

## **ADMINISTRATIVE PANEL DECISION**

Claudel Roustang Galac v. leon oria sandoval, lacteltienda  
Case No. D2023-0324

### **1. The Parties**

The Complainant is Claudel Roustang Galac, France, represented by Novagraaf France, France.

The Respondent is leon oria sandoval, lacteltienda, Mexico.

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

The disputed domain name <lacteltienda.com> (the “Disputed Domain Name”) 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 January 24, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 25, 2023, 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, 2023 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 January 30, 2023.

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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 7, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on March 14, 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

Founded in 1933, the French corporation the Groupe Lactalis (the “Group”) is one of the largest dairy product groups in the world, with major brands including “Parmalat”, “Puleva” and “Lactel”.

The LACTEL brand was launched in 1967 for offering dairy products. The Complainant belongs to the Group, and holds a number of trademark registrations for LACTEL in various countries and classes. The relevant trademarks include, *inter alia*, International Trademark Registration No. 393545 for LACTEL in Classes 29 and 30 registered on November 14, 1972, European Union Trademark Registration No. 012009023 for the figurative mark “” in Classes 5, 29, 30, 31, 32, 33, 35 and 43 registered on December 18, 2013, and French Trademark Registration No. 4486734 for LACTEL in Classes 5, 16, 29, 30, 31, 32, 33, 35, 36, 41, 42, 43 and 44 registered on September 28, 2018 (“the Complainant’s Trademark”).

The Complainant’s Trademark is also fully incorporated in the Complainant’s domain names <lactel.com> and <lactel.fr> (“the Complainant’s Domain Name”).

The Disputed Domain Name was registered on October 15, 2022, which is over 50 years after the LACTEL brand was launched. The Disputed Domain Name resolves to a parked page comprising pay-per-click (“PPC”) links to other websites.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. Apart from the Complainant’s Trademark, the only element in the Disputed Domain Name is the Spanish term “tienda” (meaning “store” in English), which does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. Furthermore, the Respondent does not have registered trademarks comprising “Lactel”.
- (c) Both the Respondent’s registration of and its use of the Disputed Domain Name establish its bad faith. Given the goodwill and reputation of the Complainant’s Trademark, the Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when the Respondent registered and used the Disputed Domain Name. The Disputed Domain Name resolves to a parked page comprising PPC links of several categories of goods and services, one of which was “lait bébé bio” (meaning “organic milk for babies” in English) and contains links to competing milk products. Hence, the Respondent’s use of the Disputed Domain Name does not represent a *bona fide* offering where such PPC links compete with or capitalize on the reputation and goodwill of the Complainant’s Trademark or otherwise mislead Internet users. In addition, the Complainant notes that mail servers have been configured at the Disputed Domain Name, which may indicate that the Respondent intends to engage in or has engaged in a phishing or fraudulent scheme. Therefore, 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark 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 by the Respondent in bad faith.

### A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark based on various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the Spanish term "tienda" (meaning "store" in English) after the Complainant's Trademark. The Panel accepts that the addition of "tienda" is not sufficient to prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark (see *Government Employees Insurance Company v. Contact Privacy Inc. Customer 0163664000 / Dieumaitre Sintama, geico-ko*, WIPO Case No. [D2022-0732](#)).

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAJM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) The Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making 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.

There is no evidence to show that the Respondent has trademark rights corresponding to the LACTEL mark or the Disputed Domain Name, or that the Respondent has become commonly known by the Disputed Domain Name.

Further, there is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name was in connection with a *bona fide* offering of goods or services. The Panel finds that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use, as the Respondent appears to have registered the Disputed Domain Name solely for the purpose of misleadingly diverting consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Group and its business, or that the Respondent's activities are approved or endorsed by the Group when in fact this is not the case. In this regard, the Panel notes that the registrant organization identified in the registration details of the disputed domain name is "lacteltienda". Moreover, the PPC links at issue do not represent a *bona fide* offering since such links compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the Disputed Domain Name.

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

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "Lactel" are the Group's websites and third-party websites providing information about the Group and/or its products. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

The Panel also agrees with the Complainant that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name is confusingly similar to the Complainant's Trademark. It can be inferred that the Respondent used the Disputed Domain Name to earn click-through revenue from the misdirection of Internet users to its website caused by the confusing similarity of Disputed Domain Name to the Complainant's Trademark (see *Société Louis Delhaize*

*Financière et de Participation (DELFIPAR) v. Privacy service provided by Withheld for Privacy ehf / Vallee Virginie*, WIPO Case No. [D2021-4126](#)). Also, as discussed above, the Respondent lacks rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

- (ii) The Respondent's proactive configuration of mail servers at the Disputed Domain Name supports the Complainant's assertion that the Disputed Domain Name creates a risk that the Respondent might be engaged in a phishing or fraudulent scheme by using an email address impliedly associated with the Complainant (see *Dewberry Engineers Inc. v. WhoisGuard Protected, WhoisGuard Inc / Lindy James, Dreamline*, WIPO Case No. [D2020-2754](#)).
- (iii) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

## 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, <lacteltienda.com>, be transferred to the Complainant.

*/Gabriela Kennedy/*

**Gabriela Kennedy**

Sole Panelist

Date: March 27, 2023