

ADMINISTRATIVE PANEL DECISION

Almarai Company v. almarairfresh
Case No. D2024-4281

1. The Parties

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

The Respondent is almarairfresh, Saudi Arabia.

2. The Domain Name and Registrar

The disputed domain name <almarairfresh.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amended Complaint on October 24, 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 October 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2024. The Response was filed with the Center on November 14, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on November 28, 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, founded in 1977, is a Saudi dairy, beverage, and food company. It uses the trademark ALMARAI to provide its products and owns trademark registrations for ALMARAI worldwide such as the following:

1. Saudi Arabian Trademark Registration No. 139800112, registered on May 20, 1978;
2. Saudi Arabian Trademark Registration No. 139801015, registered on May 20, 1978;
3. European Union Trademark Registration No. 006925051, registered on January 8, 2009.

The Complainant is the owner of the domain name <almarai.com> since 1997.

The disputed domain name was registered on May 30, 2023, and resolves to a website for the sale of poultry products.

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 a trademark or service mark in which the Complainant has rights. The Complainant also contends that its trademark is notably known for its food and beverage products and has been recognized by the public as a symbol that identifies and distinguishes the Complainant's business activities and services provided by the Complainant. The disputed domain name incorporates the Complainant's trademark. The addition of the term "fresh" does not eliminate confusing similarity. On the contrary, it increases confusion as it is linked with the Complainant's products. The generic Top-Level Domain ("gTLD") ".com" does not affect the assessment whether it is identical or confusingly similar.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent owns any rights related to the disputed domain name or that it has prior rights in the trademark. The Complainant did not authorize the Respondent to use its trademark nor is there a relationship between the Complainant and the Respondent. The Respondent is not commonly known by the disputed domain name. There is no bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name is used in connection with a website that previously used and copied the Complainant's trademark. It also offers products that compete with those of the Complainant. The Respondent knew of the Complainant's trademark when it registered the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent must have had knowledge of the Complainant's trademark as the Complainant's trademark was used since 1977, registered since 1978 and is well-known. The Respondent is using the disputed domain name in order to direct Internet users to its website.

B. Respondent

The Respondent submits that “almarai” is an Arabic word which means meadow or grass. The combination of the words “almarai” and “fresh” reflects the uniqueness of the Respondent’s brand and the term “fresh” distinguishes the disputed domain name. Furthermore, the Respondent’s activity is in the poultry farming and egg production, which is different from the Complainant’s business that is dairy. As the activities are different, there can be no consumer confusion.

The Respondent contends that the disputed domain name was registered in good faith and represents a unique business identity. The trademark “Almaraifresh for Poultry” is registered under registration number 144300803.

The assessment should be for the overall design and impact of a trademark rather the isolated similarities. The Respondent submits that its domain name and trademark are visually and contextually distinct from the Complainant’s trademark, ALMARAI and the word “fresh” is a unique identifier.

The Respondent argues that it has invested substantially in building their brand “Almaraifresh”. Cancelling the disputed domain name will cause significant losses. The Complainant’s request should be denied as the Complainant cannot have exclusivity over a common Arabic term.

Furthermore, the Respondent submits the following arguments in respect of each of the elements:

- A. The disputed domain name has 5 additional letters, which differentiates its meaning and makes it unique.
- B. The Respondent’s product is different. The disputed domain name is a single word and the word “marai” means meadow or grass in Arabic. The Respondent has been in the market for three years and has grown through hard work. The disputed domain name is in accordance with its trade name. The Respondent does not intend to tarnish the Complainant’s reputation.
- C. The Respondent has registered the disputed domain name in good faith as it is unique and the Respondent has a different business. Almarai has a meaning and cannot be owned by anyone. “Almaraifresh for Poultry” is reserved with the Saudi Intellectual Property Authority under number 144300803.

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 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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.

Although the addition of other terms here, “fresh” 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. The Respondent argues that it has a registration for “Almarai Fresh for Poultry”. The Panel notes that Annex 1 is submitted as proof of such registration. The document submitted is not clear and in any case, even if it confirms the registration of “Almarai Fresh for Poultry”, the disputed domain name does not reflect the aforementioned trademark/tradename. Furthermore, the Complainant submitted an evidence that the Respondent’s trademark is a logo trademark that does not bear “almarai” in any manner.

Panels have held that the use of a domain name for passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent must have been aware of the Complainant’s trademark and has attempted to impersonate the Complainant as the Complainant has been in operation for more than forty years and is a market leader in Saudi Arabia where the Respondent seems to be based. Also, the products displayed on the website of the Respondent are of the same type as those offered by the Complainant. The Panel notes the Respondent’s argument that its activity is different but disagrees with such contention. Although the Complainant is primarily known for its dairy products, it does also sell eggs.

The Panel also notes the Respondent’s argument that the word “almarai” has a dictionary meaning but such argument fails as the Complainant’s trademark ALMARAI is well-known in Saudi Arabia and its neighboring countries. Therefore, the choice made by the Respondent to use “almarai” indicates that this was done intentionally in order to benefit from the reputation of the Complainant and its trademark.

The Complainant submitted that the Saudi Arabian Ministry of Commerce ordered the cancellation of the Respondent’s “Almarai Fresh Poultry” tradename due to its similarity with the Complainant’s tradename.

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

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: December 12, 2024