

## **ADMINISTRATIVE PANEL DECISION**

Almirall, S.A. v. Jorge Almirall, Design Help, Inc.  
Case No. D2024-2209

### **1. The Parties**

The Complainant is Almirall, S.A., Spain, represented by Ubilibet, Spain.

The Respondent is Jorge Almirall, Design Help, Inc., United States of America (“United States”).

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

The disputed domain name <almirall.org> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On May 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 2024, 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 on June 5, 2024.

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 the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2024. The Response was filed with the Center on June 26, 2024.

The Center appointed Andrew F. Christie as the sole panelist in this matter on July 1, 2024. 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 pharmaceutical company based in Barcelona, Spain, specializing in dermatological products. It operates in more than 70 countries across five continents, with net sales of EUR 863.2 million in the year 2022.

The Complainant is the owner of numerous trademark registrations consisting of or containing ALMIRALL, including: Spanish trademark registration No. N0022056 for the word trademark LABORATORIOS ALMIRALL (registered April 10, 1947); European Union trademark registration No. 000014332 for the word trademark ALMIRALL (registered November 20, 2001); and United States trademark registration No. 4667020 for the word trademark ALMIRALL (registered January 6, 2015). It is the registrant of the domain name <almirall.com> (registered January 14, 2000).

The Respondent is an individual residing in the state of Georgia, United States. He registered the disputed domain name on February 25, 2002. He provided evidence showing he uses the disputed domain name for his main email address and for email addresses of family members.

The Complainant provided a screenshot said to be taken March 25, 2024, showing that the disputed domain name did not resolve to an active location. At the date of this Decision, the disputed domain name does not resolve to an active location.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name is identical to a trademark in which it has rights on the following grounds. The disputed domain name, in its dispositive part, is identical to its trademark ALMIRALL. The generic Top-Level Domain ("gTLD") ".org" of the disputed domain name should be disregarded from the first element's test for identity or confusing similarity.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name on the following grounds, among others. The Complainant has not authorized, licensed, or allowed the Respondent or any third party to use its trademark in the disputed domain name, or in any other way that, directly or implicitly, could provide legitimacy to that use. There is no proof of any prior or actual utilization by the Respondent of the term "almirall" in association with a genuine offering of products or services. Furthermore, there is no indication that the Respondent has been widely recognized by the term "almirall". A search of the term "almirall" in a popular search engine yields no results indicating any associated commercial or noncommercial activities other than the business and commercial activity of the Complainant. The Complainant has doubts about the actual identity and existence of the registrant of the disputed domain name. Despite effort, the Complainant has not "been able to confirm the identity and existence of the individual in the public citizen registry of the country of registration of the domain, namely Georgia", and has not "found a coincidence with any individual in Spanish-speaking territories that matches the ownership" of the disputed domain name. Accordingly, unless proven otherwise, the choice of the registrant's name would serve for no other purpose than to give the appearance of legitimacy over the disputed domain name. Furthermore, evidence supporting the lack of rights or legitimate interests is the Respondent's failure to respond or communicate regarding a cease-and-desist action initiated by the Complainant through the Registrar.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith on the following grounds, among others. Given the strength of the Complainant's presence in business circles and the notoriety of its trademark, it is implausible to suggest that an individual might be unaware of the Complainant's mark. The likelihood of the name being chosen by mere coincidence is highly improbable. The term "almirall" holds significance exclusively in Catalan, a language spoken in the northeastern region and the Balearic Islands of Spain. It refers to a military rank in the navy and is considered archaic, rarely used for any purpose other than referencing the Complainant's trademark. Being one of the top companies from this region, the term is almost exclusively used in association with the Complainant, overshadowing its original meaning. For the rest of the world, "almirall" is an imaginary word with no discernible meaning. Due to the Internet's borderless nature, the Respondent was under a duty check the disputed domain name before registering it. There is bad faith pursuant to the Policy when the Respondent "knew or should have known" of the Complainant's trademark rights at the time he registered the disputed domain name. The disputed domain name currently resolves to a website without content, which is disrupting the business of the Complainant in the sense that it is depriving the Complainant of the opportunity of reflecting its trademark in the disputed domain name. All of these circumstances, taken individually and as a whole, lead to the conclusion that the Respondent can only be acting in bad faith and with the principal interest of prejudicing the Complainant in the enjoyment of its trademark and business rights, for any personal interest that at the time remain unknown.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied all of the elements required under the Policy for a transfer of the disputed domain name.

The Respondent contends that there is an understanding that the ".com" and ".net" gTLDs are typically reserved/used by commercial entities, while the ".org" gTLD is typically reserved/used by individuals and some non-profit entities. It is established that the Complainant understands these typical uses by the fact that the Complainant registered the domain names <almirall.com> and <almirall.net> in January of 2000, while not registering the disputed domain name – which was subsequently registered by the Respondent in February of 2002.

