

ADMINISTRATIVE PANEL DECISION

Sebach - Servizio Bagni Chimici - S.p.A. v. Alexander Lyons
Case No. D2023-2668

1. The Parties

The Complainant is Sebach - Servizio Bagni Chimici - S.p.A., Italy, represented by Società Italiana Brevetti, Italy.

The Respondent is Alexander Lyons, United States of America.

2. The Domain Name and Registrar

The disputed domain name <sebach.xyz> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2023. On June 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 23, 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 June 27, 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 July 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2023.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on August 11, 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 began trading in 1987 in Certaldo, near Florence, Italy. It specializes in portable toilets for use on construction sites, public areas, small and large events. These include emergency use and long-term rental.

It has 80 concessionaires and more than 1500 rental points. A map exhibited in the Complaint shows its network of dealers across Italy. It moves 50,000 mobile portable toilets throughout Italy, each day. It has been chosen as official supplier for events all over Italy.

As can be seen from Annex 5 to the Complaint it has received certification as “The Great Place to Work ® Certification” as recognition of its organizational culture and work environment. In 2021 it was selected as among the 100 most sustainable Italian companies and awarded the Sustainability Award (Annex 6).

The Complainant owns a number of registered trade marks consisting of SEBACH, I SEBACH and with a heart-shaped logo. The trade marks relied upon are set out in the Complaint as follows;

Italy	SEBACH	No. 0001232425(November 27, 2009)	Classes 1, 11, 37,44
International	SEBACH (heart logo)	No. 954032 (January 16,2008)	Classes 1,6,11,19,37,44
Italy	I SEBACH (heart logo)	No. 0001053214 (June 25, 2007)	Classes 1,11,37,42
European Union	I SEBACH (heart logo)	No. 009860313 (August 10,2011)	Classes 25, 35
International	I SEBACH (heart logo)	No. 913772 (March 15,2006)	Classes 1,11,37,44

At Annex 7 are exhibited extracts from the relevant trade mark registries of these registered trade marks. At Annex 8, the Complainant exhibits a schedule containing a complete list (including those above) of all its registered trade marks consisting of SEBACH, I SEBACH and with a heart-shaped logo.

At Annex 9, the Complainant exhibits a schedule of its registered domain names including 25 incorporating the mark SEBACH. By way of example these include; <sebach.cn>, <sebach.net> and <sebach.org> and <sebach.com>.

The disputed domain name <sebach.xyz> was registered on January 26, 2023 which is after the dates of registration of the trade marks relied upon by the Complainant. It resolves to a “www.dan.com” webpage in which it is sold at USD 1.450.

In the absence of a Response the Panel finds the above evidence adduced by the Complainant to be true.

5. Parties' Contentions

A. Complainant

The Complainant submits;

- i. The Complaint owns trade mark rights for the marks SEBACH and I SEBACH which predate the registration of the disputed domain name and which are confusingly similar to the disputed domain name.

- ii. On the evidence the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- iii. On the evidence the disputed domain name was registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant is based upon the Complainant's prior rights in the registered marks SEBACH and I SEBACH as set out above.

The disputed domain name <sebach.xyz> consists of the mark SEBACH together with the generic Top-Level-Domain ("gTLD") ".xyz". The Complainant rightly submits that it is well-established that the gTLD should be disregarded for the purpose of determining whether a domain name is identical or confusingly similar to the trade marks relied upon.

The issue, therefore, is whether the disputed domain name "sebach" is identical or confusingly similar to the Complainant's trade marks SEBACH and I SEBACH which it relies upon. The disputed domain reproduces SEBACH in its entirety. The Panel therefore finds that the disputed domain name <sebach.xyz> is confusingly similar to the Complainant's trade marks SEBACH and I SEBACH within paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant submits that there is no evidence that the Respondent has no rights or legitimate interests in the disputed domain name. In particular;

- i. The Complainant has neither authorized, nor given its consent to the Respondent to register and use the disputed domain name;
- ii. On the basis of database searches exhibited as Annex 10 bis to the Complaint there is no evidence of any applications and/or trade mark registrations for the mark SEBACH in the name of the Respondent, Alexander Lyons.

The Complainant adduces evidence in the Complaint of a "www.dan.com" web page which shows that the disputed domain name is offered for sale at USD 1.450. It submits that the Respondent is not making a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain, as the disputed domain name points merely to an inactive website where it is being offered for sale at a "high price". There is no evidence on the webpage of use as part of a *bona fide* offering of goods or services, nor of any demonstrable preparations for such an offering.

The Complainant further submits that the use of a disputed domain name for a webpage based upon the Complainant's trade mark and company name SEBACH does not establish rights or legitimate interests and cannot constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Accordingly the Panel, in the absence of a Response, is satisfied that the Complainant has made out a *prima facie* case and has demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant relies upon the fact that the disputed domain name is used on the webpage “dan.com” where it is being offered for sale at a price of USD 1.450 which demonstrates for the following reasons that the disputed domain name was registered and is being used by the Respondent in bad faith:

- i. There is no connection between the Respondent in utilizing the disputed domain name and the Complainant as owner of the company name SEBACH and trade marks SEBACH;
- ii. The disputed domain name resolves to the webpage “www.dan.com” which is well-known as a marketplace for domain names. The disputed domain name which is not used for trading purposes is on sale for USD 1.450 which is a very high price. It is being offered for sale for a sum likely in excess of out of pocket costs. This is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Authority for this proposition, also relating to “www.dan.com” cited by the Complainant is *DKH Retail Limited v Domain Administrator, Domain Is For Sale At www.dan.com*, WIPO Case No. [D2021-0477](#).
- iii. On the evidence the Respondent is unfairly and intentionally taking advantage of, and exploiting without authorization, the reputation and distinctiveness of the Complainant’s trade marks SEBACH by attracting Internet users to the webpage “www.dan.com” and by creating a likelihood of confusion between the disputed domain name and the Complainant’s marks.
- iv. There is evidence that the Respondent has a history of registering domain names incorporating third party’s trade marks including well-known trade marks. Evidence of this is set out in Annex 10 ter which is a summary of 1649 reverse Whois domain names registered in the name of the Respondent. The Complainant also cites *ANIMA Corp v Alexander Lyons* WIPO Case No. [D2023-0948](#) in which the Respondent had also attempted to offer for sale a contested domain name at a high price likely in excess of out of pocket expenses.

Taking into account the above and in the absence of a Response, the Panel is satisfied that the disputed domain name was registered and is being used by the Respondent in bad faith within paragraph 4(a)(iii) 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 <sebach.xyz> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: August 24, 2023.