

## **ADMINISTRATIVE PANEL DECISION**

Läderach (Schweiz) AG v. da lao hu  
Case No. D2023-2449

### **1. The Parties**

The Complainant is Läderach (Schweiz) AG, Switzerland, represented by Cosmovici Intellectual Property Sarl, Switzerland.

The Respondent is da lao hu, China.

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

The disputed domain name <laderachs.com> (the “Disputed Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 11, 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 June 16, 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 June 21, 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 June 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on July 26, 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, Läderach (Schweiz) AG, is a Swiss chocolate manufacturer founded in 1962.

The Complainant holds various registered trade marks consisting of, or including, the term “läderach”, such as the following:

- LÄDERACH, European Union Trade Mark (“EUTM”) registration No. 005032371, registered on April 18, 2007 in class 30;
- LÄDERACH CHOCOLATIER SUISSE, International figurative trade mark registration No. 983800 depicted below, registered on October 10, 2008 in class 30, including in China:

**Läderach**  
chocolatier suisse

The Complainant operates an online shop on its official website available through the domain name <laderach.com>.

The Disputed Domain Name was registered on April 20, 2023. According to the Complainant’s undated evidence, the Disputed Domain Name resolved to a website which appeared to offer for sale fishing gear. The Disputed Domain Name currently resolves to a website with pornographic content.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trade marks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant claims that there is not and has never been any association between the Respondent and the Complainant, and that it has not heard of any organization, activity, project nor product identified as Läderach except for the Complainant’s own initiative. According to the Complainant, the Disputed Domain Name carries a high risk of confusion and implied affiliation. The Complainant claims that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name, but instead aims at commercial gain by misleadingly diverting consumers to its websites by riding on the fame of the trade marks.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent must have been aware of the Complainant’s well-known trade marks when registering the Disputed Domain Name. The Complainant claims that the content on the website associated with the Disputed Domain Name does not provide credible signs of a genuine business plan/intention. The random content and lack of functionality suggest that the website was created with a cybersquatting intent and not for a *bona fide* offering of goods or services. Therefore, the Complainant claims that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trade marks, and the notorious name Läderach, as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service offered on the Respondent’s website or location.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed 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 Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

### **A. Identical or Confusingly Similar**

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Complainant has clearly established that there is a trade mark in which it has rights. The Complainant's LÄDERACH trade mark has been registered and used in connection to its chocolate manufacturing business.

The Disputed Domain Name matches the Complainant's LÄDERACH word mark and the dominant textual component of the Complainant's figurative mark depicted above under section 4, except for the removal of the diaeresis and addition of the letter "s" at the end. Where the relevant trademark is recognizable within the Disputed 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 Panel finds that in view of the circumstances of this case as further explained below, these limited changes can even be considered as "typosquatting" as the Disputed Domain Name contains sufficiently recognizable aspects of the Complainant's mark (see section 1.9 of the [WIPO Overview 3.0](#)).

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's LÄDERACH trade mark.

## 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* showing 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](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights (there being no Response or evidence of any such rights). According to the information confirmed by the Registrar, the Respondent is named “da lao hu”. There are no indications that a connection between the Complainant and the Respondent exists or existed.

The Disputed Domain Name incorporates the Complainant’s LÄDERACH trade mark in its entirety without the diaeresis, which is an uncommon sign in domain names, and adds the letter “s” at the end. The Panel finds that employing a misspelling in this way signals an intention on the part of the Respondent to confuse Internet users seeking or expecting the Complainant, as these users may be unaware of the one-letter and the diaeresis difference between the Disputed Domain Name and the Complainant’s LÄDERACH trade mark. In the Panel’s view, the misleading character of the Disputed Domain Name is further increased by the fact that it is confusingly similar to the domain name linked to the Complainant’s official website “www.laderach.com”. In any event, the Panel does not find any indication of rights or legitimate interests in the Disputed Domain Name on the Respondent’s part.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant’s evidence, the Disputed Domain Name resolved to a website which appeared to offer for sale fishing gear. The Panel observes that the Disputed Domain Name currently resolves to a website with pornographic content. Given that the Disputed Domain Name is confusingly similar to the Complainant’s distinctive LÄDERACH mark, the Panel does not find the Respondent’s use of the Disputed Domain Name to host either a website promoting fishing gear or an adult-content website to be a *bona fide*, legitimate noncommercial or fair use (see, e.g., *Strellson AG v. Camus Deff*, WIPO Case No. [D2022-4498](#); *AREVA Société Anonyme à Directoire et Conseil de Surveillance v. wangyongqiang*, WIPO Case No. [D2016-1100](#); *MatchNet plc v. MAC Trading*, WIPO Case No. [D2000-0205](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

## C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name has been registered and is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its rights in the LÄDERACH mark when it registered the Disputed Domain Name. Various trade marks of the Complainant predate the registration of the Disputed Domain Name by more than a decade, including in China where the Respondent is located. Moreover, the Disputed Domain Name is confusingly similar to the Complainant's distinctive LÄDERACH mark and to the domain name related to the Complainant's official website. The Panel finds that the Respondent's awareness of the Complainant's trade mark rights at the time of registration suggests bad faith.

By directing Internet users to a website offering either fishing gear or adult content, the Panel finds it more likely than not that the Respondent intentionally aimed to attract Internet users to visit this website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website.

Moreover, in the Panel's view, there is a risk of tarnishment of the Complainant's mark by suggesting a connection between the Complainant's mark and adult content (see *Strellson AG v. Camus Deff*, WIPO Case No. [D2022-4498](#); *NFON AG v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / John Smith, NC*, WIPO Case No. [D2021-3744](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name has been registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

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

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: August 9, 2023