

ADMINISTRATIVE PANEL DECISION

Le Duff Industries v. Domain Administrator, Fundacion Privacy Services LTD
Case No. D2023-1109

1. The Parties

The Complainant is Le Duff Industries, France, represented by Scan Avocats AARPI, France.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <labridor.com> (the “Disputed Domain Name”) is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 14, 2023, 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 March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on April 28, 2023. 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, Le Duff Industries, is active in bakery manufacturing and bread production. The Complainant belongs to GROUPE LE DUFF that has 1.550 restaurants and bakeries in 100 countries worldwide and serves 1.000.000 customers daily.

The Complainant is the owner of various registered trademarks consisting of or including the term BRIDOR, such as the following:

- BRIDOR, French word trademark No. 1416167, filed and registered since June 29, 1987, in classes 30 and 43;
- BRIDOR, International word trademark registration No. 524007 filed and registered since June 27, 1988, in classes 30 and 42;
- BRIDOR, United States of America word trademark No. 73742598, registered on March 21, 1989, in class 30.

The Disputed Domain Name was registered on August 23, 2022, and resolves to a parking page including pay-per-click ("PPC") links.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant:

- the Complainant has never given any authorization or permission to the Respondent to register or to use its trademarks BRIDOR;
- the Respondent is not in any way related to the Complainant. It is not an authorized distributor of the Complainant and it does not carry out any activity for or has any business with it;
- the Respondent is not currently and has never been known under the name BRIDOR.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent could not have been unaware of the Complainant's prior marks given the renown of these marks. The Complainant also claims that the mere absence of right or legitimate interest of the Respondent should point out that the Disputed Domain Name has not been registered in good faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's BRIDOR marks have been registered and used in relation to the Complainant's bakery products and services.

The Disputed Domain Name incorporates the Complainant's BRIDOR trademark in its entirety and adds the word "la" as a prefix. Where 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's BRIDOR marks.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

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 "Domain Administrator" from the organisation "Fundacion Privacy Services LTD". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or

endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's BRIDOR trademark in its entirety, simply preceding it with the term "la". Although the Panel finds that the Disputed Domain Name may be considered as referring to different terms or concepts, one plausible option is that the prefix "la" is seen as the French translation of the English word "the". In the Panel's view, this is especially so given the French roots and activities of the Complainant. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

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, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Disputed Domain Name appears to resolve to a parking page containing PPC links such as "Lab Testing" and "B2B Travel Booking System".

UDRP panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark (see section 2.9 of the [WIPO Overview 3.0](#)).

In the present case, the Panel observes that the Disputed Domain Name does not consist of dictionary words to which the PPC links could refer. Given the full incorporation of the Complainant's mark in the Disputed Domain Name, the Panel finds that such sponsored links may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

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.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. Some of the Complainant's marks predate the Disputed Domain Name by more than 30 years and the Panel observes that previous UDRP panels have already acknowledged that the Complainant's BRIDOR mark enjoys at least some level of recognition (see, e.g., *Le Duff Industries v. Contact Privacy Inc. Customer 1242315520 /*

Karen Skipper, WIPO Case No. [D2018-1677](#); *Le Duff Industries contre [Nom anonymisé]*, WIPO Case No. [D2018-1102](#)). In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

According to evidence provided by the Center, the Respondent uses the Disputed Domain Name to resolve to a parking page containing PPC links.

Previous UDRP panels have consistently found that the mere registration of domain names that are confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:

- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;
- the lack of a respondent's own rights to or legitimate interests in a domain name (see section 3.1.4 of the [WIPO Overview 3.0](#)).

While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the Disputed Domain Name that is confusingly similar to the Complainant's trademarks (as is the case here) to obtain click-through-revenue constitutes bad faith use (see *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#)).

Finally, it appears that the Respondent used a privacy service when registering the Disputed Domain Name. A privacy shield is usually lifted at the start of the present proceedings but in this case, the Registrar confirmed that the name of the Respondent is "Domain Administrator" from the organisation "Fundacion Privacy Services LTD". In the Panel's view, this indicates that the Respondent took active steps to conceal his/her identity. In combination with the above, this supports the finding of bad faith registration and use of the Disputed Domain Name (see section 3.6 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <labridor.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: May 12, 2023