

ADMINISTRATIVE PANEL DECISION

**Altria Group, Inc., Altria Group Distribution Company v. Nathanael Brown,
Luxury & Layla
Case No. D2018-1535**

1. The Parties

The Complainant is Altria Group, Inc. of Richmond, Virginia, United States of America (“United States”), Altria Group Distribution Company of Richmond, Virginia, United States, represented by CSC Digital Brand Services AB, Sweden.

The Respondent is Nathanael Brown, Luxury & Layla of New York, New York, United States.

2. The Domain Name and Registrar

The disputed domain name <altriagroup.app> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2018. Later on July 10, 2018, the Center transmitted, by email, to the Registrar a request for registrar verification in connection with the disputed domain name. Subsequently, 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 and contact information set forth in the Complaint. The Center sent an email communication to the Complainant on July 12, 2018 providing the registrant and contact information disclosed by the Registrar and invited the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 17, 2018.

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”), 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”). All references hereinafter to the Complaint will be to the amended Complaint, unless specifically stated otherwise.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and that the proceedings commenced on July 20, 2018. In accordance with the Rules, paragraph 5, the Center set the due date for Response to August 9, 2018. The Respondent did not submit any response. Accordingly, on August 10, 2018, the Center notified the Parties of the Respondent’s default.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on August 20, 2018. 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

As reflected in the registration record for the disputed domain name in the public Whois database (a copy of that record appears in Annex 2 to the Complaint), the disputed domain name was registered on May 8, 2018 and will expire on May 8, 2019.

A. The Complainant's ALTRIA marks (collectively the "ALTRIA Marks")

The Complainant owns multiple United States registrations for the mark ALTRIA by itself in block letters or combined with a design element. The Complainant has provided, in Annex 1 to the Complaint, a copy of the registration certificates for some of these marks along with entries for these registrations from the publicly available online TSDR (Trademark Status and Document Retrieval system) database provided by the United States Patent and Trademark Office. Pertinent details of some of these registrations are as follows:

1. ALTRIA (block letters)
United States Registration No. 4,815,825; registered: September 22, 2015

This service mark is registered for use in connection with: "Distributorship services in the field of tobacco products; consumer engagement services in the nature of in-store product display arrangement services in the field of tobacco products" in international class 35. The registration indicates that both first use and first use in commerce of this mark, when used in conjunction with these services, commenced as of January 27, 2003.

2. ALTRIA (with design)
United States Registration No. 3,073,900; registered: March 28, 2006

This service mark is registered for use in connection with: "Conducting applicant's shareholder and investor relations, namely providing shareholder record keeping and corporate information and analyses" in international class 35; "administration of employee benefit and pension plans, namely dividend reinvestment plan, retirement plan, deferred profit-sharing plan, flexible spending accounts for dependent care and/or health care, group life insurance coverage and stock option program, providing grants to charities and charitable groups in the field of hunger, domestic violence, culture and the arts, aids, humanitarian aid, environment, agriculture, cultural diversity, financial sponsorship of cultural events, namely visual arts, dance, theater" in international class 36; and "charitable and philanthropic services, namely providing food, clothing, shelter" in international class 42. The registration indicates that both first use and first use in commerce of this mark, when used in conjunction with the services in all these three classes, commenced as of January 27, 2003.

3. ALTRIA (block letters)
United States Registration No. 3,029,629; registered: December 13, 2005

This service mark is registered for use in connection with: "Conducting applicant's shareholder and investor relations, namely providing shareholder record keeping and corporate information and analyses" in international class 35; "administration of employee benefit and pension plans, namely dividend reinvestment plan, retirement plan, deferred profit-sharing plan, flexible spending accounts for dependent care and/or health care, group life insurance coverage and stock option program, providing grants to charities and charitable groups program, providing grants to charities and charitable groups in the field of hunger, domestic violence, culture and the arts, aids, humanitarian aid, environment, agriculture, cultural diversity, financial sponsorship of cultural events, namely visual arts, dance, theater" in international class 36; and

“charitable and philanthropic services, namely providing food, clothing, shelter” in international class 42. The registration indicates that both first use and first use in commerce of this mark, when used in conjunction with the services in all these three classes, commenced as of January 27, 2003.

