

ADMINISTRATIVE PANEL DECISION

Groupe LACTALIS v. elziny papi

Case No. D2022-4734

1. The Parties

Complainant is Groupe LACTALIS, France, represented by Inlex IP Expertise, France.

Respondent is elziny papi, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <ae-lactalis.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 16, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on January 30, 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

Complainant is a French multinational group with a particular focus on the dairy industry that traces its roots back to 1933. After a number of combinations with other companies Complainant eventually formed Groupe Lactalis in 1984. Complainant owns numerous trademark registrations around the world that include LACTALIS, including the following representative marks (the “LACTALIS Marks”):

Mark	Designation	Class(es)	Registration No.	Registration Date
LACTALIS (Design)	France	1, 5, 7, 9, 16, 21, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45	4438490	March 20, 2018
LACTALIS (Design)	European Union	1, 5, 7, 9, 16, 21, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45	017959526	May 22, 2019
LACTALIS (Design)	United Arab Emirate	29	167890	April 29, 2013
LACTALIS (Design)	United Arab Emirate	30	167891	April 29, 2013
LACTALIS (Design)	United Arab Emirate	35	167892	February 5, 2013

Complainant also owns well over 100 domain name registrations for LACTALIS in combination with other words and numerous extensions, including <lactalis.com> registered January 9, 1999.

The disputed domain name was registered on July 4, 2022. Complainant provided evidence showing that the disputed domain name resolves to an error or unreachable page indicating that page requested cannot be found on the corresponding server hosting the disputed domain name, but that Mail eXchange (“MX”) records, necessary for sending and receiving email using the disputed domain name, had been activated for the disputed domain name on the hosting server.

5. Parties’ Contentions

A. Complainant

Complainant contends that the LACTALIS Marks are protected by numerous rights held by Complainant and have been subject to extensive use for many years. Complainant contends that the disputed domain name is identical to the LACTALIS Marks since it reproduces them identically and in a confusing way, since the disputed domain name includes the letters “ae”, which is geographically descriptive. Complainant contends that the two letters refer to the International Standard country code for the United Arab Emirates and therefore refers to a geographical area where Complainant also has rights in the LACTALIS Marks. Citing *Groupe Lactalis v. Registration Private, Domains by Proxy, LLC / Francesca Laddaga*, WIPO Case No. [D2022-2889](#), Complainant contends that the addition of the country designation “ae” to Complainant’s mark does not avoid confusing similarity.

Complainant contends that Respondent has submitted no evidence that Respondent has registered the disputed domain name as a trademark or acquired any unregistered trademark rights in the disputed domain name. Complainant has not authorized Respondent to register the disputed domain name or otherwise authorized, licensed, or permitted Respondent to use the LACTALIS Marks or apply for any domain name incorporating the same. Complainant asserts there is no business relationship between Complainant and Respondent.

Complainant contends that Respondent registered the disputed domain name on July 4, 2022, but no website has been activated since that date, which suggests Respondent has no legitimate interest in reservation of the disputed domain name, or it would be in use. Complainant asserts that since Respondent has made no legitimate and *bona fide* use of the disputed domain name offering goods and/or service, it may be inferred that Respondent's intent is to mislead and divert consumers or tarnish the LACTALIS Marks. Complainant further contends that Respondent's use of the disputed domain name is not a legitimate noncommercial fair use. As further evidence of the same, Complainant contends that it demanded, via letters and reminders from Complainant's attorney, that Respondent cease and desist use of the disputed domain name and associated mail servers, but Respondent did not reply.

Complainant contends that the disputed domain name was registered in bad faith. Complainant asserts that the LACTALIS Marks are recognized as well-known given its length of use of the marks and its 250 production sites in 50 countries around the world with more than 80,000 employees in 93 countries and over 20 billion euros turnover. Complainant cites a number of other WIPO UDRP Cases supporting such a finding. In view of such notoriety for the LACTALIS Marks, Complainant contends that registration of the disputed domain name could not have been coincidence or that Respondent was unaware of Complainant's existence, activity, and business. Complainant further contends that such bad faith is further evidenced by Respondent's use of a LACTALIS mark in the disputed domain name because it identically reproduces the mark, which is not a dictionary word, is not a common name, has no meaning in French or English, and is distinctively related to designate dairy products. Finally, Complainant contends that utilization of the country code "ae" with the LACTALIS Marks gives the impression that the disputed domain name belongs to Complainant, is associated with Complainant, or redirects to a website of Complainant.

Complainant contends that the disputed domain name has been used in bad faith. Complainant asserts that Respondent has no right or legitimate interest in the disputed domain name and therefore creates confusion with Complainant's business, which is further evidenced by the disputed domain name resolving to an unreachable page on a server. Complainant contends that such use deprives Complainant of any real and substantial offer of goods or services. For similar reasons, Complainant contends that Respondent's use disrupts Complainant's business and causes harm to Complainant's brand image. Complainant suggests that Respondent may be engaged in phishing schemes aimed to deceive Internet users and make them believe that Respondent is Complainant.

Complainant further contends that activation of MX records on the server hosting the disputed domain name would enable Respondent to send fraudulent emails, including messages from "contact@ae-lactalis.com". Complainant notes that previous panels have considered the availability of MX records to be indicative of bad faith use of the disputed domain name.

Lastly, Complainant contends that Respondent's lack of response to Complainant's cease and desist letter and reminders is further evidence of bad faith use.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the LACTALIS Marks in a domain name as early as 1999, more than 20 years prior to registration of the disputed domain name, and Complainant's registration of many LACTALIS Marks and LACTALIS-related domain names since then, are more than sufficient to establish that Complainant has trademark rights in the LACTALIS Marks.

Complainant contends that the disputed domain name is identical to the LACTALIS Marks. Complainant contends that the addition of the two letters “ae” before “lactalis” does not prevent a finding of confusing similarity to Complainant’s LACTALIS Marks, especially given the potential country code designation associated with “ae” related to the United Arab Emirates, where Complainant also has trademark rights. Further to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the Panel agrees with Complainant’s contentions.

The Panel finds that the disputed domain name is confusingly similar to the LACTALIS Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name or the LACTALIS Marks. Complainant has not licensed or authorized Respondent to use or register the disputed domain name. The disputed domain name’s use with an unreachable page on a server does not provide evidence of any use or preparation to use the disputed domain name in relation to a *bona fide* offering of goods or services. Rather, the potential fraudulent use of the disputed domain name to communicate with unsuspecting Internet users could never confer rights or legitimate interests upon Respondent, pursuant to section 2.13 of the [WIPO Overview 3.0](#). Respondent has not rebutted Complainant’s *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name.

Furthermore, the identical nature of the disputed domain name coupled with a geographic term may be seen as tending to suggest sponsorship or endorsement by Complainant in Respondent’s activities, and accordingly cannot constitute a fair use in these circumstances.

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant’s first use and first registration of the LACTALIS Marks and Complainant’s use of the LACTALIS Marks in association with the noted goods and services, ii) the nature of the disputed domain name, iii) the subsequent timing of the registration of the disputed domain name, and iv) Complainant’s prior trademark rights internationally, and particularly in the United Arab Emirates corresponding to the geographic term used with the dispute domain name, the Panel finds that Respondent clearly knew of the LACTALIS Marks at the time of registration of the disputed domain name. Respondent’s registration of the disputed domain name was therefore in bad faith.

Because the disputed domain name resolves to an unreachable page on a hosting server that has activated MX records that may be used for email based on the disputed domain name suggests Respondent’s use of the disputed domain name is in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Panel concludes 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, <ae-lactalis.com>, be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: February 14, 2023