

ADMINISTRATIVE PANEL DECISION

Linak A/S v. Sergey Vinogradov
Case No. D2023-0179

1. The Parties

The Complainant is Linak A/S, Denmark, represented by Zacco Denmark A/S, Denmark.

The Respondent is Sergey Vinogradov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <thorkildnielsen-linak.com> is registered with Registrar of Domain Names REG.RU LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 13, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on February 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 27, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on March 7, 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 LINAK A/S was incorporated in Denmark in 1980 and designs and manufactures full actuator systems for reliable movement in a wide range of applications. The Complainant has more than 2,400 employees and has production facilities in Denmark, Slovakia, China, Thailand, and the United States of America, and has subsidiaries and offices in more than 35 countries worldwide. The Complainant's annual turnover was more than DKK 4.8 billion in 2021/22.

The Complainant has registered LINAK as a trademark on a global basis for a variety of goods and services including by International Registration No. 1580497 registered on December 17, 2020, for goods and services in international classes 7, 9, 10, 11, 12, 20 and 37. This registration covers 34 countries including Denmark, the Russian Federation and the European Union and its 27 Member States.

The Complainant has domain name registrations that contain the LINAK trademark including <linak.ru> and <linak.com>, which hosts the Complainant's main website.

The disputed domain name was registered on October 26, 2022. It incorporates the personal name of a manager employed by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant points out that the disputed domain name incorporates the Complainant's registered trademark LINAK in full with the addition of the personal name of the Complainant's Head of LINAK International Thorkild Nielsen and the generic Top-Level-Domain ("gTLD") designation ".com". The Complainant says that the addition of the name Thorkild Nielsen does not prevent a finding of confusing similarity in a case like this where the trademark is clearly recognizable within the disputed domain name.

The Complainant states that the Respondent received no license or consent, express or implied, to use the Complainant's trademark LINAK in domain names or in any other manner, nor has the Complainant acquiesced in any way to such use or application by the Respondent. The Respondent does not have authorization from the Complainant to register the disputed domain name.

The Complainant also maintains that the Respondent has not used the disputed domain name as a trademark, company name, business or trade name prior to registration, nor is the Respondent otherwise commonly known by reference to the name since it has not used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. To the best of the Complainant's knowledge, the Respondent has no legitimate interest in the disputed domain name and the Complainant asserts that it is totally inconceivable that the Respondent could ever use the disputed domain name for any legitimate purpose.

According to the Complainant, at the time of the first drafting of the Complaint, the disputed domain name was used to host a website the content of which claimed to be a "Blog on Management" or more specifically a blog where "We try to talk and write about 'bad' leadership". However, the Complainant says that there is no immediate or plausible reason whatsoever for using the disputed domain name <thorkildnielsen-linak.com> for such a purpose. The Complainant points out that on January 12, 2023, an article was published on the website, that specifically mentions its Head of LINAK International. The article contains a number of very critical statements about him. However, according to the Complainant, the right of free speech, including expressing opinions on the Complainant and on members of its staff, does not in any way require that the Respondent use the Complainant's trademark in the disputed domain name. The Complainant also points out that the disputed domain name does not contain a descriptive term that may alert Internet users to the fact that it leads to a criticism site targeted at the Complainant and its Head of LINAK International, nor has the Respondent done anything else to make it clear that the disputed domain name is used for such a website. Rather on the contrary, the Complainant points out that the website purports to be a general "Blog on Management" and that it states: "We do not write abstract articles, for

living illustration, all our articles are written on the example of a fictional character, a bad leader and an incompetent manager – Thorkild Nielsen. This name was created using a neural network, as was the image of this character.” The Complainant therefore asserts that the use of the disputed domain name does not constitute legitimate or fair use in this respect either. The Complainant points to the principles that are outlined in section 2.6.2. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). and to the “Relevant decisions” that are referred to there, but says that it has not been able to find any previous decisions regarding domain names that are composed in the same manner as the domain name at issue here. The Complainant points out that in reality there is an immediate risk that the disputed domain name is used to impersonate the Complainant’s Head of LINAK International to send deceptive emails or to conduct other types of fraud. The Complainant points out that there is an MX Record connected to the disputed domain name, which demonstrates that it can be used to send and receive emails.

Further, the Complainant submits that the Respondent must have had positive knowledge of the existence of the Complainant’s trademark LINAK when the disputed domain name was registered as LINAK is a coined word and thus distinctive per se, and the trademark is also registered in multiple jurisdictions including in the Russian Federation. The abovementioned article published on January 13, 2023, on the website to which the disputed domain name resolves demonstrates that its author had detailed knowledge of the Complainant and its now previous activities in the Russian Federation.

