

ADMINISTRATIVE PANEL DECISION

AGAVE VENTURES LLC v. mesut erdogan

Case No. D2024-4382

1. The Parties

The Complainant is AGAVE VENTURES LLC, United States of America (“United States”), represented by Wyatt, Tarrant & Combs, United States.

The Respondent is mesut erdogan, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <casalunazul.com> (the “Disputed Domain Name”) is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 26, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 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 28, 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 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 20, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on December 3, 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, AGAVE VENTURES LLC, is a United States company operating in the tequila business.

The Complainant is the owner of several trademarks including the following:

- LUNAZUL, United States word mark registered under No. 3269778, on July 24, 2007, in class 33;
- LUNAZUL, international word mark registered under No. 1217604, on August 12, 2014, in class 33.

The Complainant also applied to register the mark CASA LUNAZUL with the United States Patent and Trademark Office on September 26, 2024.

The Disputed Domain Name was registered on the same day. The Disputed Domain Name resolves to a parking page offering the Disputed Domain Name for sale for USD 2,850.

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 trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no legitimate interests in respect of the Disputed Domain Name as the Respondent:

- has made no bona fide offering of goods and services;
- is not commonly known by the Disputed Domain Name;
- is not making noncommercial fair use of the Disputed Domain Name;
- is offering the Disputed Domain Name for sale at an exorbitant cost despite having no legitimate rights to the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent opportunistically registered and used the Disputed Domain Name for purposes of profit at the expense of the Complainant and its rights in the CASA LUNAZUL mark.

B. Respondent

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

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.

Based on the available record, the Panel finds 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 Panel observes that the entirety of the LUNAZUL mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of another term – here, "casa" – 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.

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, 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 Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "mesut erdogan". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term,

such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant's LUNAZUL trademark in its entirety and merely adds the term "casa", which translates to "house". In the Panel's view, this Spanish term can be easily linked to the Complainant's tequila business as it could be considered to refer to the "house" producing the beverage. Moreover, the Panel observes that the Complainant applied to register the mark CASA LUNAZUL with the United States Patent and Trademark Office on the same date the Disputed Domain Name was registered. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

The Disputed Domain Name resolves to a parking page offering the Disputed Domain Name for sale for USD 2,850. Given the nature of the Disputed Domain Name and the circumstances mentioned above, the Panel finds that the offering for sale does not constitute a legitimate noncommercial or fair use of the Disputed Domain Name. [WIPO Overview 3.0](#), section 2.5.1.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, 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.

The Panel finds that the following circumstances serve as indication of bad faith registration and use:

- the Disputed Domain Name incorporates the Complainant's LUNAZUL trademark in its entirety and combines it with a term directly referring to the Complainant's business;
- the Disputed Domain Name is identical to a trademark application filed by the Complainant on the same date the Disputed Domain Name was registered;
- some of the Complainant's trademarks predate the registration of the Disputed Domain Name by more than 15 years;
- the Disputed Domain Name resolves to a parking page offering the Disputed Domain Name for sale for USD 2,850;
- the Respondent did not take part in the administrative proceedings.

Based on the available record, 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 <casalunazul.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: December 17, 2024