

ADMINISTRATIVE PANEL DECISION

Almarai Company v. Robert Taylor, Webpods, LLC
Case No. D2024-3197

1. The Parties

The Complainant is Almarai Company, Saudi Arabia, represented by Abu-Ghazaleh Intellectual Property (AGIP), Egypt.

The Respondent is Robert Taylor, Webpods, LLC, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was initially filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2024, in regard to the domain names <almaraipoultry-eg.com>, and <almaraipoultry.com>. On August 5 and 7, 2024, the Center transmitted by email to the registrars of these two domain name requests for registrar verification in connection with them. On August 5 and 7, 2024, the registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the two domain names 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 August 7, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the registrars, requesting the Complainant to either file separate complaints for the two domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 12, 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 and the registrant of the domain name <almaraipoultry-eg.com> of the Complaint, and the proceedings commenced on August 14, 2024. In accordance with the Rules, paragraph 5, the initial due date for Response was September 3, 2024.

On August 18, 2024, the Center received an email communication from the registrant of the domain name <almaraipoultry-eg.com>. On August 19, 2024, upon request of the Complainant, the administrative proceedings were suspended for settlement discussions regarding the domain name <almaraipoultry-eg.com>. On August 20, 2024, the Center sent a Notice of Settlement to the Parties in light of the settlement agreement reached between the Complainant and the registrant of the domain name <almaraipoultry-eg.com>. On September 9, 2024, the Complainant sent an email communication to the Center confirming that the settlement regarding the <almaraipoultry-eg.com> had been implemented. Thus, on September 10, 2024, the Center informed the Parties of the dismissal of the administrative proceeding regarding the domain name <almaraipoultry-eg.com>.

On September 11, 2024, the Center notified the Parties of the reinstatement of the proceedings regarding the domain name <almaraipoultry.com> (hereinafter, the “disputed domain name”), and informed them that the new Response due date was September 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on October 2, 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 multinational dairy, beverage, and food company established in 1977, in the Kingdom of Saudi Arabia. It produces dairy products, juices, bakery, baby food, and poultry.

The Complainant is the owner of a number of trademark registrations for “ALMARAI” in different jurisdictions (the “ALMARAI trademark”), including the following:

- the European Union combined trademark ALMARAI (combined with Arabic text and design elements) with registration No. 006925051, registered on January 8, 2009, for goods in International Classes 29, 30, and 32; and
- the Egyptian combined trademark ALMARAI QUALITY YOU CAN TRUST (combined with Arabic text and design elements) with registration No. 362152, registered on August 20, 2019, for goods in International Class 29.

The Complainant is also the owner of the domain name <almarai.com>, registered on August 16, 1997, which resolves to its official website.

According to the information provided by the Registrar, the Respondent is an individual located in the United States. However, no information is provided regarding its activities.

The disputed domain name was registered on September 12, 2023. It is currently inactive. According to the evidence submitted by the Complainant, it previously redirected to the website at the domain name <webpods.com>.

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.

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's ALMARAI trademark, because it incorporates the dominant and distinctive "Almarai" element of this trademark, which is easily recognizable in the disputed domain name. The Complainant states that the addition of the term "poultry" does not eliminate the confusing similarity with the Complainant's trademark, because this term is closely linked to the Complainant's business.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, because it is not affiliated with the Complainant, has no relevant trademark rights and is not commonly known by the disputed domain name, and the Complainant has not authorized the Respondent to use the ALMARAI trademark or to register any domain name incorporating it.

The Complainant points out that the disputed domain name is currently not being associated to a website, but mail exchange ("MX") records have been activated for it and it has been used for the setting up of an email account, which creates a risk that it may be used for phishing or other types of fraud. The Complainant also refers to the use of the domain name <almaraipoultry-eg.com> and maintains that this domain name and the disputed domain name are under common control. In this regard, it points out that the two domain names were registered within 12 days of each other, that they both comprise the Complainant's ALMARAI trademark and the dictionary word "poultry", and that an email address at the disputed domain name was listed on the website at the domain name <almaraipoultry-eg.com>, which website impersonated the Complainant by using its company name, featuring the ALMARAI trademark, and copying the Complainant's logo and color scheme, and that website offered for sale counterfeit poultry products bearing an imitation of the ALMARAI trademark. According to the Complainant, all the above shows that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that it had used the ALMARAI trademark for many years when the Respondent registered the disputed domain name. The Complainant maintains that the Respondent registered the disputed domain name with knowledge of and targeting the ALMARAI trademark, which according to it is evident from the composition of the disputed domain name, and from the content of the commercial website at the domain name <almaraipoultry-eg.com>, which misrepresented itself as the Complainant, and offered for sale goods bearing the Complainant's ALMARAI brand that were the same as the Complainant's goods, and which website was under common control with the disputed domain name. According to the Complainant, the above shows that the Respondent created a likelihood of confusion with the Complainant and its ALMARAI trademark to offer counterfeit products for commercial gain. The Complainant adds that the activated MX records indicate an increased risk that the disputed domain name may be used for phishing or other illegitimate purposes.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary remarks

