have used the disputed domain name in connection with an API Server for his application and not to host a website or to profit by selling the disputed domain name to the Complainant. However, he has failed to provide any details as to this alleged application, such as information on the related scope, as well as to the reason why he selected the disputed domain name, which differs only by two letters from the prior trademark EIYOLAB and could thus suggest an affiliation with the Complainant. Moreover, the Respondent has also failed to submit any document to demonstrate that the disputed domain name has been actually used for his application.

The Panel finds that, in view of i) the distinctiveness of the Complainant's prior trademark, to which the disputed domain name is confusingly similar, ii) of the Respondent's failure to provide any evidence of actual or contemplated good faith use and iii) of the Respondent's concealing his identity via a Whois privacy service, the Respondent's passive holding does not prevent a finding of bad faith use.

Furthermore, in his informal email communication of February 2, 2023, the Respondent indicated his intention to cease any use of the domain name and transfer it to the Complainant. However, the Respondent did not follow up on the Complainant's subsequent email to and did not provide the signed Standard Settlement Form needed to execute the transfer. The Panel notes that the Respondent, by failing to comply with his statements in his correspondence to the Center, has made the proceeding unnecessarily prolonged, and finds that such conduct is further indicative of the Respondent's bad faith. See *AB Electrolux v. Tran Nguyen Phuong*, WIPO Case No. [D2016-2419](#) and *SRAM GmbH v. Cong Ty Co Phan Chieu Sang Khai Quang*, WIPO Case No. [D2016-1424](#).

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) of the Policy.

## 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 <eyolabs.com> be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: May 19, 2023