

ADMINISTRATIVE PANEL DECISION

Läderach (Schweiz) AG v. 钟锋 (zhongfeng)
Case No. D2022-2071

1. The Parties

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

The Respondent is 钟锋 (zhongfeng), China.

2. The Domain Name and Registrar

The disputed domain name <laderachs.com> is registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 June 9, 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 amendment to the Complaint in English on June 10, 2022.

On June 9, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 10, 2022, the Complainant submitted its 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 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 in English and Chinese of the Complaint, and the proceedings commenced on June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 7, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on July 12, 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 the Rules, paragraph 7.

4. Factual Background

The Complainant, Läderach (Schweiz) AG, is a Swiss company well known for manufacturing fresh premium chocolate since 1962. The Complainant states that its products are now sold in more than 100 chocolatier stores with sales locations in 15 countries such as, Switzerland, Germany, Austria, the United Kingdom, the United States of America, and Canada, as well as franchise partners in the Middle East and Asia. The Complainant also operates an online store at "www.laderach.com" for customers to order Läderach specialties from Switzerland and have them delivered to their homes.

The Complainant is the owner of the following registered trademarks (collectively, the "LÄDERACH Marks"), including but not limited to:

- European Union Registration No. 005032371 for LÄDERACH, registered on April 18, 2007;
- United Kingdom Registration No. UK00905032371 for LÄDERACH, registered on April 18, 2007;
- Swiss Registration No. 567864 for  , registered on February 11, 2008;
- International Registration No. 983800 for  , registered on October 10, 2008;
- Swiss Registration No. 654825 for  , registered on February 14, 2014;
- International Registration No. 1196728 for  , registered on February 14, 2014;
- Swiss Registration No. 683217 for  , registered on January 22, 2016;
- Benelux Registration No. 981350 for LÄDERACH, registered on September 9, 2015;
- International Registration No. 1297259 for  , registered on January 20, 2016; and
- International Registration No. 1297373 for  , registered on January 22, 2016.

The Complainant also states that it is the owner of the domain names <laderach.com>, <laderach.swiss>, <laederach.swiss>, <laderach.co.jp>, <laderach.om>, <laderach.com.cn>, and <laderach.se>.

The disputed domain name <laderachs.com> was registered on February 8, 2022 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered LÄDERACH mark as the disputed domain name comprises of the Complainant's LÄDERACH mark in full and together with the addition of the letter "s", and generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith as the Respondent was well aware of the Complainant and its LÄDERACH mark at the time of registration of the disputed domain name and the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(a) 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."

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the disputed domain name consists of Latin characters and not Chinese characters;
- (ii) the language used by the Registrar for its website where the Respondent obtained the disputed domain name is English; and

(iii) the Complainant is unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language.

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. Further to section 4 above, the Complainant has provided evidence of its ownership of and rights to the LÄDERACH mark. The disputed domain name contains the Complainant's LÄDERACH mark in full and together with the addition of the letter "s" and gTLD ".com". As regards the accented "Ä" in the LÄDERACH mark, which has been reflected without the accent in the disputed domain name (*i.e.*, "a"), prior panels have held that the addition or deletion of grammatical marks such as hyphens, apostrophes and circumflexes does not prevent a finding of confusing similarity.

Similarly, the addition of the letter "s" after the LÄDERACH mark does not prevent a finding of confusing similarity. It is also well established that the addition of the gTLD ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1).

Consequently, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests. The Complainant has provided evidence that it owns a trademark registration for the LÄDERACH mark long before the disputed domain name was registered. The Complainant is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)). There is also no evidence on record showing that the Respondent is commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case. There can indeed be little doubt the Respondent unfairly sought to target the Complainant with the disputed domain name. The Panel's finding is reinforced given the composition of the disputed domain name as compared to not only the Complainant's mark, but also to the Complainant's domain name <laderach.com> to which the Respondent has merely added an "s" to create the disputed domain name in an attempt to mislead unsuspecting Internet users expecting to find the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)).

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its LÄDERACH trademark. Given that the Complainant's trademarks have been registered for a long time and the notoriety of the Complainant's LÄDERACH Marks, it is highly unlikely that the Respondent did not know of the Complainant and its LÄDERACH Marks prior to the registration of the disputed domain name. The disputed domain name incorporates the Complainant's LÄDERACH trademark in its entirety with an additional letter "s", which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)).

The disputed domain name is being passively held by the Respondent as it resolves to an inactive website. 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. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. (See [WIPO Overview 3.0](#), Section 3.3).

Having regard to the above factors in the particular circumstances of the present case whereby the Complainant's LÄDERACH mark is sufficiently distinctive, the Respondent has failed to submit a Response, and the fact that it is implausible to put any good faith use to the disputed domain name.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the Respondent's false contact details, the fact that no Response was submitted by the Respondent to the Complaint, and that any good faith use of the disputed domain name is implausible, the Panel finds that the disputed domain name was 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 <laderachs.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: July 26, 2022