

ADMINISTRATIVE PANEL DECISION

Delaval Holding AB v. QiuMing Xu
Case No. D2023-4357

1. The Parties

The Complainant is Delaval Holding AB, Sweden, represented by Aera A/S, Denmark.

The Respondent is QiuMing Xu, China.

2. The Domain Names and Registrar

The disputed domain names <delavalfarms.cloud> and <delavalfarms.com> are registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 20, 2023. On October 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Hidden contact information) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 30, 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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 21, 2023.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on November 28, 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, a company founded in Sweden in 1883, is part of the Tetra Laval Group, a full-service supplier of milking and other systems to dairy farmers. The scale of the parent company is that it employs over 4,500 people in more than 100 countries.

The Complainant holds some 700 trademark registrations throughout the world, including: European Union trademark number 001785583 for DELAVAL, registered on October 16, 2002, in classes 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 17, 18, 21, 25, 27, 31, 36, 37, 41, and 42; United States of America trademark registration number 2705930 for DELAVAL, registered on April 15, 2003, in classes 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 17, 18, 21, 25, 27, 31, 36, 37, 41, and 42; and Saudi Arabia trademark registration number 142103560 for DELAVAL, registered February 18, 2001, in class 9.

The Complainant also owns some 150 domain name registrations world-wide including <delaval.cloud> and <delaval.com>.

According to the WhoIs, the disputed domain names were first registered on September 12, 2023, with the registrant organization being a privacy service and the registrant name in each case stated to be redacted for privacy. The Registrar has disclosed the underlying registrant's identity in respect of each disputed domain name, which is the same in both instances. On September 12, 2023, the disputed domain name <delavalfarms.com> resolved to a page displaying the Complainant's name and logo with facilities to insert or to register a user name and password. At the time of filing the Complaint, neither of the disputed domain names resolved to a website. No other information is available about the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that:

it is the owner of the trademark DELAVAL, registered in multiple jurisdictions worldwide. The disputed domain names are confusingly similar to the Complainant's trademark because they incorporate the trademark together with the additional word "farms", which pertains to the Complainant's business, and which does not prevent a finding of confusing similarity.

The Complainant has not granted to the Respondent, and the Respondent does not have, any rights or legitimate interests in the disputed domain names. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services but has used the disputed domain name <delavalfarms.com> for a period of time for a website purporting to be that of the Complainant. There is no evidence the Respondent has been generally known by the disputed domain names or has any rights in any similar name or trademark. The disputed domain name <delavalfarms.cloud> is passively held.

The disputed domain names were registered and are being used in bad faith. The Complainant's trademark is so well known that the Respondent must have been aware of the Complainant's business and cannot use the disputed domain names except to trade illegitimately on the Complainant's goodwill by confusion. The Respondent's website to which the disputed domain name <delavalfarms.com> has resolved, by requesting a username and password, could have been set up to collect information for phishing purposes. The

Respondent's registration and use of the disputed domain names falls within the provisions of paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "farms", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain names and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. The Panel can find no evidence the disputed domain names have been used for a *bona fide* purpose, or that the Respondent has been commonly known by a name similar to the disputed domain names, or that they have been used for any noncommercial or fair purpose.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

When a screen capture was made September 12, 2023, the disputed domain name <delavalfarms.com> resolved to a website headed with the name DeLaval preceded by a triangular and circular logo apparently copied exactly from the Complainant's own website at "www.corporate.delaval.com/about/our-farm/". The Respondent's website invited users to log in by providing account and password information, or to register. This login page, without more, may not be sufficient evidence to satisfy fully the Complainant's assertion that it is evidence the disputed domain name <delavalfarms.com> is in use for a fraudulent phishing scheme. This website is, however, sufficient to satisfy a finding that the relevant disputed domain name has been used with intent to attract Internet users by confusion with the Complainant's trademark, if only by initial interest confusion, and to conclude on the balance of probabilities that this usage was not purposeless but was with ultimate commercial gain in mind. The Panel finds the disputed domain name <delavalfarms.com> to have been used in bad faith under paragraph 4(b)(iv) of the Policy, and on the balance of probabilities, to have been registered in bad faith for that purpose.

At the time of filing this Complaint, neither of the disputed domain names resolved to a website.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the presently passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third 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 names <delavalfarms.cloud> and <delavalfarms.com> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: December 5, 2023