



Arab Center for Dispute Resolution

ADMINISTRATIVE PANEL DECISION

EICMP vs. Mr. David Wernery
Case No. A2019-0018

1. The Parties

The Complainant is Emirates Industries for Camel Milk and Products “Camelicious” - EICMP

The Respondent is Mr. David Wernery

2. The Domain Name and Registrar

The disputed domain name is <Camelicious.com> registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed on June 19, 2019. The Complainant elected a three-member panel on July 31, 2019.

Service took place under the rules by email to the registered address given by the respondent.

No response was filed within the time period required under the rules, or at all.

The panel was selected and confirmed on August 28, 2019.

On August 29, 2019 the Panel requested further information from the Complainant. This was not forthcoming.

4. Factual Background

The Complainant is a company incorporated in the UAE, and doing business there since 2004 and owner of the registered trade mark being the stylized word “Camelicious,” and its equivalent in Arabic, registered in the UAE in May 2006 in class 29 for dairy related products including butter and milk products.

The Complainant also registered the trade mark in many countries between the years 2014-2017, including Bahrain, the European Union, Jordan, Kuwait, Malaysia, Oman and Qatar and Russia as well as in the US, where it was registered in classes 29 and 30

That US registration notes that the word, Camelicious, has no meaning in any foreign language or in English. It is a fanciful mark made up of the words “Camel” and “delicious” and is a play on words in reference to the product of the Complainant, which is a camel milk product.

The Complainant registered the domain name Camelicious.ae at some point in 2004. We cannot be certain of the date as the WHOIS data omits it.

The domain name in dispute here, Camelicious.com, was registered by and remains owned by, Mr. David Wernery – the Respondent --and was registered on December 2004 but does not resolve to any website and has been passively held since registration.

The Complainant says that the Respondent was a legal advisor engaged by the Complainant and that the disputed domain name was registered by the Respondent on behalf of, or as agent or fiduciary for the Complainant and/or that the Complainant is the true or beneficial owner of the disputed domain name and that the Complainant has demanded the transfer of the disputed domain name.

The Respondent allegedly responded with an offer to sell the disputed domain name at a sum over cost.

The Panel requested the correspondence between the parties, but this has not been provided.

5. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainant to prove all three of the following elements to be entitled to the relief sought: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first limb of the UDRP Policy at paragraph 4 (a) (i) requires that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights.

The suffix or gTLD is ignored for this similarity analysis under the UDRP.

Here, the disputed domain name is “Camelicious” and this is the English portion of the registered mark of the Complainant. That mark also includes the same word in Arabic.

The test for identity is strict and therefore, in this case the disputed domain name is similar to the Complainant's registered name and mark.

The Complainant has met the first limb of the Policy and shown that it has registered trade mark rights in the mark, Camelicious.

However, the Panel notes that all of the applications for the registered marks were filed after the disputed domain name's registration. This will be considered further below in relation to the third Policy limb –namely bad faith.

Since the disputed domain name is similar to the trade marks the first requirement of the UDRP is fulfilled.

B. Rights or Legitimate Interests

The Complainant says that the Respondent was a legal advisor to their company.

Indeed, it appears from the Respondent's email address that he worked for a firm of start-up advisors called Artemis Associates. They appear from online information, cached from their old website, to assist and advise on company incorporations and applications for licenses and business structuring and launches. This is publicly available information and the Panel visited the website at artemis-associates.ae on 6 October 2019, that site now resolves to a business called Tridentech Trading.com at www.tridentechtrading.com. That business shares the same address as the Respondent's registered address for the disputed domain name,

The Respondent has not come forward to provide any explanation for why he registered the disputed domain name and whether it was done at the instruction of and/or for the Complainant.

The Complainant failed to provide the Panel with the requested correspondence between the parties and the Complainant has the burden of proof and must make a prima facie showing.

There is no evidence other than testimony from the Complainant. However, it is relevant for the Panel to consider issues that arise on the very face of the case. Here that includes the fact that the trade mark in question is highly fanciful and distinctive. It has no ordinary or common meaning in English. The selection can hardly be accidental or coincidental or a descriptive or fair use in that sense.

The Respondent as an individual is not known by the name, nor has he any obvious license –or indeed has he shown any use (bona fide or fair or otherwise).

The Panel finds that the Complainant has shown that the Respondent has no rights or legitimate interests in the Domain Name. Therefore the second element of the UDRP is fulfilled.

C. Registered and Used in Bad Faith

As noted above, there is no use in this case by the Respondent, other than passive holding, however, that is no longer determinative and all factors will be considered in the analysis of bad faith.

Furthermore, the Respondent, as a business or legal advisor to the Complainant, should have known that the mark was selected by and to be used by the Complainant.

Indeed, it is highly likely that he was asked to obtain the .com for the Complainant in connection with its set-up or that he did so with knowledge of the Complainant's business plans. If prior to launch, that would have been confidential business information and would have been imparted in confidence. The Complainant also asserts that the Respondent failed, refused or neglected to transfer the domain name when requested and sought a sum over out of pocket costs.

One of the established grounds of bad faith under the Policy is a showing that respondent registered a domain name primarily for the purpose of selling it to the complainant/owner for a sum in excess of the out of pocket costs.

The Complainant asserts there was such a discussion with the Respondent about returning or transferring the disputed domain name and a sum over cost was sought. No evidence except testimony was provided however. The Complainant should have submitted the written communication where the sum was sought.

We do note however the Respondent decided not to come forward with an answer.

As to the fact that the disputed domain name was registered prior to the trade mark registration(s) and while this usually means bad faith will not be found, there is a recognized exception under the UDRP where a domain name is registered in anticipation of trade mark rights, this can occur before a launch or a merger or based on inside knowledge gained by an employee or consultant.

If the facts asserted by the Complainant as to the relationship between the parties are true, this may be squarely applicable here. See the WIPO overview 3.0 at paragraph 3.8.2.

In the absence of any answers or a denial and in all of the circumstances, the Panel is entitled to find the Complainant's submissions are likely to be true on the balance of probabilities.

The Panel finds the third UDRP element is made out.

6. Decision

For the above reasons, we believe that the disputed domain name Camelicious.com should be transferred to the complainant.

Panelists:

Victoria McEvedy
Syed Naqiz Shahabuddin
Charles Shaban

Date: October 6, 2019