The Respondent contends that he has a right and legitimate claim to the disputed domain name because his last name is Almirall, and he is making a legitimate noncommercial use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Respondent contends that the disputed domain name should not be considered to have been registered and used in bad faith because it is used primarily as the Respondent's main email address, in addition to email addresses of family members. The Respondent's other main motivation for acquiring the disputed domain name was to create a website to provide genealogy information tracing the Almirall family tree in Spain. For now, the site remains empty. The disputed domain name was not registered or acquired primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant. The disputed domain name was not registered in order to prevent the Complainant from reflecting its trademark in a corresponding domain name and, in connection therewith, the Respondent has not engaged in a pattern of such conduct. The Complainant and the Respondent are not competitors, and the disputed domain name was not registered by the Respondent primarily to disrupt the Complainant's business. The disputed domain name was not registered in an intentional attempt to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. It is the owner of trademark registrations for the word trademark ALMIRALL.

The entirety of the Complainant's trademark is reproduced within the disputed domain name. When the gTLD ".org" is disregarded (which is appropriate in this case), the disputed domain name consists solely of the Complainant's trademark. Accordingly, the disputed domain name is identical to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. The Panel finds that the Respondent has established the circumstances of paragraph 4(c)(iii) – i.e., that he has made a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent provided a copy of his Georgia, United States driver's license, which established that his first name is Jorge and that his family name is Almirall. He also provided a screenshot of a "webhostinghub.com" control panel establishing the existence of two email addresses that use the disputed domain name, one of which has consumed more than 9GB of storage. The Panel is satisfied that the Respondent uses the disputed domain name for an email address.

The Complainant does not assert that the Respondent is using his email address for any inappropriate activity (such as to misleadingly divert consumers, or to tarnish the Complainant's trademark), and there is no evidence to suggest that the Respondent is doing so. Thus, there is no basis for concluding that the Respondent's use of the disputed domain name is anything other than a legitimate noncommercial use of the type which, according to paragraph 4(c)(iii) of the Policy, demonstrates rights or legitimate interests in a domain name. Accordingly, the Panel is satisfied that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has not been established.

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

Given the above finding in respect of the second element of the Policy, it is not strictly necessary for the Panel to address the third element of the Policy. Nevertheless, the Panel will do so, to ensure that the Respondent obtains a finding in relation to the Complainant's contention that he has acted in bad faith.

The disputed domain name was registered in February 2002, more than two decades ago and only two years after the Complainant registered the equivalent domain name in the ".com" and ".net" gTLDs. It is not established whether or not the Respondent was aware of the Complainant or its trademark when he registered the disputed domain name. However, even if he was aware of the Complainant or its trademark, there is no reason to believe that he registered the disputed domain name in bad faith. None of the

paragraph 4(b) circumstances that are evidence of bad faith registration and use are present in this case. Moreover, there is no other circumstance present in this case which suggests that the Respondent's motivation for registering the disputed domain name was for anything other than the one he asserts and has established – namely, for personal activities. Neither the registration nor the use of the disputed domain name by the Respondent has been undertaken in bad faith.

The Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

When the Complaint was originally filed, the name of the registrant of the disputed domain name in the Whois information was Redacted for Privacy. The true identity of the registrant was disclosed to the Complainant when the Center conveyed to the Complainant the Registrar's verification response. Five days later, the Complainant filed an amended Complaint, in which it "raises doubts about the actual identity and existence of the registrant of the disputed domain name" and that "Despite this effort by the Complainant, we have not been able to confirm the identity and existence of the individual in the public citizen registry of the country of registration of the domain, namely Georgia". Whatever effort the Complainant put in to confirming the identity of the Respondent, that effort was pointless given that the disclosed country of the Respondent's location was the United States, not Georgia.

The Registrar's verification response in fact identified the registrant's name and complete address (i.e., street, city, state, country), and also the registrant's organization. Had the Complainant undertaken a simple web search using this information, it would have found (as the Panel has found) a clear reference to the existence of the Respondent in the disclosed location and associated with the registrant organization.

It is difficult for the Panel to understand why the Complainant would undertake a search for the Respondent in Georgia when the Registrar's verification clearly stated that the registrant's country was the United States and provided the name of a city (Acworth) that does not exist in the country of Georgia. The Panel considers that the most likely reason for doing this is carelessness, rather than mala fides.

On balance, the Panel is not satisfied that the Complaint filed the amended Complaint in bad faith. Accordingly, the Panel does not find that the Complainant has engaged in an attempt at Reverse Domain Name Hijacking.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew F. Christie/*

**Andrew F. Christie**

Sole Panelist

Date: July 15, 2024