

ADMINISTRATIVE PANEL DECISION

LYMA Life Limited v. Alfredo Goncalves Junior and Agicom Produtos Ultra Premium Ecommerce LTDA
Case No. D2023-3299

1. The Parties

The Complainant is LYMA Life Limited, United Kingdom, represented by CMS Cameron McKenna Nabarro Olswang LLP, United Kingdom.

The Respondent is Alfredo Goncalves Junior and Agicom Produtos Ultra Premium Ecommerce LTDA, Brazil.

2. The Domain Name and Registrar

The disputed domain name <lymawellness.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Agicom Produtos Ultra Premium Ecommerce LTDA) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 2023 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 August 7, 2023, adding the disclosed registrant (Alfredo Goncalves Junior) alongside the previously named Respondent.

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 August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on September 4, 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 active in the wellness industry, providing supplements and skincare products, amongst others. The Complainant has been quoted in publications such as Forbes, Vogue, and the Financial Times. The Complainant's business was founded in 2017 and it has used LYMA and "LYMA Life" as trade names since 2017.

The Complainant has several registrations for the LYMA trademark around the world. The Complainant is, *inter alia*, the owner of:

- United Kingdom trademark LYMA (word), registration number 3415704, registered on December 13, 2019;
- United Kingdom trademark LYMA (device), registration number 3256862, registered on December 15, 2017;
- Chinese trademark LYMA, registration number 47030939, registered on March 7, 2021.

In addition, the Complainant holds the domain name <lyma.life>, in use (at least) since August 31, 2018.

The disputed domain name was registered on April 1, 2022.

The disputed domain name resolves to an apparent retail website where a message announces that: "We are an official factory store and offer products at wholesale prices." According to the documents provided by the Complainant, the Respondent's website previously (at least on July 19, 2023) displayed different content. Namely, it was used to mislead consumers into thinking that the goods offered on the Respondent's website originate from the Complainant. On the Respondent's website, a page reproducing text from the Complainant's official website was displayed. This page referred to the same products offered on the Complainant's official website. In addition, this page included: "© LYMA Life Ltd. 2022, Edison House, 223-231 Old Marylebone Road, London, NW1 5QT concierge@lyma.life", which constitutes the Complainant's copyright notice, postal address and email address respectively. The website also included contact information referencing Agicom Produtos Ultra Premium Ecommerce LTDA.

5. Parties' Contentions

A. Complainant

The Complainant claims that:

(a) the disputed domain name is confusingly similar to the Complainant's trademarks; company name and the Complainant's unregistered rights in the "lyma" sign; (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and (c) the Respondent has registered and is using the disputed domain name in bad faith, including by reproducing the Complainant's email and postal addresses on the website hosted at the disputed domain name.

Thus, the Complainant specifically stresses that the Respondent is trying to give the false impression that the Respondent's website is the Complainant's website, or that the Respondent is either the owner of the Complainant's business or an authorised licensee of it.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issues: Respondent Identity

The Complaint was filed against Agicom Produtos Ultra Premium Ecommerce LTDA, since this information was identified as contact information on the website to which the disputed domain name resolved to. The Panel also notes that the publicly-available Whois for the disputed domain name is masked. Upon the Registrar's disclosure of the registrant information, the Complainant amended the Complaint to add the disclosed registrant, treating both Agicom Produtos Ultra Premium Ecommerce LTDA and Alfredo Goncalves Junior as the "Respondent".

Neither Agicom Produtos Ultra Premium Ecommerce LTDA or Alfredo Goncalves Junior filed a Response to the Complaint or generally participated in the proceeding. Thus, little information is known about either. However, the Panel notes that the Center's written communications were delivered to both addresses provided for the Respondents, both located in Sao Paulo, Brazil, and there is nothing to indicate that the Center's emails notifying both Respondents failed to deliver.

The Rules define "Respondent" as the holder of a domain-name registration against which a complaint is initiated. In view of the Respondents' default, the Registrar's disclosure of Alfredo Goncalves Junior as the registrant, the use of contact information relating to Agicom Produtos Ultra Premium Ecommerce LTDA on the disputed domain name's website to which Alfredo Goncalves Junior has been disclosed as the registrant of, and the fact that both Respondents both reportedly reside or are located in the same city, indicates to the Panel that both Respondents are more likely than not related or are engaged in the same scheme through the disputed domain name. Accordingly, the Panel will treat both Agicom Produtos Ultra Premium Ecommerce LTDA and Alfredo Goncalves Junior as the "Respondent".

6.2 Substantive Issues

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel 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.

A. Identical or Confusingly Similar

The Complainant has established rights in the LYMA trademark.

The disputed domain name contains the Complainant's LYMA trademark with the addition of the term "wellness" and the generic Top-Level Domain ("gTLD") ".com". The addition in the disputed domain name of the term "wellness" does not prevent the LYMA trademark from being recognizable in the disputed domain name.

Pursuant to section 1.8 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which states: "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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Therefore, the Panel finds the disputed domain name to be confusingly similar to the LYMA trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection to or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademarks.

The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. Rather, the Respondent was using the disputed domain name to host a website reproducing text from the Complainant's official website and referencing products offered by the Complainant. Along with the composition of the disputed domain name, combining the Complainant's LYMA mark with the term "wellness" associated with the Complainant's industry, the nature of the disputed domain name is such to carry a risk of implied affiliation to the Complainant, which cannot be considered as fair use. [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, the change of content in the disputed domain name does not change the aforementioned conclusion, particularly in light of the commercial nature of the website to which the confusingly similar disputed domain name resolves to.

In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. Moreover, the Respondent has not replied to the Complainant's contentions to claim any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the LYMA mark when the Respondent registered the disputed domain name.

In fact, this Panel agrees with the Complainant that, considering that, the disputed domain name is the result of the combination of LYMA, the Complainant's trademark, and the term "wellness", which refers to the Complainant's sector of business activity, the choice to register the disputed domain name cannot be a coincidence and instead a purposeful choice to mislead.

This is even more true considering that the Respondent has reproduced the Complainant's email and postal address on the website at the disputed domain name, as well as the exact text contained in the Complainant's official website.

Consequently, it appears that the Respondent registered the disputed domain name while aware of the Complainant's trademark and activity, and did so with the intention of creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of either the Respondent and/or the disputed domain name.

This constitutes bad faith registration and use as well as a disruption of the Complainant's business under the Policy.

Inference of bad faith can also be found in the Respondent's failure to respond to the Complainant's contentions, and the Respondent's lack of any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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, <lymawellness.com>, be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: September 18, 2023