

ADMINISTRATIVE PANEL DECISION

Lanxess Deutschland GmbH v. Kathy Morris

Case No. D2022-0256

1. The Parties

The Complainant is Lanxess Deutschland GmbH, Germany, represented by Wolpert Rechtsanwälte, Germany.

The Respondent is Kathy Morris, Germany.

2. The Domain Name and Registrar

The disputed domain name <lanxees.com> 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 January 26, 2022. On January 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 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 January 27, 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 January 28, 2022.

On January 27, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On January 28, 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 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 Japanese of the Complaint, and the proceedings commenced on February 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 23, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 1, 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 is company with its registered seat in Germany. It is internationally active in the development, manufacturing and marketing of chemical intermediates, additives, chemicals and plastics.

The Complainant is owner of the LANXESS trademark, which is registered in various jurisdictions. For instance, the Complainant is the owner of the European Union Trade Mark Registration No. 003696581, registered on June 27, 2005, covering protection for a large variety of goods and materials as protected in classes 1, 2, 4 and 17 (Annex 4 to the Complaint).

The disputed domain name was registered on December 7, 2021.

The Respondent is reportedly an individual in Germany.

As to the provided screenshots and information by the Complainant, the disputed domain name probably never resolved to an active website (Annex 6 to the Complaint). However, the current record indicates that an active mail exchange ("MX") email server for the disputed domain name was configured and used for emails sent to customers of the Complainant for most likely fraudulent purposes (Annex 8 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its LANXESS trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the Registration Agreement of the disputed domain name is Japanese, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in Japanese and/or to request a Japanese translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceeding, even though communicated in Japanese and English. The Panel particularly notes that the Respondent was given the opportunity to respond in Japanese and that this opportunity remained unused by the Respondent.

Consequently, the Panel finds that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in LANXESS (Annex 4 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered LANXESS trademark. As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings would not prevent a finding of confusing similarity.

In the present case, the Panel notes that disputed domain name incorporates an apparent misspelling of the Complainant's LANXESS trademark by the mere replacement of the letter "s" by "e", which in view of the Panel, still makes the Complainant's LANXESS trademark well recognizable within the disputed domain name.

Hence, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's LANXESS trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's LANXESS trademark in a confusingly similar way within the disputed domain name. There is also no indication in the current record that the Respondent is commonly known by the disputed domain name.

In the absence of a Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name. Bearing in mind that the Respondent used the disputed domain name for sending out emails to customers of the Complainant for probably fraudulent purposes (Annex 8 to the Complaint) and additionally noting the composition of the disputed domain name, the Panel has no doubt that the Respondent was well aware of the Complainant and its LANXESS trademark before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its LANXESS trademark.

Bearing all this in mind, the Panel does not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel believes that the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent was aware of the Complainant's widely-known trademark when she registered the disputed domain name in December 2021. At the date of registration, the Complainant's LANXESS trademark was already registered and widely used for many years. It is obvious to the Panel, that the Respondent has chosen the disputed domain name to target and mislead email recipients in their believing that these emails using the disputed domain name originate from corporate members of the Complainant itself. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

Furthermore, the Panel finds that the Respondent is using the disputed domain name in bad faith, even though the disputed domain name is not linked to an active website (Annex 6 to the Complaint). As previously noted, the current record indicates the disputed domain name was used by the Respondent to mislead customers of the Complainant in their believing that emails sent from the disputed domain name

originate from the Complainant and its employees, most likely for fraudulent activities (Annex 8 to the Complaint).

All in all, the Panel cannot conceive of any plausible and legitimate use of the disputed domain name that would be in good faith, except with an authorization of the Complainant.

Taking all facts of the case into consideration, the Panel believes that this is a typical typosquatting case. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 <lanxees.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: March 15, 2022