The Complainant further asserts that the Respondent uses the disputed domain name for an active website and by doing so intentionally attempts to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant and the Complainant’s mark LINAK as to the source, affiliation or endorsement of the Respondent’s website.

Finally, the Complainant reiterates that an MX Record connected to the disputed domain name exists, which demonstrates that the disputed domain name can be used to send and receive emails. The Complainant asserts that it is generally recognized that the use of a domain name for purposes other than hosting trademark-abusive content, such as for sending emails, for phishing or for identity theft purposes, equally constitutes bad faith use under the UDRP, as stated in section 3.2.4 of the [WIPO Overview 3.0](#).

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

According to information received by the Center from the Registrar the language of the Registration Agreement is Russian, and therefore this proceeding would normally be conducted in that language. However, the Complainant seeks to have the proceeding conducted in English, pointing out that as a Danish entity it is not able to communicate in Russian. A great deal of additional expense and delay would be occasioned by the need for translation, according to the Complainant. The Complainant also states that it is clear that the Respondent understands English and that the Respondent would, if he chose to do so, be able to participate in the proceeding in the English language. This is said to be evident from the printout of the website to which the disputed domain name resolved as included in the Complaint, which shows that displayed text is in English.

The Respondent has not replied to the Complaint nor made any submission in relation to the language of the proceeding. He was nonetheless notified in English and in Russian. Translation of materials for the proceeding would engender considerable costs for the Complainant that do not appear warranted since the Respondent must master the English language, given that this is the language employed on the website to which the disputed domain name resolves. In the circumstances, it will not be unfair that proceedings be conducted in English.

Therefore the Panel holds that the language of the proceeding is English.

A. Identical or Confusingly Similar

The disputed domain name is not identical to the LINAK trademark of the Complainant. However, it incorporates that distinctive mark in a clearly recognizable manner, in particular since it is separated from the rest of the domain name by a dash. That fact alone is sufficient to meet the requirements of paragraph 4(a)(i) of the Policy. The inclusion of a personal name is of no consequence to the assessment of confusing similarity.

Therefore the Panel holds that the disputed domain name is confusingly similar to the LINAK trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent has not made any reply to the contentions of the Complainant. He did not receive any license or authorization to include the LINAK trademark of the Complainant in the disputed domain name nor to use it in any other way. When the Panel accessed the website to which the disputed domain name resolves on March 21, 2023, it opened to a 'Page not found' notice. However, the Complainant points out that the disputed domain name resolved to a site which purported to be a 'Blog on Management', and then also made reference to Thorkild Nielsen, a manager with the Complainant, nonetheless claiming that this was a fictional character generated by computer. None of this makes any sense and there is clearly no reason or justification for including the trademark LINAK or the personal name of a Linak manager in the domain name for a site containing a management blog. There is also no evidence that an actual blog on management was genuinely conducted at the site.

Further, as the Complainant points out, there is no indication in the disputed domain name that any site to which it might resolve is concerned with a blog on management, personal criticism of management or the like. The facts before the Panel are clearly consistent with a thinly veiled and badly executed attempt by the Respondent to manufacture some excuse for acquiring a domain name that incorporates a third party's trademark. It seems altogether more likely that the real reason for registering the disputed domain name is for the Respondent to acquire the ability to dispatch emails that give the appearance of emanating from the Complainant. None of these activities generate rights in a party engaging in them, nor do they provide any ground for concluding that the Respondent has a legitimate interest in retaining the disputed domain name for the sake of operating a genuine criticism site.

The Respondent is also not known by the mark LINAK or any part of the disputed domain name and has not acquired any rights in that mark or used it in any legitimate manner.

Therefore the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

It is abundantly clear from the composition of the disputed domain name that the Respondent was well aware of the Complainant and its rights in the LINAK trademark when the disputed domain name was registered. He clearly knew at the time that Thorkild Nielsen is a manager of the Complainant, and it is manifestly false to maintain that Mr Nielsen's name was autonomously generated by a computer program. As indicated above, the attempt to justify the acquisition of the disputed domain name by maintaining that it was required to set up a management blog is without foundation and a clear deceit. It is more likely that the real purpose was to acquire an email address that could be employed for the purpose of phishing or to effectuate some other fraudulent plan.

Therefore the Panel holds 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 <thorkildnielsen-linak.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: March 21, 2023