B. The Complainant and the Respondent’s current website

The Complainant, Altria Group, is the parent company of Philip Morris USA Inc., John Middleton Co., U.S. Smokeless Tobacco Company LLC, John Middleton Co., and Ste. Michelle Wine Estates, among other entities.

The Complainant owns the domain name <altria.com> at which it operates a website that provides, *inter alia*, corporate information about the Complainant, its operating companies and products. A screen-shot of the homepage from this site appears in Annex 5 to the Complaint.

Further, the Complainant provides a number of services under its mark and trade name ALTRIA including charitable services such as providing scholarships and various financial services, and providing information about underage tobacco prevention and tobacco issues, among others. Through its subsidiaries, Altria provides information regarding tobacco product cessation support and also provides tobacco product distribution, sales, and consumer engagement and related services in the field of tobacco products under and in connection with that mark and trade name. Since 2003, the Complainant has marketed and sold substantial amounts of goods worldwide under its mark ALTRIA and, as a result, gained a substantial reputation in that mark with that mark having itself acquired fame.

The Respondent has registered approximately 25 other domain names, many, if not all, of which include a third-party mark associated with an individual brand or business, specifically including:

<fritolay.app> (FRITO LAY mark owned by PepsiCo, Inc.);
<geico.app> (GEICO mark owned by GEICO S.P.A.);
<kelloggs.app> (KELLOGG’S mark owned by Kellogg Company); and
<novartis.app> (NOVARTIS mark owned by Novartis AG).

A list of all these domain names appears in Annex 6 to the Complaint along with print-outs of corresponding Whois records for some of those domain names confirming that the Respondent is the registrant of approximately 25 domain names.

At the time the Complaint was filed the disputed domain name resolved to an inactive site, specifically a parked page, which merely stated “website coming soon!”. A screen-shot of this page appears in Annex 3 to the Complaint. Currently, the disputed domain name does not resolve to any website whatsoever.

5. Parties’ Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its mark ALTRIA.

Specifically, the disputed domain name contains this mark appended by the generic word “group”. The mere addition of this term to the Complainant’s trademark does not negate the confusing similarity between the disputed domain name and the Complainant’s trademark under paragraph 4(a)(i) of the Policy.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for any of several reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

Specifically, the Respondent is not licensed or otherwise authorized by the Complainant to use any of its ALTRIA Marks. Moreover, the disputed domain name resolved to a parking page which merely stated “Website coming soon!” and now does not resolve to any website. This use of the disputed domain name does not constitute a *bona fide* offering of goods or services, or either a legitimate noncommercial or fair use. Furthermore, there is no evidence of record that the Respondent has made any demonstrable preparations to use the name in connection with any such *bona fide* offering

Further, the Respondent is not commonly known. The Complainant’s exclusive trademark rights in ALTRIA date back to no later than January 27, 2003 — predating by some 15 years the May 8, 2018 date on which the Respondent registered the disputed domain name. Moreover, the Whois record for the disputed domain name corroborates the fact that the Respondent has never been so commonly known simply by virtue of the Respondent having (a) identified itself, during registration of the name, as “Nathanael Brown, Luxury & Layla” which bears no resemblance whatsoever to the disputed domain name, and (b) additionally, at the time the Complaint was filed, used a privacy Whois service to completely shield its identity.

(iii) Registered and Used in Bad Faith

The Complainant also contends that, for various reasons, the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

The Complainant states that the ALTRIA Marks are well known, with numerous trademark registrations in the United States and internationally. The Complainant argues that at the time of registration of the disputed domain name, the Respondent knew or should have known of the Complainant’s trademarks, and that registration of domain names containing well-known trademarks constitutes bad faith *per se*.

