

## **ADMINISTRATIVE PANEL DECISION**

Al Rifai Roastery S.A.L v. Andrea Denise Dinoia  
Case No. D2023-4821

### **1. The Parties**

The Complainant is Al Rifai Roastery S.A.L, Lebanon, represented by Talal Abu Ghazaleh Legal, Egypt.

The Respondent is Andrea Denise Dinoia, Italy.

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

The disputed domain name <rifai.com> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On December 12, 2023, the Respondent sent an informal email communication to the Center. The Complainant filed an amended Complaint on December 13, 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 December 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2023. Besides its informal email communication of December 12, 2023, the Respondent did not submit a formal response by the due date.

The Center appointed Kennedy Matthew as the sole panelist in this matter on January 17, 2024. 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.

On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification of the date when the Respondent acquired the disputed domain name, if later than the date of its creation. On the same day, the Registrar replied that the disputed domain name was added to Andrea Denise Dinoia's account on June 2, 2023. On January 23, 2024, the Center transmitted by email to the Registrar a request for verification of the date when Michele Dinoia became the registrant of the disputed domain name. On the same day, the Registrar replied that both Michele Dinoia and Andrea Denise Dinoia appear as one account/email address in the Registrar's database so the date of transfer is the same (*i.e.*, June 2, 2023).

On January 30, 2024, pursuant to paragraphs 10 and 12 of the UDRP Rules, the Panel issued Administrative Panel Procedural Order No. 1 in which it requested that the Respondent substantiate her assertions that the change of registrant on June 2, 2023, was due to an internal change and that the disputed domain name was registered by the Respondent in 2003. The decision due date was extended to February 9, 2024. The Respondent submitted evidence and comments on the due date, February 2, 2024. The Complainant submitted comments in reply on the due date, February 5, 2024.

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

The Complainant is a nut retailer founded by Hajj Moussa Al Rifai in 1948. The Complainant owns multiple trademark registrations in multiple jurisdictions, the earliest of which is Lebanese trademark registration number 093696, renewed under number 173345, for a figurative ALRIFAI mark, written in Arabic and Latin scripts with the R in a special form, registered from April 15, 2003, specifying goods in classes 29 and 30. The Complainant holds later trademark registrations for figurative marks AL RIFAI CAFÉ MÉLANGE in Arabic and Latin scripts; SNACKS AL RIFAI in Arabic and Latin scripts, AL RIFAI GOURMET; R AL RIFAI written in Arabic and Latin in a special form and under it the word SELECTION written in Latin special form; and R RIFAI PASSION FOR NUTS SINCE 1948. The Complainant also holds Lebanese trademark registration number 208359 for a figurative R RIFAI mark, registered on October 19, 2022, specifying goods and services in classes 29, 30, 31, 35, and 43; and European Union trademark registration number 018561706 for a figurative R RIFAI mark, registered on January 8, 2022, specifying goods and services in classes 29, 30, 31, and 35.

The Complainant registered the domain name <alrifai.com> on October 23, 1997 and uses it in connection with its official website. According to archived screenshots, the site has displayed ALRIFAI branding since 1998. The site provides information about the Complainant and its products, which are now available through selected retailers and travel retailers, including in Europe, such as Milan airport duty free, as well as in hotels and restaurants. The Complainant's products now display the R RIFAI mark on their packaging. The website links to the Complainant's European and global online stores. The Complainant has registered other domain names, including <rifai.com.lb> in 2021. The Complainant operates a RIFAI by ALRIFAI mobile application for nuts and kernels. According to evidence presented by the Complainant, the top results of Google searches for "rifai" and "alrifai" relate to the Complainant.

The Respondent is an individual. She lists a company named Puglia.com srls in her contact address. The domain name <puglia.com> is used in connection with a website that provides information about the Italian province of Puglia, including events, recipes, news, and accommodation.

The disputed domain name was created on May 3, 2003. According to the Registrar's verification email, historical Whois records presented by the Complainant, and correspondence from prior registrars presented by the Respondent, the contact email address was that of Michele Dinoia as early as February 10, 2005; the registrant was Michele Dinoia as early as April 17, 2010; the registrant and registrant organization were "Michele Dinoia, Macrosten Ltd" as early as June 7, 2015; and the registrant name was masked by a privacy

service at some point after May 10, 2018. The Registrar verified that the registration was added to Andrea Denise Dinoia's account on June 2, 2023. The contact email address remained the same. A death certificate presented by the Respondent shows that Michele Dinoia passed away on September 8, 2023.