As mentioned in section 3 above, this proceeding initially involved also the domain name <almaraipoultry-eg.com>. As a result of a settlement reached between the Complainant and the registrant of that domain name, the proceeding was terminated in respect of it. The Complainant requested that the proceeding be continued only in respect of the disputed domain name without amending the Complaint, where a significant part of its arguments is based on the use of the domain name <almaraipoultry-eg.com> and on the allegation that it was under common control with the disputed domain name.

In this situation, and considering that neither of the Parties to the present proceeding nor the registrant of the domain name <almaraipoultry-eg.com> has objected or argued otherwise, the Panel finds no basis to exclude the Complainant's arguments related to the use of the domain name <almaraipoultry-eg.com>, and its allegation that the same domain name was under common control with the disputed domain name, as well as the evidence submitted by the Complainant in support of these arguments, and will take these allegations and evidence into account in reaching his conclusions on the merits of the Complaint.

6.2. Substantive issues

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.

The Complainant has shown rights in respect of the ALMARAI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. As discussed in section 1.10 of the [WIPO Overview 3.0](#), Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. On this basis, trademark registrations with design elements would prima facie satisfy the requirement that the complainant show "rights in a mark" for further assessment as to confusing similarity.

The ALMARAI trademark includes the text "Almarai", written in Latin script, combined with a text in Arabic script and design elements. One of the registrations of the ALMARAI trademark also includes the slogan "Quality you can trust". In the Panel's view, the "Almarai" element is the dominant element of the trademark.

The Panel finds the ALMARAI trademark is recognizable within the disputed domain name, which incorporates its "Almarai" element. Accordingly, the disputed domain name is confusingly similar to the ALMARAI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "poultry") 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 ALMARAI trademark 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.

The Complainant submits that the domain name <almaraipoultry-eg.com> and the disputed domain name were under common control. In this regard, it points out that the two domain names were registered within 12 days of each other, that they both comprise the Complainant’s ALMARAI trademark and the dictionary word “poultry”, and that an email address related to the disputed domain name was listed on the website at the domain name <almaraipoultry-eg.com>, which website impersonated the Complainant by using its company name, featuring the ALMARAI trademark, and copying the Complainant’s logo and color scheme, and that website offered for sale counterfeit poultry products bearing an imitation of the ALMARAI trademark. These two domain names are indeed very similar to each other and were both registered in September 2023. The evidence submitted by the Complainant shows that the domain name <almaraipoultry-eg.com> indeed resolved to a website that featured a trademark very similar to the Complainant’s ALMARAI trademark and offered poultry products that fall within the scope of protection of the ALMARAI trademark and are being offered by the Complainant, without including any disclaimer for the lack of relationship with the Complainant. The evidence also shows that the same website indicated a contact email address associated with the disputed domain name, and also referred to a Facebook profile that included a website address at the disputed domain name.

Taking all the above into account, and considering that neither the Respondent, nor the registrant of the domain name <almaraipoultry-eg.com> have denied the Complainant’s allegations that the two domain names were under common control or the evidence in support of this allegation, the Panel accepts that it is more likely than not that this was indeed so. The use of the domain name <almaraipoultry-eg.com> for a website that impersonated the Complainant and offered competitive products while referring to a contact email address and to a Facebook profile that contained a web address at the disputed domain name supports the conclusion that the two domain names have been jointly used as part of the same scheme that targeted the Complainant’s ALMARAI trademark for commercial gain. Such conduct cannot support a finding of rights or legitimate interests of the Respondent in the disputed domain name. [WIPO Overview 3.0](#), section 2.13.1.

The Panel therefore finds that 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.

The disputed domain name is confusingly similar to the Complainant's ALMARAI trademark and has MX records activated for it. As discussed in the section on rights and legitimate interests, the evidence supports a conclusion that the disputed domain name and the domain name <almaraipoultry-eg.com> and its associated website were under common control and have been jointly used for a scheme that targeted the Complainant's ALMARAI trademark for the offering of poultry products that compete with the Complainant's products for commercial gain, where an email address and a web address at the disputed domain name were indicated as contact addresses. This supports a finding that by using the disputed domain name for communication purposes, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to a website that was under common control with the disputed domain name, by creating a likelihood of confusion with the Complainant's ALMARAI trademark as to the source, sponsorship, affiliation, or endorsement of such website and of the products offered on it.

The Panel therefore 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 <almaraipoultry.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: October 16, 2024