Panel Decision for dispute CAC-ADREU-008285

Case number	**CAC-ADREU-008285**
Time of filing	**2022-04-19 12:51:18**
Domain names	**lavazzapoint.eu**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**Luigi Lavazza S.p.A.**

Respondent

Organization	**Krista el EOOD**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is one owner of one of the most reputed brand in the international market, the LAVAZZA trademark having been used internationally since decades. In light of the Complainant's significant investments in R&D, marketing, sales and distribution channels, as well as the existence of a truly impressive client base for these products worldwide, LAVAZZA is an indisputably famous and well-known trademark in Italy and Europe, including in Bulgaria, where the Respondent is prima facie based. LAVAZZA also occupied the 33rd position in the Reputation Institute "Global RepTrak 100" ranking in 2020

The disputed domain <lavazzapoint.eu>, which incorporates in full the LAVAZZA trademark, has been registered on September 3, 2021. The disputed domain name is used to sell LAVAZZA products and make extensive usage of Complainant's trademarks.

A. COMPLAINANT

The Complainant contends:

that the disputed domain name reproduces in its entirety the most distinctive part of the complainant's trademarks, i.e. LAVAZZA, the addiction of the generic and non-distinctive "point" component being without effects for the purpose of the similarity of the disputed domain with Complainant's well-know marks. The disputed domain name has been redirected to a website featuring the LAVAZZA trademarks and offering for sale purported LAVAZZA products, without providing a prominent and evident disclaimer on the home page apt to inform users of the lack of affiliation with the Complainant;

that the Respondent is not licensee, authorized agent of Complainant or in any other way authorized to use Complainant's trademarks. Specifically, Respondent is not authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name

that Respondent is promoting not only LAVAZZA coffee products and machines but also unrelated jewels and watches, which are sold via the linked Facebook page. Moreover, Respondent has failed to accurately disclose its lack of relationship with the trademark holder;

that Respondent intentionally registered and used the disputed domain name to attract users to its website for commercial gain, by creating a likelihood of confusion with Complainant's well-known trademark as to the source, sponsorship, affiliation, or endorsement of its website and its business promoted therein.

B. RESPONDENT

No response has been filed by Respondent.

DISCUSSION AND FINDINGS

The Panel is satisfied with all the arguments and evidence put forward by the Complainant, who successfully fulfilled the cumulative conditions for a disputed domain name to be trasferred, in accordance with Paragraph B1(b)(11) and Paragraph B11 (b) of the ADR.eu Alternative Dispute Resolution Rules ("the ADR Rules").

A. The domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or Community law

The domain name <lavazzapoint.eu> reproduces in its entirety the most famous LAVAZZA Trademarks (which include also the LAVAZZA ESPRESSO POINT), and is used to sale products displaying the Complainant's trademark in the lack of any authorization by the Lavazza group, which insistingly sent several cease&desist letters to the Registrant and the hosting provider as well without receiving any response. Usage of the "POINT" element is likely to increase the risk of association with the Complainant, as per the cited WIPO case law WIPO Case No. D2016-2512 and the "store" element.

B. The domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint

After having examined the content of the disputed domain name and the further information provided by the Complainant and the websites linked through the "Follow us on Facebook" promoting the sale of jewellery and other products unrelated with Complainant's coffee products, this Panel shares the Complainant's submission that in the present case there is no possibility for any "bona fide" assessment of the offering of goods and sale occurring on lavazzapoint.eu, also pursuant test elaborated by the Panel case-law and precisely Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, namely:
- the respondent must be offering the goods or services at issue;
- the respondent must use the site to sell only the trademarked goods;
- the site itself must accurately disclose the respondent's relationship with the trademark owner; and
- the respondent must not try to "corner the market" in all relevant domain names, thus depriving the trademark owner of the ability to reflect its own mark in a domain name.

In the present case, at least the second and third condition is not met since the Respondent is promoting not only LAVAZZA coffee products and machines but also unrelated jewels and watches, which are sold via the linked Facebook page. As the Complainant correctly points out, Respondent has failed to accurately disclose its lack of relationship with the trademark holder, with the result that its use of Complainant's trademark either on the website or as a basis for the domain name is deprived of any legal basis according to settled case-law (See inter alia, along these lines, Beyoncé Knowles v. Sonny Ahuja, WIPO Case No. D2010-1431: "Several WIPO panels have ruled that a re-seller, even an authorized re-seller, cannot use another mark in a Domain Name without the express consent of the mark owner, consent that obviously does not exist here. See, e.g., The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co. Inc., WIPO Case No. D2000-0113; Avon Products, Inc. v. Jongsoo Lee, WIPO Case No. D2001-0272.1 Similarly, the fact that Respondent may desire to sell BEYONCÉ fragrance does not give him an absolute right to take <beyoncefragrance.com> as a domain name. See Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903).

C. The domain name was registered or is being used in bad faith

With regards to the bad faith element, it is therefore apparent that the Respondent was or ought to have been aware of the Complainant's trademark at the time of registration.

Respondent's full awareness of Complainant's Trademarks and the reputation attached thereto is apparent from all the circumstances of the case.

The above-described use of the disputed domain name shows that Respondent intentionally registered and used the disputed domain name to attract users to its website for commercial gain, by creating a likelihood of confusion with Complainant's well-known trademark as to the source, sponsorship, affiliation, or endorsement of its website and its business promoted therein. The disingenuous character of Respondent's conduct is even more evident by considering the usage of links to unrelated goods and products than the those under Complainant's trademarks.

The disputed domain name was registered and is being used in bad faith, according to article 21 (1) (b) of the Regulation No. 874/2004.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the disputed domain name <LAVAZZAPOINT.EU> be transferred to the Complainant.

PANELISTS

Name	**WebLegal, Roberto Manno**

DATE OF PANEL DECISION 2022-04-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <lavazzapoint.eu>
II. Country of the Complainant: Italy, country of the Respondent: Bulgaria

III. Date of registration of the domain name: 03 September 2021

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Word trademark registered in European Union, reg. No. 000317057, for the term LAVAZZA, filed on July 18, 1996,registered on May 25, 1998in respect of goods and services in classes 21, 30 and 42
2. Word International trademark , reg. No. 317174, for the term LAVAZZAregistered July 18, 1966 in respect of goods and services in classes 29, 30 and 31
3. Word International trademark , reg. No. 1186133, for the term LAVAZZA registered July 29, 2013 in respect of goods and services in classes 7 and 11
4. Figurative CTM, reg. No. 1299219registered on February 23, 2016in respect of goods and services in classes 11, 30 and 43

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Respondent has failed to accurately disclose its lack of relationship with the trademark holder

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Respondent intentionally registered and used the disputed domain name Domain Name to attract users to its website for commercial gain, by creating a likelihood of confusion with Complainant’s well-known trademark.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. Is Complainant eligible? Yes