From 2004, the disputed domain name resolved to a parking page displaying numerous pay-per-click ("PPC") links, 10 of which were "related resources" that included "online Islamic store", "hookah pipe", "nut", and "light". From 2017 until at least 2019, the disputed domain name resolved to a PPC links parking page. From at least 2020 to 2022, the disputed domain name resolved to a page hosted by a web hosting company and domain name broker that offered the disputed domain name for sale, with a link to "Contact Owner". Since 2023, the disputed domain name has resolved to a parking page displaying PPC links related to foreign exchange and online shopping, among other things, with a button labelled "Buy this domain" that links to a contact form where Internet users can make an offer. As of June 15, 2023, the disputed domain name was listed for sale on a different domain name broker's website with the minimum offer set at USD 100,000. On the same day, the Complainant made an offer of USD 5,000 via this broker's website. The Respondent refused and asked for a better offer. On June 19, 2023, the Complainant offered USD 10,000, which the Respondent also refused.

The Complainant provides evidence of numerous prior panel decisions under the Policy since 2002 regarding domain names held by Michele Dinoia (in some cases with Macrosten Ltd or SZK.com). Many, but by no means not all, of these decisions concluded that the domain names at issue had been registered and were being used in bad faith. See, for example, *BellSouth Intellectual Property Corporation v. Michele Dinoia*, WIPO Case No. [D2004-0486](#); *Centron GmbH v. Michele Dinoia*, WIPO Case No. [D2006-0915](#); and *Andrey Ternovskiy dba Chatroulette v. Privacy Administrator, Anonymize, Inc / Michele Dinoia, Macrosten Ltd*, WIPO Case No. [D2019-0780](#). The Complainant also provides evidence of a prior panel decision under the Policy which concluded that Andrea Denise Dinoia had registered and was using a domain name in bad faith. See *Cleveland Browns Football Company LLC v. Andrea Denise Dinoia*, WIPO Case No. [D2011-0421](#).

## 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 name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's ALRIFAI, AL RIFAI CAFE MELANGE, SNACKS AL RIFAI, ALRIFAI GOURMET, R ALRIFAI SELECTION, R RIFAI PASSION FOR NUTS SINCE 1948, R RIFAI and R ALRIFAI trademarks, as it incorporates the dominant element of such marks in its entirety. The Complainant holds trademark registrations for its ALRIFAI marks. It has also acquired common law rights in all its ALRIFAI marks by virtue of the extensive commercial use of these trademarks in the food and beverage industry.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name resolves to a parking page displaying PPC links. The Complainant has never authorized nor licensed the Respondent to use its common law and registered trademarks nor to seek the registration of any disputed domain name incorporating them. The Respondent is not affiliated with the Complainant in any way. "Rifai" is a transliteration of the Arabic word "الرفاعي" / "رفاعي" which can be translated as "honor". The Respondent's claim that "rifai" means "do it again" (redo) in Italian is false, as the linguistic origin of the "Rifai" term is Arabic. Despite the Respondent's claim that it intended to use the disputed domain name to operate a business, the PPC links do not relate to any dictionary meaning and the Respondent has listed the disputed domain name for sale for 20 years.

The disputed domain name was registered and is being used in bad faith. The Complainant has been operating the ALRIFAI brand since 1948; registered its company in Lebanon in 1991; registered its domain name <alrifai.com> in 1997; and registered its AL RIFAI R trademark in 2003. The Complainant's ALRIFAI

trademarks are well known throughout the world and the Respondent must have been aware of their existence. The Complainant has operated its website since 1997. The Respondent saw the disputed domain name as an opportunity to later sell it to the Complainant for large sums of money, as evidenced by the Respondent's communications with the Complainant and its attempt to sell it for USD 100,000 as a minimum offer, a price tag clearly directed at a company the size of the Complainant. Bad faith registration and use existed when Michele Dinoia registered the disputed domain name in 2003 and when it was acquired by the current registrant in 2023.

