

ADMINISTRATIVE PANEL DECISION

San Antonio Winery, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2023-1656

1. The Parties

The Complainant is San Antonio Winery, Inc., United States of America (“US”), represented by Cislo and Thomas LLP, US.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name, <stelarosawines.com>, 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 April 14, 2023. On April 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 2023, 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 (GoDaddy.com, LLC / Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 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 April 19, 2023.

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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

The Center appointed David Stone as the sole panelist in this matter on June 14, 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 an award-winning, US-based business that has been involved in the production, sale and international distribution of wine since 1917. The Complainant has sold its Stella Rosa range of wines since the early 2000s, with significant commercial success, and in that time has engaged in numerous high-profile campaigns to advertise its Stella Rosa products.

The Complainant owns numerous trade marks for STELLA ROSA, including the following (the Marks):

- International registration number 1073052, registered on February 22, 2011 in international class 33;
- US registration number 4000417, registered on July 26, 2011 in international class 33;
- US registration number 4621690, registered on October 14, 2014 in international classes 29 and 30;
- US registration number 4522059, registered on April 29, 2014 in international class 43;
- US registration number 4575423, registered on July 29, 2014 in international class 25;
- US registration number 4636301, registered on November 11, 2014 in international classes 3, 6 and 21;
- US registration number 6690519, registered on April 5, 2022 in international class 9;
- US registration number 6686553, registered on March 29, 2022 in international class 30; and
- US registration number 6655101, registered on February 22, 2022 in international class 33.

The Complainant owns the domain name <stellarosawines.com>, which it uses to operate a website where consumers can find information about the Complainant's products and purchase them.

The disputed domain name was registered on March 6, 2023 and it resolves to a pay-per-click ("PPC") site.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Marks, because it contains the text of the Marks in its entirety, barring the omission of one of the two letters "l". Also, owing to this minor difference the disputed domain name is almost identical to the Complainant's domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The website associated with the disputed domain name automatically redirects to the website "ww1.stellarosawines.com/", which contains links or advertisements for wine or wine-related services. One of these links directs to a website with the prominent title "STELAROSAWINES.COM" and further links to websites advertising wine. These websites are not affiliated or associated with the Complainant. The Complainant believes that the Respondent attempted to exploit the Complainant's reputation and goodwill by selecting a domain name almost identical to the Complainant's and using it to redirect and confuse consumers seeking information about Stella Rosa wines. The false and misleading association between the Respondent's website and the Complainant is damaging to the Complainant, and cannot confer rights or legitimate interests.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent's acts have been undertaken with full knowledge of the Complainant's rights in the Marks and with the willful and deliberate intent to cause confusion and trade on the goodwill in the Marks. The Respondent has done this to attract Internet users for commercial gain. The Complainant notes that the Respondent seems to have a history of registering and using domain names in bad faith, having been the

named respondent in more than 200 domain name disputes, almost all of which have resulted in transfer of the domain names. The Complainant contends that the Respondent is a serial cybersquatter who attempts to profit from owning and using domains that are associated with well-known or famous brands.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainant must prove in order to succeed:

- (i) that the disputed domain name is identical or confusingly similar to a trade mark 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

On the evidence provided by the Complainant, the Panel is satisfied that the Complainant has rights in the Marks. In assessing the similarity between the disputed domain name and the Marks, it is permissible to ignore the Top-Level Domain ("TLD"). The disputed domain name therefore comprises the entire text of the Marks, minus one of the letters "l", in addition to the word "wines". Although one letter is missing, in the Panel's opinion the text of the Marks is recognizable within the disputed domain name, which is therefore confusingly similar to the Marks (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#))). The presence in the disputed domain name of the word "wines", does not prevent such a finding (see section 1.8 of the [WIPO Overview 3.0](#)). Given the presence of this word, the Panel concludes that the term "stelarosa" in the disputed domain name is a deliberate misspelling of the text of the Marks.

The condition in paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the criteria that determine whether a domain name registrant has rights or legitimate interests in a domain name:

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

The Complainant makes out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent has provided no evidence to contradict it.

On the facts and contentions before the Panel, the website associated with the disputed domain name is being used to host advertising PPC links that lead to third-party sites offering goods similar to those sold by the Complainant. Given the nature of the disputed domain name, in the Panel's opinion the Respondent was aware of the Marks and designed the disputed domain name to bring the Marks to mind and to be almost identical to the Complainant's domain name. The Respondent has received no authorization from the Complainant to use the Marks in this way, and has presented no evidence that it has any other right to do so. In particular, the Respondent is not known by the disputed domain name. The disputed domain name seems to serve no purpose other than to attract potential customers of the Complainant to the Respondent's website, where those customers are offered links to the Complainant's competitors. This cannot be considered either a *bona fide* offering of goods or services (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)) or legitimate noncommercial or fair use of the disputed domain name.

The condition in paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out the non-exhaustive criteria for bad faith. Generally, for the purposes of the Policy, bad faith constitutes registration and use of a domain name in order to:

- (i) sell, rent or transfer the domain name to the trade mark owner (or a competitor thereof) for a profit;
- (ii) prevent the trade mark owner from registering its trade mark in a domain name, provided that the respondent is engaged in a pattern of such conduct;
- (iii) disrupt the business of a competitor; or
- (iv) divert Internet traffic for commercial gain.

As discussed, the Complainant has provided evidence that the Respondent is using the disputed domain name to redirect Internet users to a website with links advertising products similar to those sold by the Complainant. The Panel assumes that the links on the Respondent's website are PPC links from which the Respondent makes money. The Respondent has provided no explanation of its behavior, and so the Panel concludes that the Respondent registered the disputed domain name to create a false and misleading impression of association between the disputed domain name and the Complainant. In terms of bad faith use, the Respondent is therefore using the disputed domain name to divert Internet users for commercial gain. Although it is not determinative, the evidence of the Respondent's apparent prior conduct as, in the Complainant's words, a "serial cybersquatter" supports this outcome.

The condition in Paragraph 4(a)(iii) of the Policy is satisfied.

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, <stelarosawines.com>, be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: June 28, 2023