

## **ADMINISTRATIVE PANEL DECISION**

Alois Dallmayr Kaffee oHG v. Part Gostar, Mohammad Daei Rasouli  
Case No. D2023-2887

### **1. The Parties**

The Complainant is Alois Dallmayr Kaffee oHG, Germany, represented by df-mp Dörries Frank-Molnia & Pohlman Patentanwälte Rechtsanwälte PartG mbB, Germany.

The Respondent is Part Gostar, Mohammad Daei Rasouli, Austria.

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

The disputed domain name <dallmayr.coffee> is registered with One.com A/S (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 (REDACTED FOR PRIVACY Part Gostar). The Center sent an email communication to the Complainant on July 6, 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 July 12, 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 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2023.

On August 8, 2023, the Complainant requested the suspension of the proceedings. On September 6, 2023, the Complainant informed the Center that the parties remained in settlement negotiations and therefore requested an extension to the suspension for a further 30 days. On September 7, 2023, the Complainant

requested that the proceedings be reinstated. The Proceedings were reinstated accordingly, and the Response date was recalculated as September 15, 2023.

The Respondent sent formal email communications to the Center dated September 13, 14, 19 and 25, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 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.

The Panel notes from material exhibited by the Complainant that the Complainant appears to have been in settlement negotiations with a representative of the entity "Part Gostar" other than the Registrar-disclosed Respondent. The Registrar-disclosed Respondent confirmed to the Center in the emails referred to above, and the Panel determines, that he is the appropriate Respondent in the proceeding.

#### **4. Factual Background**

The Complainant is a company registered in Germany. It is a supplier of coffee, tea and delicatessen products under the name and trademark DALLMAYR, and provides evidence of its longstanding use of that trademark in commerce.

The Complainant is the owner of various registrations for the trademark DALLMAYR, including for example the following:

- Germany trademark registration number 1108419 for the word mark DALLMAYR, registered on July 3, 1987, for goods including coffee, tea and cocoa in International Class 30; and
- International trademark registration number 514060 for the word mark DALLMAYR, registered on July 28, 1987, for goods including coffee, tea and cocoa in International Class 30, and designating countries including Austria under the Madrid Protocol.

The disputed domain name was registered on May 31, 2023.

The disputed domain name appears to have resolved to a holding page maintained by the Registrar.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends, for the purposes of paragraph 4(a) of the Policy, that the disputed domain name is identical or confusingly similar to a trademark in which it has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

While the Complainant makes detailed submissions and provides evidence in support of the above contentions, it is unnecessary further to address these in view of the circumstances set out below.

The Complainant requests the transfer of the disputed domain name.

##### **B. Respondent**

The first three of the informal emails received by the Center from the Respondent confirmed that he was the correct Respondent in the matter and sought details of the Complaint, which he stated he had not previously received. In his email dated September 25, 2023, the Respondent stated:

“The mentioned domain was registered incorrectly and the domain was not used, nor was there any other intention to do so.

Anyway, the mentioned domain was registered due to a typo and we had already requested the mentioned domain expiration to <one.com> company (domain and web host provider company), but according to <one.com> company’s protocols (due to providing free hosting at the time of domain registration), we had to wait until its hosting expired, and for this reason, this domain remained in our dashboard and it was not deleted.

If this domain belongs to another company or has a desire to have it, it can be easily transferred without any charges or paperwork!

Definitely, the other party can have the mentioned domain by providing the documents that he has provided in the attachment. And we will be very glad to help them in this way.

Of course, the other party could have sent us a simple email before filing a complaint, and we unfortunately did not receive such an email.

The other party can email us and get their Auth-ID for transfer.

I remain at your disposal for any further information may you need.”

## **6. Discussion and Findings**

Section 4.10 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) addresses the question: “How do panels handle cases involving a respondent’s informal or unilateral consent for the transfer of the domain name to the complainant outside the “standard settlement process...” It discusses the matter as follows:

“Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the “standard settlement process” described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis).

In some cases, despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits. Scenarios in which a panel may find it appropriate to do so include (i) where the panel finds a broader interest in recording a substantive decision on the merits – notably recalling UDRP paragraph 4(b)(ii) discussing a pattern of bad faith conduct, (ii) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent’s consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trademark rights.”

In this case, the Panel finds that the Respondent’s email dated September 25, 2023, evidences his unequivocal consent to the transfer of the disputed domain name to the Complainant. The Panel finds that none of the qualifications set out in the second paragraph quoted above have application in this case, and therefore orders the transfer of the disputed domain name to the Complainant on the basis of the Respondent’s consent.

## 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, <dallmayr.coffee>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: October 25, 2023