

ADMINISTRATIVE PANEL DECISION

Almarai Company v. MARIA ROSARIO MARIA ROSARIO, Not My Daughter Inc.

Case No. D2024-0428

1. The Parties

The Complainant is Almarai Company, Saudi Arabia, represented by Talal Abu Ghazaleh Legal, Egypt.

The Respondent is MARIA ROSARIO MARIA ROSARIO, Not My Daughter Inc., United States of America.

2. The Domain Name and Registrar

The disputed domain name <almaraimilk.shop> (“the Domain Name”) is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 31, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 2024, 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 February 6, 2024.

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 February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 29, 2024.

The Center appointed Dawn Osborne as the sole panelist in this matter on March 7, 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.

4. Factual Background

The Complainant in this administrative proceeding is a leading Saudi multinational dairy, beverage and food company headquartered in Saudi Arabia which has used the ALMARAI brand since 1977. It owns registrations of the ALMARAI brand (with device mark) including but not limited to:

Registrations for a blue ALMARAI device mark with minor variations (“the Blue Logo”) including

- Saudi Arabia trade mark Nos. 139800112 in class 29 and 139801015 in class 31 since May 20, 1978;
- European Union trade mark registrations Nos. 006925051 in classes 29, 30 and 32 since January 8, 2009 and 007589609 in class 5 since September 2, 2009; and
- United Kingdom trade mark No. UK00002504557 in class 5 since April 10, 2009.

And registrations of a white ALMARAI device mark (“the White Logo”) including

- United Arab Emirates trade mark No. 177061 registered November 5, 2014.

The Complainant has owned the domain name <almarai.com> since 1997.

The Domain Name registered in 2023 currently does not point to an active site but has been used for a site impersonating the Complainant including by copying the look and feel of the Complainant’s web site and using the Complainant’s ALMARAI Blue Logo and White Logo as mastheads on different pages on the Respondent’s web site.

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 Domain Name.

Notably, the Complainant contends that:

The Domain Name is confusingly similar to the distinctive ALMARAI element of the Complainant’s registered marks containing that word element in its entirety and adding only the generic term “milk” and the generic Top-Level Domain (“gTLD”) “.shop” neither of which prevents said confusing similarity.

The Respondent does not have any rights or legitimate interests in the Domain Name, is not commonly known by it and is not authorised by the Complainant.

The Domain Name was pointed to a site taking the look and feel of the Complainant’s web site and using the Complainant’s Blue Logo and White Logo as a masthead on different pages of the Respondent’s site which makes the Respondent’s site appear to be connected to and impersonating the Complainant. This is not a bona fide offering of goods or services. It is registration and use in opportunistic bad faith causing confusion amongst Internet users and causing disruption to the Complainant’s business in actual knowledge of the Complainant’s rights. Use of a Domain Name containing the mark of a Complainant as a parking page is not a bona fide offering of goods and services and has been held to be bad faith as passive holding.

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 trade mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the distinctive ALMARAI word element of the Complainant's registered device marks is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the Complainant's marks and each of them for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "milk", 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 Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD ".shop" is a functional element of a domain name and does not prevent confusing similarity between the Complainant's mark and the Domain Name being typically disregarded for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

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 in contention (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 Domain Name. 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 Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here impersonation/passing off through copying the look and feel of the Complainant's web site and use of the Complainant's ALMARAI mark Blue Logo and White Logo registered device marks as mastheads on the Respondent's web site can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Nor does passive holding of the Domain Name.

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.

In the present case, the Panel notes that the Respondent copied the look and feel of the Complainant's web site and used the Complainant's Blue Logo and White Logo registered device trade marks in the mastheads of pages on the Respondent's site disrupting the business of a competitor and amounting to intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. The use of the Complainant's logos shows the Respondent had and has actual knowledge of the Complainant, the Complainant's mark and the Complainant's rights, business and services.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off by means of copying the look and feel of the Complainant's site and use of the Complainant's Blue Logo and White Logo in the mastheads of pages on the Respondent's competing web site, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

The Domain Name currently points to a parked page. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 Domain Name 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, and (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trade mark, the composition of the Domain Name containing the word "milk", a principle product of the Complainant and the failure of the Respondent to respond to this Complaint, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

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 Domain Name <almaraimilk.shop> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: March 21, 2024