

ADMINISTRATIVE PANEL DECISION

Timbro Trading S/A v. Jumbo great, Tane Rontal, Greez JKI
Case No. D2023-2722

1. The Parties

The Complainant is Timbro Trading S/A, Brazil, represented by Salusse, Marangoni, Parente e Jabur Advogados, Brazil.

The Respondents are Jumbo great, Nigeria, Tane Rontal, United States of America, and Greez JKI, Germany.

2. The Domain Names and Registrars

The disputed domain names <timbotrading.com> and <timbrotrading.net> are registered with NameCheap, Inc.

The disputed domain name <timbrotradng.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com.

The Registrars are collectively referred to as (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 26, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On June 26 and June 27, 2023, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. On August 2, 2023, the domain name <timbrotarding.com> was withdrawn from the proceeding. The Center sent an email communication to the Complainant on August 5, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint or to file a separate complaint for each of the disputed domain names. The Complainant filed an amended Complaint on August 10, 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”).

n accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. On August 23, 2023, the Center received an email communication from a third party. The Respondents did not submit any response. Accordingly, the Center notified the Respondent's default on September 12, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on September 18, 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 a Brazilian company which has been using the TIMBRO trademark since its foundation in 2010 in connection with the trading and import-export of goods from and into Brazil.

The Complainant is the owner of the following trademark registrations for TIMBRO, as per trademark registration certificates submitted as annexes 11 and 12 to the Complaint:

- Brazilian trademark registration No. 903115018 for TIMBRO (word mark), filed on November 11, 2010 and registered on April 15, 2014, in international class 35;
- Brazilian trademark registration No. 907378471 for TIMBRO (figurative mark), filed on February 26, 2014 and registered on November 16, 2016, in international class 35.

Both trademarks are currently registered under the former company name of the Complainant (Timbro Comércio Exterior Ltda.) which was amended in 2021 in Timbro Trading S/A, and this change is currently pending to be recorded before the Brazilian Trademark Office.

The Complainant is also the owner of the domain name <timbrotrading.com>, which was registered on August 12, 2010 and is used by the Complainant to promote its services under the trademark TIMBRO.

The disputed domain names <timbotrading.com> registered on June 5, 2023, <timbrotrading.net> registered on October 24, 2022 and <timbrotradng.com> registered on May 24, 2022 all point to parking pages displaying pay-per-click links. The disputed domain name <timbotrading.com> has been used in connection with fraudulent scams.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names <timbotrading.com>, <timbrotrading.net> and <timbrotradng.com>.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the trademark TIMBRO in which the Complainant has rights.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondents are not licensees, representatives or agents of the Complainant, that there is no business relationship between the Complainant and the Respondents and the latter have never been authorized to register the disputed domain names or use the Complainant's trademark in any way.

The Complainant submits that the Respondents have not provided any evidence of use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or service before or after any notice of the dispute herein or in connection with a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Complainant asserts that the disputed domain names redirect to parking pages with pay-per-click links, generating undue revenues for the Respondents. The Complainant also informs the Panel that the disputed domain name <timbotrading.com> has been used in connection with fraudulent scams in an attempt to impersonate and defraud the Complainant and its customers.

The Complainant further highlights that none of the Respondents are commonly known by the disputed domain names, nor have they ever acquired any rights over the terms "Timbo", "Timbro" or "Timbro Trading".

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering i) the Complainant has notable goodwill and world renown in its field and in the TIMBRO trademark, ii) the Complainant's pre-existing rights in the TIMBRO mark and services long predate the registration of the disputed domain names and iii) the Respondents are not commonly known by the disputed domain names or the TIMBRO trademarks, the Respondents must have been well aware of the Complainant at the time of registering the disputed domain names and chose nonetheless to unduly profit from the Complainant's goodwill by creating a likelihood of confusion amongst Internet users, insinuating that the disputed domain names belong to the Complainant.

The Complainant emphasizes that the disputed domain names are being used to generate undue revenues and were used in connection with a fraudulent scheme impersonating the Complainant and seeking to defraud the Complainant and its customers by the reproduction of details of genuine employees of the Complainant and of the Complainant's trademark and branch address in email communications.

The Complainant underlines that further proof of the Respondents' bad faith conduct can be noted in the fact that the Respondents also chose to retain privacy protection services to conceal their true identity.

B. Respondents

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

6. Discussion and Findings

6.1. Consolidation of multiple Respondents

Paragraph 10(e) of the Rules provides that a panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and the Rules.

As stated in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (*e.g.*, where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (*e.g.*, <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are

the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).”

