

ADMINISTRATIVE PANEL DECISION

Wortmann KG Internationale Schuhproduktionen v. Zhang Qiang and Amelie Bowen

Case No. D2024-3235

1. The Parties

The Complainant is Wortmann KG Internationale Schuhproduktionen, Germany, represented by Ebrand Services, Poland.

The Respondents are Zhang Qiang, China, and Amelie Bowen, Italy.

2. The Domain Names and Registrar

The disputed domain names <tamarisargentina.com>, <tamarisbelgique.com>, <tamarisbelgiumsale.com>, <tamarisbulgaria.com>, <tamarischile.com>, <tamariscolombia.com>, <tamarisczshop.com>, <tamarisgreeceonline.com>, <tamarisireland.com>, <tamarisisrael.com>, <tamarisjapan.com>, <tamariskuwait.com>, <tamarislatvija.com>, <tamarislietuva.com>, <tamarisméxico.com> [<xn--tamarismxico-ieb.com>], <tamarisnederlandshop.com>, <tamarisnorge.com>, <tamarisperu.com>, <tamarisportugal.com>, <tamarisromania.com>, <tamarisuksale.com>, <tamarisuruguay.com>, and <tamarishungarysale.com> are registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 13, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on September 18, 2024.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on September 24, 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 September 23, 2024, the Center received a supplemental filing from the Complainant requesting the addition of the disputed domain name <tamarishungarysale.com> (the "Additional Domain Name"). On October 14, 2024, the Panel requested the Center to obtain registrar verification for the Additional Domain Name from the concerned Registrar.

On October 16, 2024, the Center transmitted by email to the Registrar, Paknic (Private) Limited, a request for registrar verification in connection with the Additional Domain Name. On October 17, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent Zhang Qiang is listed as the registrant of the Additional Domain Name and providing the contact details.

On October 18, 2024, the Panel issued the Procedural Order No. 1 giving the Respondents an opportunity to respond to the Complainant's submission, which was attached to Procedural Order No. 1. The Respondents did not submit any response.

4. Factual Background

The Complainant is the European shoe production and distribution company selling the products under multiple brands, including Tamaris, Marco Tozzi, Caprice, Jana and s.Oliver Shoes, in over 70 countries worldwide.

The TAMARIS trademark is a fashion brand developed in Germany, specializing in women's shoes, clothing, and accessories. The Complainant started manufacturing shoes under the TAMARIS trademark in 1967.

The Complainant is the owner of the following registrations of the TAMARIS trademark, among others:

- International Trademark Registration No. 1110548 for TAMARIS, registered on January 30, 2012, for goods in International Classes 3, 14, 18, 21, and 25;
- International Trademark Registration No. 896489 for TAMARIS, registered on July 13, 2006, for goods in International Class 25;
- United States of America Trademark Registration No. 1403206 for TAMARIS, registered on July 29, 1986, for goods in International Class 25;
- European Union Trademark Registration No. 007402381 for TAMARIS, registered on May 20, 2009, for goods in International Class 14.

The Complainant is the holder of the multiple domain names incorporating the TAMARIS trademark in different country code and generic Top-Level Domains ("ccTLDs" and "gTLDs").

All the disputed domain names were created on June 2, 2023, except for the disputed domain names <tamarisjapan.com> and <tamariskuwait.com> which were created on June 1, 2023, and the disputed domain name <tamarismexico.com> which was created on May 31, 2023. According to the evidence submitted by the Complainant, the disputed domain names have been resolving to commercial websites which impersonate the Complainant's official website. Some of the disputed domain names are geographically blocked and the associated websites are only visible from certain countries, or by using a VPN.

On August 1, 2024, the Complainant attempted to block the disputed domain names by contacting all email addresses derived from Whois data and also those provided by the registrar. No response has been received to the Complainant's letters.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant contends that it owns rights in the TAMARIS trademark.

The Complainant further alleges that the disputed domain names are confusingly similar to the TAMARIS trademark which they contain in its entirety with the addition of some additional terms, which mostly constitute geographical terms or refer to the sales.

No rights or legitimate Interests

The Complainant asserts that the Respondents lack rights or legitimate interests in the disputed domain names.

The Complainant claims that it has not licensed or authorized the Respondents to register or use the disputed domain names, nor are the Respondents affiliated to the Complainant in any form.

There is no evidence demonstrating that the Respondents might be commonly known by the disputed domain names.

There is no evidence of the Respondents' use of the disputed domain names in connection with a bona fide offering of goods or services, nor any evidence of a legitimate noncommercial or fair use of the disputed domain names by the Respondents. Moreover, the disputed domain names resolve to websites impersonating the Complainant.

Registered and used in bad faith

The Complainant contends that the disputed domain names have been registered and are being used in bad faith.

Third, the Complainant asserts that the disputed domain names were registered and are being used in bad faith.

The Complainant contends that the Respondents could not have been unaware of the TAMARIS trademark when it registered the disputed domain names, which are confusingly similar to the Complainant's trademark. Furthermore, the Respondents' actual knowledge of the Complainant and its trademark is clearly demonstrated by the publication of the Complainant's trademark on the commercial websites under the disputed domain names on which the Complainant's products are offered for the discounted price in absence of any disclaimer of non-affiliation with the Complainant. The Respondents were clearly well aware of the Complainant and its trademark and registered the disputed domain names with such trademark in mind, in order to capitalize on the reputation of the Complainant and its trademark to attract Internet users.

