

ADMINISTRATIVE PANEL DECISION

Canva Pty Ltd v. Belmont Miguel

Case No. D2023-1388

1. The Parties

Complainant is Canva Pty Ltd, Australia, represented by SafeNames Ltd., United Kingdom.

Respondent is Belmont Miguel, Angola.

2. The Domain Name and Registrar

The disputed domain name is <fullpackcanva.com> which is registered with Launchpad.com Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 24, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 2023, the Registrar transmitted by email to the Center its verification response, confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on May 1, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on May 8, 2023. This Panel finds that it was properly constituted. This 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

Complainant operates an online graphic design platform which provides design templates for users to edit, as well as tutorials, courses and events.

Complainant has rights over the CANVA mark for which it holds several mark registrations, such as United States of America Registration No. 4,316,655 in class 42, registered on April 9, 2013; Australian Registration No. 1,483,138 in class 9, registered on September 9, 2013; International Registration No. 1,204,604 in class 9, registered on October 1, 2013.

Complainant also has rights over the CANVA and design mark for which it holds United States of America Registration No. 6,114,099 in classes 9 and 42, registered on July 28, 2020.

The disputed domain name was registered on March 21, 2022. Before the Complaint was filed, the website linked to the disputed domain name showed, among others, “Get access to 185+ Canva Ready Craft Packs and more...”, the image of a box showing a circle and inside it the word Canva in stylized letters,¹ “The Full Pack Canva is not just another simple art pack for Canva. It is the largest Pack for Canva for Entrepreneurs and Designers”, “by purchasing TODAY you will receive 4 EXCLUSIVE BONUS”, “BONUS 1 Canva Pro ~~BRL 322.80~~ >> Free Today We’ll make Canva Pro available to you”, “From R\$ 800.00 for only R\$47,00 RELEASE ACCESS TO THE FULL PACK CANVA NOW!”.

5. Parties’ Contentions

A. Complainant

Complainant’s assertions may be summarized as follows.

Complainant, founded in 2012, operates an online graphic design platform through its main website “www.canva.com”, which provides thousands of images and templates to choose from when creating graphic designs for many uses and contexts. In 2014 Complainant launched its app for the iPad, which is now available on mobile phone devices, and which grew access to CANVA services. Complainant’s services are offered exclusively online, which make them inherently global. Complainant offers its services, as a basic package, for free, and also offers a paid version named Canva Pro. Complainant’s online platform is available in approximately 100 languages, and Complainant markets its offerings to users based in various jurisdictions through the use of country-specific websites.

Complainant holds a number of trademark registrations for CANVA in multiple jurisdictions. Within the field of graphic design, the CANVA mark has achieved considerable acclaim and is frequently featured in third-party lists collating the best online graphic design tools available. Complainant also holds numerous exact-match domain names, such as <canva.biz>, <canva.us>, <canva.cn> and <canva.co.in>. Further, Complainant has established a strong social media presence through Facebook, Instagram, Twitter and Pinterest, with millions of followers and subscribers.

Complainant’s services have achieved significant reputation and acclaim. Complainant has been valued at USD 6 billion as of June 2020 and currently has more than 60 million active users per month with customers in 190 countries. Similar web traffic statistics indicate that Complainant’s main website “www.canva.com” received an average of more than 300 million visits per month between May and July, 2022.

The disputed domain name is confusingly similar to Complainant’s CANVA mark. The disputed domain name incorporates the CANVA mark preceded by the words “full” and “pack”. Complainant’s CANVA mark is the dominant and only distinctive element in the disputed domain name.

¹ This Panel notes that such circle containing the word Canva in stylized letters seems identical to Complainant’s CANVA and design mark cited above.

Respondent lacks rights or legitimate interests in the disputed domain name. Respondent is not known, nor has ever been known, by the CANVA mark, nor by anything similar, and has no registered or unregistered trademark rights for 'canva' or anything similar. Respondent is not connected or affiliated with Complainant, and has not been granted by Complainant with any authorization or license to use the CANVA mark or to use domain names that feature the CANVA mark.

Although at the point of submission of the Complaint, the disputed domain name failed to resolve to an active website, the disputed domain name previously resolved to a website purporting to sell packs of editable graphic design templates, similar to Complainant's products and services, claiming those templates to be editable directly in Complainant's platform. That is not a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain.

Respondent has used the disputed domain name to capitalize on the renown and goodwill of the CANVA mark (clearly incorporating said mark in the disputed domain name) by misleadingly diverting Internet users to its website which advertises the sale of editable templates. Such conduct cannot constitute a *bona fide* offering of goods or services. The fact that the disputed domain name is now being passively held also does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the Policy.

The disputed domain name's composition creates initial interest confusion by giving Internet users the impression that it will resolve to a website that provides Complainant's services, and that it is thus authorized or endorsed by Complainant. The disputed domain name's website was previously used to offer to Internet users the same services as Complainant; given the composition of the disputed domain name, it only serves to further the likelihood that Internet users will falsely believe it is associated with Complainant.

Respondent registered and has used the disputed domain name in bad faith.

Given Complainant's reputation in the graphic design industry, the disputed domain name was chosen because of its association with Complainant and its products and services. Anyone with access to the Internet can find the CANVA mark on publicly accessible trademark databases, and all top Google search results for the CANVA mark pertain to Complainant's offerings. Prior UDRP decisions have repeatedly affirmed the renown and distinctiveness of the CANVA mark. Thus, it is clear that Respondent should have been aware of Complainant's CANVA mark at the time of registering the disputed domain name.

