

ADMINISTRATIVE PANEL DECISION

Laboratoire Terravita v. William Hardy-Abeloos
Case No. D2023-1017

1. The Parties

The Complainant is Laboratoire Terravita, France, represented by Coblence & Associés, France.

The Respondent is William Hardy-Abeloos, France.

2. The Domain Name and Registrar

The disputed domain name <eiyofitness.com> (the “Domain Name”) is registered with Launchpad.com Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 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 amendment to the Complaint on March 20, 2023.

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 of the Complaint, and the proceedings commenced on March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2023.

The Complainant filed an unsolicited Supplemental Filing on March 24, 2023. On April 18, 2023, the Center acknowledged receipt of the Supplemental Filing.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on June 2, 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 following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a French headquartered laboratory mainly specializing in food supplements.

The Complainant is the owner of several trade marks in EIYO or including EIYO (the "EIYO trade marks") including the following:

- French Trade Mark EIYO, No. 4908917, filed on October 27, 2022;
- French Trade Mark EIYOLAB, No. 3716524, registered on November 26, 2010;
- French Trade Mark EIYOFIT, No. 4799485, filed on September 13, 2021; and
- French Trade Mark EIYODERM, No. 4800979, registered on January 14, 2022.

The Domain Name was registered on February 7, 2023, and resolves to a Registrar webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the EIYO trade marks in which the Complainant has rights as the Domain Name incorporates the entire EIYO trade mark with the addition of "fitness" and that such addition to the Domain Name does not prevent the likelihood of confusion between the Domain Name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant states the Respondent has never been authorized by the Complainant in any way to use the Complainant's trade mark and that the use of the Domain Name to resolve to a page indicating that the Domain Name is not totally configured, cannot constitute a *bona fide* or a legitimate or fair noncommercial use of the Domain Name.

The Complainant contends that the Respondent has registered the Domain Name in bad faith, with the intention to target the Complainant and its EIYO trade marks, to the Respondent's benefit or to harm the Complainant's reputation. The Complainant submits that it has made longstanding and widespread use of its EIYO trade marks since 2010 and that the trade mark EIYOLAB benefits from a strong reputation in the dietary supplements market and the products sold under this trade mark are frequently recommended by the specialized press. The Complainant also considers that the Respondent is using the Domain Name in bad faith. The Complainant submits that the Respondent intends to divert Internet users and the Complainant's customers for commercial or malicious purposes.

B. Respondent

The Respondent did not reply to the Complainant's contentions but sent an email to the Complainant directly, after the Complaint was filed, not copying the Center.

6. Preliminary Procedural Issue - Admissibility of Supplemental Filing from the Complainant

Under the Rules, no express provision is made for supplemental filings by either Party, except in response to a deficiency notification or if requested by the Center or the Panel. Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of unsolicited supplemental filings. Admissibility of supplemental filings is to be assessed based on relevance and foreseeability (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.6).

The Panel admits the Complainant's Supplemental Filing to the extent that it deals with the communication received from the Respondent on March 21, 2023, which includes an offer to sell the Domain Name for a price deemed appropriate.

7. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in the EIYO and EIYOFIT trade marks. The Domain Name includes the EIYO trade mark as well as the EIYOFIT trade mark.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the EIYO and EIYOFIT trade marks in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's EIYO trade mark with the addition of the term "fitness" as well as the EIYOFIT trade mark with the addition of "ness".

The Panel finds that the EIYO and EIYOFIT trade marks is instantly recognizable in the Domain Name and that the addition of the terms "fitness" does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name. See section 1.8 of [WIPO Overview 3.0](#).

Then there is the addition of the generic Top-Level Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD, such as ".com", is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name.

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or
- (iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous UDRP panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the disputed domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it has not authorized the Respondent to make any use of its EIYO and EIYOFIT trade marks. In addition, the Domain Name is not currently used in a manner that could indicate that the Respondent is making a noncommercial legitimate or fair use of the Domain Name. In the communication sent by the Respondent to the Complainant (after the filing of the Complaint and without copying the Center), the Panel notes that there is no evidence of any preparation to use the Domain Name in connection with a *bona fide* offering of goods or services but the Respondent merely makes an unsubstantiated claim that such preparations took place. On this basis, the Panel finds it appropriate to infer that the Respondent is not making a noncommercial legitimate or fair use of the Domain Name.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade marks EIYO and EIYOFIT in their entirety in combination with the terms "fitness" (a term that is relevant to the Complainant's business), carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website 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] website or location or of a product or service on [the respondent's] website or location.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the EIYO trade mark and the EIYOFIT trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the fact that the Respondent appears to be based in France where the Complainant has developed goodwill in the EIYO trade marks, (ii) the targeted choice of term "fitness", relevant to the Complainant, appended to the EIYO trade mark in the Domain Name and (iii) the fact that the term "eiyofitness" is highly similar, including in terms of meaning, to the EIYOFIT trade mark.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The Domain Name appears to be passively held. Passive use itself does not prevent a finding of the Respondent's bad faith given the overall circumstances here.

This view is further supported by the fact that the Respondent chose not to formally object to the Complainant's assertions but instead sent an email to the Complainant, after the filing of the Complaint, and without copying the Center, claiming – without producing any supporting evidence – that it had made preparations to use the Domain Name in connection with a *bona fide* offering of goods or services and threatening to file a Response in the event that an agreement could not be found on a price for the Domain Name.

This does not offer any realistic possibility that the Respondent is intending to use the Domain Name in good faith.

Thus, the Panel finds that the Domain Name has been registered and is also 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 Domain Name <eiyofitness.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: June 16, 2023