

ADMINISTRATIVE PANEL DECISION

Compagnie Gervais Danone v. Condulac cab
Case No. D2024-2452

1. The Parties

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

The Respondent is Condulac cab, Mexico.

2. The Domain Name and Registrar

The disputed domain name <seminuevosdanone.com> is registered with Realtime Register B.V. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 14, 2024. On June 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 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 (redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 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 24, 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 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 16, 2024.

The Center appointed Daniel Peña as the sole panelist in this matter on July 29, 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 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 global and local brands including, ACTIVIA, APTAMIL, EVIAN, SILK, and, of course, DANNON and DANONE.

The Complainant has registered numerous trademarks consisting of, or containing the term DANONE, including in Australia, Canada, China, Egypt, France, Germany, Indonesia, Italy, Japan, Mexico, the United Kingdom, and the United States of America. Such trade mark registrations in the term DANONE include but are not limited to the following:

- International trademark DANONE No. 172526, registered on October 31, 1953, duly renewed and covering goods and services in classes 1, 5, and 29;
- French trademark DANONE No. 1690721, registered on February 7, 1992, duly renewed and covering goods and services in classes 3, 5, 21, 25, 28, 29, 30, 32, 35, 41, and 42;
- European Union Trade Mark No. 014796742, registered on March 11, 2016, duly renewed and covering goods and services in classes 29, 30, and 32;
- Mexican trademark DANONE No. 546920, registered on April 24, 1997, duly renewed and covering goods and services in class 29;
- Mexican trademark No. 872676, registered on March 23, 2005, duly renewed and covering goods and services in class 29.

The disputed domain name was registered on February 20, 2024. According to the evidence presented by the Complainant, the disputed domain name resolved to a website apparently impersonating the Complainant.

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 DANONE, since it comprises in its entirety, the DANONE trademark. The only difference between the disputed domain name and the DANONE trademark is the addition of the descriptive terms in Spanish language “semi” and “nuevos”, with the meaning of “almost new” in English. In addition, the Complainant contends that its trademark DANONE is 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 DANONE trademarks or to seek registration of any

domain name incorporating such trademarks. Given the undisputed worldwide fame of the 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 DANONE trademarks are distinctive and well-known globally. Furthermore, these trademarks have been in use for more than 100 years, 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 DANONE trademarks throughout the world.

The disputed domain name resolves to a commercial website which is bearing the Complainant's copyrighted designs and logos. Such use deliberately attracts Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant. Thus, 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.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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. Considering these requirements, the Panel rules as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks DANONE on the basis of its multiple trademark registrations, including its International trademark registrations, and those in the European Union, France, and Mexico. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 1.2.1.

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within [WIPO Overview 3.0](#), section 1.7. The Respondent's incorporation of the Complainant's DANONE trademark in its entirety in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark. Mere addition of the terms "semi" and "nuevos" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's DANONE mark because the Complainant's DANONE mark remains clearly recognizable in the disputed domain name. As noted in [WIPO Overview 3.0](#), section 1.8, "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain name because the Respondent's name is "condulac cab" which has no connection with the DANONE trademark.

The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to a commercial website that allegedly impersonates the Complainant and misrepresents that the website is owned or endorsed by the Complainant, exacerbating the Internet user confusion as to the website's affiliation to the Complainant. Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b). The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied. The Panel concludes that the Respondent deliberately chose to include the Complainant's DANONE trademark in the disputed domain name, in order to achieve commercial gain by misleading third parties, and that such use cannot be considered as a legitimate noncommercial or fair use.

The Panel further finds that the disputed domain name carries a risk of implied affiliation with the Complainant. The addition of the terms "semi" and "nuevos" in Spanish, meaning "almost new" in English, misleads consumers about the lack of relationship with the Complainant, which does not support a finding of any rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.1.

Given the above, the Panel finds that the Complainant has made out an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent knew or should have known of the Complainant's mark DANONE considering the global renown of the Complainant's prior mark and the website content targeting the Complainant's logos and products. The Panel takes note of the construction of the disputed domain name, which combines the DANONE mark and the descriptive terms "semi" and "nuevos", as well as the fact that the disputed domain name directs to a website that contains the Complainant's logo and copyrighted material. The Panel is satisfied that by directing the disputed domain name to a commercial website with the Complainant's logo and content, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. See [WIPO Overview 3.0](#), section 3.1.4. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

Having considered the Complainant's submissions and in the absence of a Response, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within paragraph 4(a)(iii) 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 <seminuevosdanone.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: August 12, 2024