Respondent relies on the initial interest confusion of the string 'fullpackcanva' to attract and misleadingly divert Internet users to its own website, which UDRP decisions have repeatedly found to constitute bad faith use.

Respondent fails to disclaim its association from Complainant. Respondent's website claims to use Complainant's platform as a way of allowing users to edit its purchasable templates, bypassing Complainant's subscription service. Given that Complainant's marks and platform are a uniquely distinctive part of Respondent's offerings, Internet users would likely be misled into believing that the disputed domain name is authorized or endorsed by Complainant. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation, or endorsement of its website, which is indicative of bad faith.

Complainant sent a cease and desist communication to Respondent in July 2022. Respondent failed to reply, which may constitute further evidence that it knowingly acted in bad faith. Respondent had the opportunity to explain its registration of the disputed domain name but chose not to do so. Respondent's use of the disputed domain name to promote services competitive with those of Complainant, and its failure to provide any justification for its registration, show that it sought to trade off the reputation of the CANVA mark.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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

It is undisputed that Complainant has rights over the CANVA and the CANVA and design marks.

Since the addition of the generic Top Level Domain ("gTLD") ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the CANVA mark in its entirety, albeit preceded by "fullpack". It is clear to this Panel that the CANVA mark is recognizable in the disputed domain name and that the addition of such terms in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

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

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is uncontested that Complainant's CANVA mark and website linked to <canva.com> are well known among the relevant segment of Internet users. Complainant contends that Respondent is not commonly known as CANVA or anything similar, that it has no relationship with Respondent, that it has not authorized Respondent to use its marks² and that Respondent does not hold any trademark rights for CANVA or anything similar.

This Panel considers that the nature of the disputed domain name, comprising Complainant's mark with the term "fullpack" (which refers to a complete collection of downloadable content) carries a risk of initial confusion with Complainant's CANVA design templates offered online. The evidence in the file shows that Respondent commercially operated the website linked to the disputed domain name to advertise the sale of editable design templates featuring Complainant's marks, without showing the identity of the operator thereof, and there appears to be no disclaimer as regards Complainant and its marks, thus leading Internet users to believe that such website may be somehow associated with Complainant. In the file there is no

² See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#): "There is no evidence that the Complainant authorized the Respondent to register the disputed domain name or to use the CASIO trademark, with or without immaterial additions or variants. These circumstances are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent."

justification for Respondent to use Complainant's marks in the disputed domain name and its website, and to commercially benefit therefrom. All that demonstrates neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

This Panel considers that Complainant has established *prima facie* that Respondent has no rights or legitimate interests in the disputed domain name (see *Intocast AG v. Lee Daeyoon*, WIPO Case No. [D2000-1467](#), and section 2.1 of the [WIPO Overview 3.0](#)). In the case file there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy, or of any other circumstances, giving rise to rights or legitimate interests in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

Taking into consideration that the registration and use of Complainant's marks preceded the registration of the disputed domain name, Complainant's Internet and social media presence, the popularity of Complainant's website, and the content of the website previously linked to the disputed domain name, this Panel is of the view that Respondent targeted Complainant and its marks at the time it obtained the registration of the disputed domain name, which is indicative of bad faith.³

Complainant provided screenshots of the website previously associated with the disputed domain name, from which it is clear that Respondent used the disputed domain name for commercial purposes, featuring at its website the sale of editable design templates repeatedly showing Complainant's marks, thus diverting Internet traffic looking for Complainant's CANVA products in order to commercially benefit therefrom.⁴ By using in such way the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website and the products or services offered therein, which is also a showing of bad faith. Given such prior use, the fact that presently said website no longer resolves to an active site does not prevent such a finding of bad faith.⁵

Further, Respondent's failure to reply to Complainant's cease and desist communication may also be indicative of bad faith (see *Fenix International Limited v. Oleg Zabugrovskiy*, WIPO Case No. [D2021-3386](#)).

Thus the overall evidence in the file indicates that Respondent's choice of the disputed domain name was deliberate for its confusing association with, and with the intention to commercially benefit from the reputation and goodwill of, Complainant's marks, which denotes bad faith.

In this Panel's view, the lack of response is also indicative that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

In light of the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

³ See *Canva Pty Ltd v. Lucas Pinheiro and Jeivison Luiz Carvalho de Souza*, WIPO Case No. [D2022-0853](#): "given the composition of the disputed domain names the Panel finds that the Respondent obviously knew of the Complainant and deliberately registered the disputed domain names, especially because the disputed domain names resolve to a website offering the same services as the Complainant and reproducing the Complainant's logo."

⁴ See *Lilly ICOS LLC v. East Coast Webs, Sean Lowery*, WIPO Case No. [D2004-1101](#): "registration of a domain name in order to utilize another's well-known trademark by attracting Internet users to a website for commercial gain constitutes a form of bad faith."

⁵ See *LEGO Juris A/S v. ayoub Iagnadi*, WIPO Case No. [D2022-3337](#): "Given such prior use, the fact that afterwards said websites were taken down does not prevent such a finding of bad faith." See also *Canva Pty Ltd v. Contact Privacy Inc. Customer 0162636820 / Andrea Banfi, Canva Templates*, WIPO Case No. [D2022-2195](#).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <fullpackcanva.com> be transferred to Complainant.

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: May 22, 2023