

## **ADMINISTRATIVE PANEL DECISION**

Alfa Laval Corporate AB v. Adrian Richie

Case No. D2023-2016

### **1. The Parties**

The Complainant is Alfa Laval Corporate AB, Sweden, represented by Advokatbyrå Gulliksson AB, Sweden.

The Respondent is Adrian Richie, Switzerland.

### **2. The Domain Name and Registrar**

The disputed domain name <lafalaval.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 9, 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 May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 15, 2023.

The Center appointed Olga Zalomyi as the sole panelist in this matter on July 7, 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 is a Swedish company specializing in heat transfer, centrifugal separation and gas and fluid handling products and services across many industries, including the marine environment, food and energy sectors. The Complainant owns numerous trademark registrations for the ALFA LAVAL mark, such as the following:

- The Swedish trademark ALFA LAVAL, No. 6089, registered on December 13, 1897;
- The United States of America trademark ALFA LAVAL, No. 0764251, registered on February 4, 1964.

The Respondent registered the Domain Name on March 9, 2023. The Domain Name does not direct to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions can be summarized as follows:

The Complainant states that the Domain Name is confusingly similar to its well-known ALFA LAVAL trademark and its domain names associated with the mark because except for the swap between the letters "a" and "l", the Domain Name is identical to the Complainant's ALFA LAVAL trademark. The Complainant contends that the addition of the generic Top-Level Domain ("gTLD") ".com" should be disregarded from the determination of confusing similarity.

The Complainant contends that the Respondent is passively holding the Domain Name, which does not constitute use of the Domain Name in connection with *bona fide* offering of goods or services. The Complainant asserts that the Respondent is not commonly known by the Domain Name because the Respondent does not run any business under the name "lafalaval" / "lafa laval" and has never used such expression to identify any products or services. The Complainant contends that it did not grant the Respondent a license or an authorization to use the Complainant's ALFA LAVAL trademark for registration of the Domain Name.

The Complainant states that the Respondent registered and is using the Domain Name in bad faith because the Respondent has intended to attract for its own gain Internet users to its own website or online location by creating a likelihood of confusion with the Complainant's mark and website as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's website or location. The Complainant contends that the Respondent's passive holding of the Domain Name does not prevent finding of bad faith for the following reasons: the Complainant's ALFA LAVAL trademark is well-known, so the Respondent registered the Domain Name to profit from the Complainant mark's reputation; the Respondent provided false or invalid contact information; there is no conceivable good faith use of the Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i)); and

- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and
- (iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

#### **A. Identical or Confusingly Similar**

The evidence on file shows that the Complainant owns trademark registrations for the ALFA LAVAL trademark and, as a result, has rights in the ALFA LAVAL trademark pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Complainant's ALFA LAVAL trademark. "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."<sup>1</sup> The generic Top-Level domain ("gTLD") is disregarded under the confusing similarity test.<sup>2</sup> Here, the Respondent interchanged the letters "l" and "a" in the Domain Name to make it visually indistinguishable from the Complainant's trademark. Because the Domain Name consists of an intentional misspelling of the Complainant's mark and the gTLD ".com" is excluded from the confusing similarity analysis, the Panel finds the Domain Name is confusingly similar to the Complainant's ALFA LAVAL mark.

The Complainant has satisfied the first element of the UDRP.

#### **B. Rights or Legitimate Interests**

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Respondent has been commonly known by the Domain Name. The Domain Name is registered in the name of Adrian Richie.

The Complainant contends and the Respondent does not dispute that the Complainant has not licensed or permitted the Respondent to use the Complainant's ALFA LAVAL trademark in domain names, or for any other purpose.

There is no evidence that the Respondent is using the Domain Name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the Domain Name. The Domain Name does not direct to any active website. There is also no evidence of the Respondent's use or preparations to use the Domain Name in connection with a *bona fide* offering of goods or services. Nor is the Respondent making a legitimate noncommercial or fair use of the Domain Name. When

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<sup>1</sup> Section 1.9, [WIPO Overview 3.0](#).

<sup>2</sup> Section 1.11.1, [WIPO Overview 3.0](#).

accessing fair use, UDRP Panels usually look at the following factors: if a response is filed, whether the respondent provides false contact information or engages in cyberflight, and whether the respondent has engaged in a pattern of trademark-abusive domain name registrations.<sup>3</sup> Here, the Respondent failed to file a response, provided incorrect contact information and has been engaged in a pattern of trademark abusive domain name registrations.<sup>4</sup>

The Panel therefore, finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent<sup>5</sup>. Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP<sup>6</sup>.

### **C. Registered and Used in Bad Faith**

Under the third UDRP element, the Complainant is required to prove that the Domain Name was registered and is being used in bad faith.

First, given that the Domain Name was registered in 2023, over a hundred of years after the Complainant obtained its trademark registrations for the ALFA LAVAL mark, it is likely that the Respondent knew of the Complainant's trademark rights. Second, the Respondent has been a Respondent in two prior UDRP cases involving domain names that contain third party marks to which he is not entitled. Third, the Respondent failed to provide any evidence-backed rationale for registering the Domain Name. Therefore, it is likely that the Respondent registered the Domain Name in bad faith.

The Domain Name is passively held. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain name will be considered to be in bad faith: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel finds that passive holding of the Domain Name does not prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the Domain Name. The Complainant's trademark is distinctive and widely used in commerce.

Further, bad faith registration and use of a domain name can be established by a showing of circumstances indicating that the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. See UDRP, paragraph 4(b)(ii). The Respondent has been found by previous UDRP panels to have engaged in a pattern of registering domain names to prevent the owners of marks from registering them<sup>7</sup>. The Respondent's similar course of conduct here with respect to the Complainant's ALFA LAVAL trademark justifies a finding of bad faith registration and use under the terms of paragraph 4(b)(ii).

The Complainant has satisfied the third element of the UDRP.

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<sup>3</sup> Section 2.5.3, [WIPO Overview 3.0](#).

<sup>4</sup> *Technip France v. ADRIAN Richie*, WIPO Case [D2023-0835](#); *Sanofi v. Adrian Richie*, WIPO Case No. [D2021-3032](#).

<sup>5</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>6</sup> *Id.*

<sup>7</sup> *Technip France v. ADRIAN Richie*, WIPO Case [D2023-0835](#); *Sanofi v. Adrian Richie*, WIPO Case No. [D2021-3032](#).

## 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 Domain Name, <lafalaval.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: July 21, 2023