

ADMINISTRATIVE PANEL DECISION

LINAK A/S v. ca domains, Mark Miller
Case No. D2023-1912

1. The Parties

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

The Respondent is ca domains, Mark Miller, Canada.

2. The Domain Name and Registrar

The disputed domain name <linakukltd.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 April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 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 May 3, 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 May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 2, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on June 22, 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

According to the information in the Complaint, the Complainant is a company registered in Denmark in 1980, that designs and manufactures full actuator systems for smooth and reliable movement in a wide range of applications. The Complainant's actuators facilitate ergonomic improvements in workplaces as diverse as offices, hospitals, industrial productions, and within farming. 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 has registered various trademarks consisting of LINAK, including the International trademark No. 1,580,497 registered on December 17, 2020. The Complainant also holds a number of domain name registrations that contain the LINAK trademark including <linak.co.uk>, <linak.us> and <linak.com>, which hosts the Complainant's main website.

The disputed domain name was registered on February 18, 2023 and it is used for the sale of various products and displaying the Complainant's trademark and referring to "LINAK UK Ltd".

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its trademark LINAK because it incorporates the Complainant's registered trademark LINAK in full, with the addition of the generic terms "UK" and "Ltd". The Complainant asserts that the addition of these terms does not prevent a finding of confusing similarity as the trademark is clearly recognizable within the disputed domain name.

As regards the second element, the Complainant argues that the Respondent does not carry the name "Linak" and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark LINAK in domain names or in any other manner from the Complainant. Moreover, the Respondent has not used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The website at the disputed domain name purports to offer a wide variety of products, but the Complainant questions whether these products are actually available for sale. On the other hand, in the "About" section on the website at the disputed domain name, the Respondent purports to be exporting "Wood pellets, Wood chips, Wood R.U.F, Rice husk powder, Rice husk grind, Rice Husk Briquette, Rice husk pellets, Rice husk ash, Sawdust and others to Worldwide". However, the Complainant contends that these types of products are not offered for sale on the website at the disputed domain name. Also, one of the contact email addresses displayed on the website at the disputed domain name is likely to mislead Internet users to believe that the message comes from the Complainant's United Kingdom ("UK") subsidiary, which is named "LINAK UK Limited".

With respect to the third element, the Complainant argues that its trademark LINAK is a coined word and is thus distinctive *per se*. The trademark is registered in multiple jurisdictions around the world, and has been used intensively for many years, including in the United Kingdom, where the company that claims to be the entity behind the website at the disputed domain name is located. In addition, the Respondent uses the name and address of the Complainant's UK subsidiary as part of the contact information on the website, therefore the Complainant submits that the Respondent must have had positive knowledge as to the existence of the Complainant's trademark LINAK at the time when the Respondent registered the disputed domain name. As regards the use, the Respondent uses the disputed domain name for an active website and by doing so it is obvious that the Respondent intentionally attempts to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant and the Complainant's trademark LINAK as to the source, affiliation or endorsement of the Respondent's website. Moreover, the use of false contact information is in itself a clear indication of bad faith use. Lastly, the Respondent has been involved in previous UDRP proceedings, therefore the Respondent is engaged in a pattern of conduct in registering domain names.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case although "reasonably available means calculated to achieve actual notice" were employed as per paragraph 2(a) of the UDRP Rules. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the LINAK trademarks by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well-established that the generic Top-Level Domain ("gTLD"), in this case ".com", may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant's trademarks.

The trademark LINAK is reproduced in its entirety in the disputed domain name. The addition of "uk" and "ltd" does not prevent a finding of confusing similarity with the Complainant's trademark, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case

demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established that it holds rights over the LINAK trademark and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain name is used to resolve to a website purporting to sell various consumer goods and displaying the Complainant's trademark and the corporate name of the Complainant's UK subsidiary. Absent authorisation from the Complainant, such use cannot confer rights or legitimate interests upon the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to bring evidence to the contrary. Moreover, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety cannot be considered fair as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademark predate the date at which the Respondent registered the disputed domain name. The Respondent has not denied knowledge of the Complainant. Under these circumstances, and also given the Complainant's trademark are distinctive and the confusing similarity between the disputed domain name and the Complainant's trademark, as well as the use of the Complainant's trademark and corporate name of one of its subsidiaries on the website at the disputed domain name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark, and with intention to target that trademark.

As regards the use, as indicated above, the disputed domain name is used to resolve to a website purporting to sell various consumer goods and displaying the Complainant's trademark and corporate name of one of its subsidiaries. In the circumstances of the case, the Panel accepts the Complainant's evidence and finds that the Respondent has taken the Complainant's trademark and incorporated it into the disputed domain name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights. Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and considering the nature of the disputed domain name indeed none would seem plausible.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the un rebutted evidence in the case file shows that the Respondent was involved in other previous UDRP proceeding where the concerned UDRP panels decided in favor of the complainant (See *Virgin Enterprises Limited v. Mark Miller, ca domains*, WIPO Case No. [D2019-0680](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "the domain name in order to prevent the owner of the

trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct”.

Based on the evidence and circumstances of this case, the Panel concludes that the requirement of paragraph 4(a)(iii) of the Policy is 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 <linakukltd.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: July 6, 2023