Furthermore, the Complainant contends that the websites invited Internet users to open an account, which demonstrate that the Respondents, in all likelihood, intended to obtain users' personal information.

B. Respondents

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

6. Discussion and Findings

Procedural Issue: addition of the additional domain name

The Complaint was originally submitted regarding the disputed domain names <tamarisargentina.com>, <tamarisbelgique.com>, <tamarisbelgiumsale.com>, <tamarisbulgaria.com>, <tamarischile.com>, <tamariscolumbia.com>, <tamarisczshop.com>, <tamarisgreeceonline.com>, <tamarisireland.com>, <tamarisisrael.com>, <tamarisjapan.com>, <tamariskuwait.com>, <tamarislatvija.com>, <tamarislietuva.com>, <tamarismexico.com>, <tamarisnederlandshop.com>, <tamarisnorvege.com>, <tamarisperu.com>, <tamarisportugal.com>, <tamarisromania.com>, <tamarisuksale.com>, and <tamarisuruguay.com>. After the notification of Panel appointment, the Complainant requested the addition of the disputed domain name <tamarishungarysale.com>.

The Panel considers that it is reasonable to accept the addition of this additional disputed domain name to the Complaint as all the disputed domain names involve the Complainant's TAMARIS trademark and have been registered by the Respondents almost all on the same date. The Panel has duly notified the Respondents about the addition of the Additional Domain Name and provided the Respondents with enough time as to submit its contentions regarding the Additional Domain Name. While the Complainant has submitted an Amended Complaint referring to all the disputed domain names the Respondent has not submitted any communication. The Panel finds that the addition of the Additional Domain Name to the present proceeding has been fair and equitable to all the parties.

Procedural Issue: Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

With reference to the above, it is reasonable to conclude that the disputed domain names are more likely than not subject to common control given that the Respondents' websites shared substantially the same content and layout (save for textual elements being in different languages). This cannot be coincidental, and it is highly likely that the disputed domain names are being controlled by a single entity, and thus are subject to common control. See *Eli Lilly and Company v. Darren K. Headley, Tim B. Hartman, Lana D. Cummings, Dante K. Ruiz, Esther G. Roberts, Joey W. Durfee*, WIPO Case No. [D2013-1303](#) and the cases therein cited. Furthermore, it should be recognized that all the disputed domain names belonging to the Respondents each reproduce the Complainant's TAMARIS trademark, have been registered through the same Registrar, and within short period of time. Third, all the disputed domain names are composed of the Complainant's trademark together with a geographic indicator.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

Substantive Matters

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 3.0](#), section 1.7.

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

The disputed domain names consist of the Complainant’s TAMARIS trademark followed by the geographical and/or generic term followed by the generic Top-Level Domain (“gTLD”) “.com”.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Finally, for the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD, see section 1.11.1 of the [WIPO Overview 3.0](#).

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

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 names. 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 names such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent is commonly known by the disputed domain names, nor is there any evidence of use or demonstrable preparations to use the disputed domain names for a bona fide offering of goods or services.

There is no evidence of legitimate noncommercial or fair use of the disputed domain names, either. The fact that the disputed domain names resolve to commercial websites impersonating the Complainant, with the Complainant's discounted products offered for sale and without any disclaimer stating no affiliation with the Complainant, confirms that the Respondent, was not intending to use these disputed domain names in the framework of a bona fide offering of goods or services. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Furthermore, the disputed domain names, being virtually identical to the Complainant's company name and TAMARIS trademark, carry a risk of implied affiliation and affirm the Respondent's intention of taking unfair advantage of the likelihood of confusion between the disputed domain names and the Complainant's trademarks. [WIPO Overview 3.0](#), section 2.5.1.

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.

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.

The Panel accepts that the Complainant's use and registration of the TAMARIS trademark long predated the Respondent's registration of the disputed domain names. The Respondent clearly knew of the Complainant's business and trademark as the disputed domain names resolve to websites purportedly offering products bearing the Complainant's trademark and impersonating the Complainant.

As a result, the Panel finds that the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the disputed domain names.

Paragraph 4(b) of the Policy considers that a domain name is used in bad faith when, by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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 the respondent's website or location.

In the present case, the Panel notes that the disputed domain names, which reproduce the TAMARIS trademark combined with the geographic and generic terms followed by the TLD ".com" falsely suggests that Internet users will find a website affiliated with the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant and thereby attracts Internet users and inspires confidence. The Panel concludes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

In the present case, the disputed domain names resolve to websites impersonating the Complainant, reproducing the Complainant's trademarks, and collecting the personal information about Internet users.

Panels have held that the use of a domain name for illegal activity here, phishing, impersonation/passing off, 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 disputed domain names constitutes 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 disputed domain names <tamarisargentina.com>, <tamarisbelgique.com>, <tamarisbelgiumsale.com>, <tamarisbulgaria.com>, <tamarischile.com>, <tamariscolombia.com>, <tamarisczshop.com>, <tamarisgreeceonline.com>, <tamarisireland.com>, <tamarisrael.com>, <tamarisjapan.com>, <tamariskuwait.com>, <tamarislatvija.com>, <tamarislietuva.com>, <tamarisméxico.com> [<xn--tamarismxico-ieb.com>], <tamarisnederlandshop.com>, <tamarisnorge.com>, <tamarisperu.com>, <tamarisportugal.com>, <tamarisromania.com>, <tamarisuksale.com>, <tamarisuruguay.com>, and <tamarishungarysale.com> be cancelled.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: October 31, 2024