The Complainant asserted that the disputed domain names, although registered in the name of different entities, are under common control since:

(i) all of the disputed domain names share a similar naming pattern consisting of either the reproduction of or a misspelling of the Complainant’s trademark TIMBRO;

(ii) all of the disputed domain names were registered using privacy protection services so as to conceal the Respondents’ true identity;

(iii) all of the disputed domain names were registered within a short period of time (between April 2022 and June 2023);

(iv) all of the disputed domain names presently resolve to parked webpages displaying pay-per-click (“PPC”); and

(v) all of the disputed domain names were possibly used in connection with the same fraudulent scheme to defraud the Complainant and its customers in an attempt to impersonate the Complainant using genuine information pertaining to Complainant’s employees and submitting false invoices and/or banking details to Complainant’s employees and customers.

The Panel finds that, based on the elements highlighted by the Complainant and referenced above, especially the similarities in the composition of the disputed domain names, and considering that the Respondents provided incorrect or false contact information in the Whois records – as demonstrated by the Center’s exchange of correspondence on record with the courier, which could not deliver hard copy of the Written Notice to the registrants’ postal addresses for <timbrotradng.com> and <timbrotrading.net>, and by the additional correspondence between the Center and the entity located at the registrant postal address for <timbotrading.com>, which indicated that the named registrant could not be found at such address –, the disputed domain names are, on balance of probabilities, under common control.

The Panel also finds that the consolidation in this case is fair and equitable to the parties as the Respondents have been given an opportunity to object to consolidation through the submission of a Response to the Complaint but have chosen not to rebut the consolidation.

The Panel concludes that the consolidation of the multiple domain names is appropriate in this case and is consistent with the Policy and Rules as well as with prior relevant UDRP decisions in this area (see, amongst others, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

Therefore, the Panel will now proceed to a decision on the merits of the case.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules: “A Panel shall 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.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

(i) that the disputed domain names registered by the Respondents are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

With reference to <timbrotrading.net> and <timbrotradng.com>, the Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

As to <timbotrading.com>, the Panel finds the mark is recognizable within the disputed domain name, despite the deletion of the letter "r" from the Complainant's TIMBRO mark. Moreover, a domain name which consists of an obvious misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

Moreover, where the relevant trademark is recognizable within the disputed domain names, the addition of other terms, such as "trading" and "tradng", does not prevent a finding of confusing similarity under the first element. Section 1.8 of the [WIPO Overview 3.0](#).

Therefore, based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant's *prima facie* showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Panel also notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondents and the Complainant. The Respondents are not licensees of the Complainant, nor have the Respondents otherwise obtained an authorization to use the Complainant's trademark. Moreover, there is no element from which the Panel could infer the Respondents' rights and legitimate

interests over the disputed domain names, or that the Respondents might be commonly known by the disputed domain names.

As highlighted above, the disputed domain names have been pointed to parking pages with pay-per-click links. The Panel finds that the Respondents' use does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

Furthermore, considering the composition of the disputed domain names, confusingly similar to the trademark TIMBRO and the Complainant's domain name <timbrotrading.com>, the Panel finds that the disputed domain names are inherently misleading. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Lastly, the Complainant has provided evidence that at least the disputed domain name <timbotrading.com> has been used in connection with the sending of an email communication impersonating a Complainant's employee, reproducing the Complainant's trademark and branch address and requesting payment of an invoice to a bank account different from the one of the Complainant. Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Therefore, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In light of the prior use of the trademark TIMBRO in connection with the Complainant's import-export services, promoted online via the Complainant's website "www.timbrotrading.com", the Panel finds that the Respondents' registration of the disputed domain names <timbotrading.com>, <timbrotrading.net> and <timbrotradng.com>, which are highly confusingly similar to the Complainant's main domain name <timbrotrading.com>, cannot amount to a mere coincidence.

The Panel also finds that the use of the disputed domain name <timbotrading.com> in connection with a fraudulent email communication impersonating the Complainant and featuring the Complainant's trademark and company details clearly demonstrates the Respondents' awareness of the Complainant and their intention to target the Complainant and its trademark.

The Panel also finds that, since all three disputed domain names point to parking pages with pay-per-click links, the Respondents intentionally attempted to attract Internet users to their websites for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship or endorsement of their websites according to paragraph 4(b)(iv) of the Policy.

As to the use of <timbotrading.com> in connection with fraudulent email communications, previous panels have held that the use of a domain name for illegal activity, including phishing, impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Therefore, based on the available records, the Panel finds the third element of the Policy has been established.

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 names <timbotrading.com>, <timbrotrading.net> and <timbrotradng.com>, be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: October 2, 2023