## **B. Respondent**

The name of the registrant of the disputed domain name was changed on June 2, 2023 due to an internal change at NDA. The term "rifai" means "do it again" (*i.e.*, redo) in Italian. The Respondent operates in Italy and registered the disputed domain name to associate it with a recipe project connected to the <puglia.com> site, precisely to teach people how to redo recipes. Although the Complainant has "Rifai" in its name, this does not negate that the Respondent's registration was made in good faith. The disputed domain name was registered by the Respondent in 2003 and never been subject to any objection until now. The <rifai.com> project has experienced delays as the project manager unfortunately passed away this year and the Respondent is still organizing to revitalize all the projects he had conceived.

## **6. Discussion and Findings**

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

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Failure to prove any one element will result in denial of the Complaint. The burden of proof of each element is borne by the Complainant.

### **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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown registered rights in respect of the figurative R RIFAI trademark, among others. See [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name incorporates the term RIFAI, which is the only term in the R RIFAI mark. Although the disputed domain name omits the figurative R with the counter-space in the shape of an almond, the Panel finds that sufficient aspects of the mark are incorporated for it to be recognizable within the disputed domain name. As a standard requirement of domain name registration, the generic Top-Level Domain ("gTLD") extension (".com") can be disregarded in the assessment of confusing similarity. Accordingly, the Panel finds the disputed domain name confusingly similar to the R RIFAI mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.

The Complainant also claims common law rights in all its ALRIFAI marks. In support, it provides extensive evidence of its use of its name "Al Rifai" in connection with nuts and other food and beverage products, since 1948 in Lebanon and elsewhere in the Middle East, including on its website since 1998 and its invoices since

at least 2001. It includes evidence of use of a figurative R ALRIFAI mark on its invoices since at least 2005, as well as in advertising in Lebanon, more recently in duty free stores in Europe, and in Google search results. Based on this evidence, the Panel will accept *arguendo* that the Complainant has shown unregistered rights in an ALRIFAI mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

The disputed domain name incorporates the term RIFAI, which is the dominant element of the unregistered ALRIFAI mark. Although the disputed domain name omits the definite article “AL”, the Panel finds that sufficient aspects of the mark are incorporated for it to be recognizable within the disputed domain name. Once again, as a standard requirement of domain name registration, the gTLD extension (“.com”) can be disregarded in the assessment of confusing similarity. Accordingly, the Panel finds the disputed domain name confusingly similar to the unregistered ALRIFAI mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

The Panel will assess the existence of the Respondent’s rights and legitimate interests in light of the circumstances prevailing at the time when the Complaint was filed. See [WIPO Overview 3.0](#), section 2.11.

The Complainant shows that the disputed domain name, which is confusingly similar to the R RIFAI mark, currently resolves to a parking page displaying PPC links and offering the disputed domain name for sale. The Respondent is not affiliated with the Complainant in any way. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services for the purposes of the Policy, nor is she making a legitimate noncommercial or fair use of the disputed domain name. Further, the Registrar has confirmed that the Respondent’s name is “Andrea Denise Dinoia”, which does not resemble the disputed domain name. Nothing indicates that the Respondent is commonly known by the disputed domain name. 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 name.

Turning to the Respondent’s arguments, she notes that the term “rifai” means “do it again” (i.e., redo) in Italian and claims that the disputed domain name was registered for a recipe project connected to the <puglia.com> site, to teach people how to redo recipes for learning. The Panel is prepared to accept that the Respondent, who lists Puglia.com srls in her contact address, is somehow connected to the operator of the site associated with the domain name <puglia.com>. The Panel has visited that site and notes that it publishes recipes on a page headed “Ricette” (i.e., recipes). However, the Respondent provides no evidence of any preparations by her (or by Michele Dinoia) to create another recipe website associated with the disputed domain name, much less one titled “rifai”, which has only a constrained connection to recipes. Further, the fact that the disputed domain name is offered for sale and that the Respondent actively sought an offer for it from the Complainant undermines the Respondent’s claim that it is intended for a recipe website. The Respondent provides no other grounds to find that she has rights or legitimate interests in the

disputed domain name. In view of these circumstances, the Panel finds that the Respondent has not rebutted the Complainant's prima facie showing.