As the disputed domain name never resolved to an operational website, the Respondent is passively holding the disputed domain name which reflects bad faith use.

Further, as the Respondent has intentionally registered other domain names each of which incorporates a well-known third-party mark, the Respondent has engaged in a pattern of abusive registration which also reflects bad faith use and registration.

B. Respondent

In view of the lack of any Response, this administrative proceeding continued by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant’s undisputed factual allegations which the Panel finds are not inherently implausible.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark ALTRIA.

From simply comparing the disputed domain name to the Complainant’s mark ALTRIA, no doubt exists that the disputed domain name is confusingly similar to it. The disputed domain name consists of the mark in its entirety to which the word “group” has been appended and to which the generic Top-Level Domain (“gTLD”) “.app” has then been added, with the addition of the gTLD being irrelevant in this case in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP jurisprudence, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, the Respondent's addition of the generic word "group" clearly resulted in such a minor variation. See, e.g., *Calvin Klein Trademark Trust and Calvin Klein Inc. v. Abeer Ayoub*, WIPO Case No. D2018-0387; *SAP SE v. Lakshmi Reddy Bhumireddy and P. Hareesh*, WIPO Case No. D2017-0396; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. D2016-2392; *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; and *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148.

However, under certain circumstances, the addition of particular gTLDs to a mark to form a domain name could impart enough distinctiveness to the resulting name relative to the mark such that Internet users, when perceiving the name in its entirety, would not likely be confused into falsely believing that an affiliation, endorsement or sponsorship of some sort exists between the rights-holder of the mark and the owner of the name, when, in actuality, no relationship exists between these entities. See, e.g., section 1.11.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"). However, that is certainly not the case here. When the disputed domain name is viewed in its entirety, i.e., <altriagroup.app>, the Complainant's mark ALTRIA is the overwhelmingly predominant component of the disputed domain name with inclusion of the gTLD having absolutely no effect whatsoever to mitigate that predominance. Hence, the only rational finding, and the Panel so finds, is that any Internet user seeing this name would likely infer that either the Respondent or an operational website reachable through that name — if and when the latter were ever to occur, is in some fashion endorsed or sponsored by the Complainant when, in fact, the parties have no such relationship at all, thus likely causing user confusion.

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of the Complainant's ALTRIA Marks and does not have any relationship, affiliation or connection whatsoever with the Respondent. Further, with respect to paragraph 4(c)(i) of the Policy, there is no evidence of record indicating that the Respondent either now uses or has ever made any demonstrable preparations to use the disputed domain name to resolve to an operational website through which it presently does or will make a *bona fide* offering of any goods or services. Furthermore, as to paragraph 4(c)(iii) of the Policy, the name is not used at all in any manner that is either noncommercial or reflective of fair use whatsoever, let alone one that does not provide a potential for commercial gain. In that regard, since the date the disputed domain name was registered, it has not resolved to an operational website. Previously, the website was merely a parking page displaying the text "Website coming soon!". Now, the disputed domain name fails to resolve at all to any website whatsoever.

Moreover, as to paragraph 4(c)(ii) of the Policy, the record is entirely devoid of any evidence which reflects that the Respondent is currently or has ever been commonly known by the disputed domain name or any of

the Complainant's ALTRIA Marks. Given the substantial worldwide reputation that the Complainant acquired in its mark ALTRIA since it first used that mark at least as early as January 27, 2003 and subsequently registered that mark on December 13, 2005 — the former being approximately 15 years prior to the date on which the Respondent registered the disputed domain name on May 8, 2018 — with that mark having ultimately acquired fame as both a brand identifier and trade name of the Complainant, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to any of those of the Complainant — at least for the goods and services provided by the Complainant under any of its ALTRIA Marks — without interfering with the exclusive trademark rights of the Complainant. See, e.g., *Covestro Deutschland AG v. Kay Mone / KMN INC.*, WIPO Case No. D2018-0145; *Alstom v. Zahir Khan, Palki Event Inc.*, WIPO Case No. D2017-1124; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson, supra*; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; and *Calvin Klein Trademark Trust; Chicago Mercantile Exchange Inc. and CME Group Inc; Cummins Inc.; and Staatliche Porzellan-Manufaktur Meissen GmbH*, all cited *supra*.

