

ADMINISTRATIVE PANEL DECISION

Compagnie Gervais Danone v. Ayotoluwafunmi Olarinde, Dannon Group
Case No. D2024-2125

1. The Parties

The Complainant is Compagnie Gervais Danone, France, represented by Eversheds Sutherland (France) LLP, France.

The Respondent is Ayotoluwafunmi Olarinde, Dannon Group, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <dannonapi.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2024. On May 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 2024, 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 (Data Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 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 amendment to the Complaint on June 4, 2024.

The Center verified that the Complaint together with the amendment to the 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 June 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on July 8, 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

It results from the Complainant's undisputed allegations that it is a company incorporated under French law, and a subsidiary of Danone S.A., a global food and beverage group built on three businesses: Essential Dairy and Plant-Based Products, Waters and Specialised Nutrition (hereinafter "Danone"), which is a world leader in these businesses, operating in 160 countries with more than 100,000 employees around the globe. Danone is present in the food and beverage industry with iconic global and local brands including, Activia, Aptamil, Evian, Silk and, of course, Dannon and Danone.

The Complainant and its affiliates are the registered owner of several trademarks worldwide consisting of or containing DANNON and DANONE.

In particular, the Complainant's affiliate company DANONE US, LLC owns the United States of America ("U.S.") trademark No. 73357013 DANNON, registered on January 24, 1984, duly renewed and covering goods in class 29.

In addition, the Complainant uses numerous domain names consisting of the term "dannon", including the domain name <dannon.com> (registered on July 2, 1995) and domain names consisting of the term "danone", such as <danone.com> (registered on December 14, 1995) for its official websites.

The disputed domain name <dannonapi.com> was registered on January 17, 2024. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name directs to a website that purports to provide a list of computing commands which relate to "E-VerifyMe Card" and/or "E-VerifyMe".

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 its well-known trademarks DANNON and DANONE, since it comprises in its entirety, the DANNON trademark. The only difference between the disputed domain name and the DANNON trademark is the addition of the descriptive term "api" which is an abbreviation for "application programming interface" in English, which would be in relation to the computing commands the website - to which the disputed domain name resolves - purports to provide.

In addition, the Complainant contends that its trademarks DANNON (and DANONE) are distinctive and well-known worldwide.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not affiliated with the Complainant in any way. It is not an authorised dealer, distributor, or licensee of the Complainant, nor has it been otherwise allowed by the Complainant to make any use of its DANNON or DANONE trademarks or to seek registration of any domain name incorporating such trademarks. Given the undisputed worldwide fame of the DANNON and DANONE trademarks, it is not conceivable that the Respondent could possibly establish any rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, previous UDRP panels have established that the Complainant's DANNON and DANONE trademarks are distinctive and well-known globally. Furthermore, these trademarks have been in use for more than 80 years and 100 years, respectively, before the disputed domain name was registered. It is therefore inconceivable that the Respondent could have been unaware of the Complainant's trademarks at the time of registration of the disputed domain name given the fact that the Complainant had already registered and extensively used its DANNON and DANONE trademarks throughout the world. The Respondent is using the disputed domain name in bad faith to intentionally mislead Internet users by creating a likelihood of confusion with the Complainant's trademarks. The disputed domain name resolves to a website that purports to provide computing commands in relation to the E-Verify system, an official Internet-based system of the U.S. government through which employers electronically confirm the employment eligibility of their employees, which is clearly indicative of bad faith on the part of the Respondent who, intends to free ride on the reputation of the DANNON and DANONE trademarks in order to attract Internet users to the disputed domain name, with consumers or professionals being misled as to the source of the disputed domain name and potentially tricked into believing that the disputed domain name is affiliated to Danone, its products, business and trade marks.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

In accordance with section 1.4.1 of [WIPO Overview 3.0](#), as the Complainant is an affiliate of the company DANONE US, LLC that is the owner of the DANNON registration mentioned above in the Factual Background, the Panel considers that the Complainant has standing to bring this UDRP proceeding.

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

Although the addition of other term here, “api”, 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes that the disputed domain name contains the registered and well-known trademark DANNON, and that more likely than not, this trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant’s reputation by registering a domain name containing the Complainant’s trademark with the intent to mislead Internet users. While the Respondent provided Dannon Group as an organization name for the registration of the disputed domain name, that is not sufficient in itself to give rise to rights or legitimate interests in the disputed 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 shares the view of other UDRP panels and finds that the Complainant’s trademark DANNON is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant’s trademark when registering the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant’s trademark followed or preceded by the term “api”. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith, [WIPO Overview 3.0](#) section 3.1.4. The Panel shares this view.

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.

In this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (1) the nature of the disputed domain name, i.e., incorporating the well-known trademark DANNON;
- (2) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name;

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 name <dannonapi.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: July 22, 2024