The Panel takes note that "Rifa'i" (pronounced "Rifai") is a masculine name of Arabic origin and the English translation of "al rifai" is "honorable person". However, the Respondent is not using nor has prepared to use the disputed domain name in connection with any such meaning.

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

### **C. Registered and Used in Bad Faith**

The Panel recalls that paragraph 4(a)(iii) of the Policy sets out two conjunctive requirements, according to which the Complainant must demonstrate both that the disputed domain name was registered in bad faith and also that the disputed domain name is being used in bad faith. As regards bad faith registration, the Complainant needs to show that the Respondent targeted the Complainant's mark at the time when the disputed domain name was registered.

In the present case, the disputed domain name was registered in 2003 but the Registrar has confirmed that it was only added to the account of the Respondent (Andrea Denise Dinoia) on June 2, 2023. The Respondent alleges that the change in the disputed domain name registrant data was due to an internal change and that the disputed domain name has effectively been under the same control since 2003. The Panel notes that the Respondent's current contact email address in the Registrar's database has been associated with the disputed domain name registration since at least 2005, and that the prior registrant was Michele Dinoia (whom the Respondent submits was her father). Nothing on the record indicates that there was any change in the registrant data prior to that. The Panel also notes that, while there have been some changes in the use of the disputed domain name over the years, it remains for sale and resolves to a PPC parking page as it formerly did. In view of the particular circumstances here, notwithstanding the nominal change in registrant, the Panel finds in the particular circumstances present here an unbroken chain of possession of the disputed domain name and will assess the registration for bad faith with a view to the circumstances prevailing as at May 3, 2003.

The disputed domain name was registered in May 2003, prior to the registration of most of the Complainant's trademarks, including R RIFAI. The Panel recalls that, where a registrant registers a domain name before a complainant's trademark rights accrue, panels will not normally find bad faith. See [WIPO Overview 3.0](#), section 3.8.1. The Panel has considered the possibility of exceptional circumstances in which the domain name registrant acted in anticipation of the Complainant's nascent registered rights in the R RIFAI mark, with which it is most similar. However, this mark was not registered until 19 years after the disputed domain name and the evidence of use of this mark is only recent. In these circumstances, the Panel does not find that there is evidence that the R RIFAI mark was being targeted.

The disputed domain name was registered shortly after the Complainant's earliest trademark registration, for the figurative ALRIFAI mark, which may also have been after the much earlier date of accrual of the Complainant's unregistered rights in the ALRIFAI mark. However, the Complainant's trademark rights in 2003 existed in Lebanon, and possibly elsewhere in the Middle East, whereas the disputed domain name registrant was based in Italy. The evidence of use of the ALRIFAI mark in Italy (in Milan airport duty free) and in Europe, and the Google search results for "alrifai", are more recent. While it is possible that the Respondent visited the Complainant's website or was otherwise aware of the Respondent prior to 2003, it should be recalled that at that time the website displayed ALRIFAI branding, whereas the disputed domain name incorporates "rifai" without the definite article "al". The Complainant does not appear to have adopted RIFAI as its branding until more recently. These circumstances do not give the Panel reason to find that the disputed domain name was registered with the Complainant or its marks in mind.

The Complainant draws attention to the PPC links on the parking page associated with the disputed domain name from 2004. While one of them related to "nut" (and the Complainant's principal product is nuts), it was in a list of links that did not otherwise bear any relationship to the Complainant. The Complainant notes prior

decisions under the Policy which found that the prior disputed domain name registrant (Michele Dinoia) and the current registrant (Andrea Denise Dinoia) had registered and were using domain names in bad faith. However, Michele Dinoia also successfully defended himself in several prior cases. These facts are relevant, but not determinative. The Complainant also notes the price that the Respondent was seeking for the disputed domain name in 2023, but not earlier, which does not shed light on the disputed domain name registrant's state of awareness of the Complainant 21 years ago.

Nothing on the record leads to a different conclusion regarding the Complainant's other registered marks.

Having considered the above evidence, the Panel does not find that the evidence supports a conclusion that the Complainant's marks were being targeted when the disputed domain name was registered. Given that finding, it is unnecessary to consider whether the disputed domain name is being used in bad faith.

Therefore, the Panel finds that the Complainant has not established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: February 7, 2024