Consequently, the Respondent does not satisfy any part of paragraph 4(c) of the Policy and thus has no rights or legitimate interests in the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The Panel infers, from the lack of any response, that the Respondent was well aware, prior to having registered the disputed domain name, of the Complainant and its mark ALTRIA and the substantial reputation and goodwill which that mark acquired and the exclusive rights which the Complainant held in that mark. Since 2003, the Complainant's mark ALTRIA has acquired not only a substantial reputation globally, but also, as a result of the Complainant's worldwide marketing and sales activities, fame. This deliberate unauthorized registration of a domain name which includes a mark of another, let alone a mark which is famous, reflects bad faith.

The Panel also infers that the Respondent, from its deliberate actions of not only having included the Complainant's mark ALTRIA into the disputed domain name but also appending the word "group" to the mark particularly since the Complainant is the parent organization comprising a group of distinct operating entities, was also well aware of the significant potential of the disputed domain name <altraigroup.app> to confuse Internet users as to whether some association, affiliation or relationship existed between the disputed domain name and/or the Respondent's website and the Complainant — when, in fact, no such connection actually exists, and intentionally sought to opportunistically exploit that confusion.

Thus, there is simply no question that the registration is abusive and the Respondent exhibited bad faith in doing so.

To date, the Respondent passively held the disputed domain name for a period of approximately three months from May 8, 2018 to the present. During that time, it never used the disputed domain name to resolve to an operational website. A three-month period of passive holding, in and of itself, may generally be too short to constitute bad faith use.

However, another relevant factor, apart from just a short period of passive holding, is present here which, when all facts are viewed collectively, decidedly alters that result in favor of a finding of bad faith use. Specifically, the Respondent perpetrated a pattern of potentially abusive registrations, with approximately 24 additional such registrations having been discovered by the Complainant. Most, if not all, these registrations include marks of third parties which more than likely have achieved widespread recognition in their respective industries or marketplaces — as is certainly the case with the Complainant's mark ALTRIA.

From this, it is evident to the Panel that the Respondent intended and may very well still intend to exploit the potential for each of these domain names to readily cause confusion of Internet users who are familiar with the underlying marks into believing that an association, affiliation, endorsement or connection exists between the Respondent, its corresponding website and the rights-holder of the mark incorporated into the name, when, in actuality, no such relationship exists. As the Respondent would likely run a serious risk of infringing any of those marks were it to commercially use the corresponding domain name — which it likely knew at the time or should have known, it is reasonable to infer that the Respondent's purpose in registering these domain names, including the present disputed domain name, was and remains to opportunistically exploit the confusion, that would otherwise arise to the detriment of the rights-holder of the corresponding mark such as the Complainant here, by eventually selling each of these domain names to the respective rights-holder of the corresponding mark included in the domain name for a sufficient profit, certainly in excess of its out-of-pocket costs of registration, to prevent that confusion from occurring. Thus, the Respondent's overall purpose in registering each domain name was effectively to hold it for ransom. What happened here is simply that the Complainant rapidly discovered the Respondent's registration of the disputed domain name and filed the present Complaint sufficiently early during the life of the domain name to forestall the Respondent from having made any monetary demands of the Complainant or having taken any other action regarding the name adverse to the interests of the Complainant — which the Respondent would most likely have done if it were to have had sufficient time to do so.

Consequently, the Panel finds that the Respondent registered and used the disputed domain name in bad faith in violation of paragraphs 4(a)(iii) and 4(b)(i) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient evidence of its allegations, with respect to the disputed domain name to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The disputed domain name <altriagroup.app> is to be transferred to the Complainant.

Peter L. Michaelson
Sole Panelist
Date: August 28, 2018