

ADMINISTRATIVE PANEL DECISION

Agave Ventures LLC v. C Walker
Case No. D2024-1174

1. The Parties

The Complainant is Agave Ventures LLC, United States of America (“United States”), represented by Wyatt, Tarrant & Combs, United States.

The Respondent is Cindy Walker, United States, self-represented.

2. The Domain Name and Registrar

The disputed domain name <lunaazulmx.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 March 13, 2024. On March 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on March 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2024. Upon request from the Respondent, the Center granted an automatic four calendar day extension under paragraph 5(b) of the Rules. The Response was filed with the Center on April 13, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 18, 2024. 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 limited liability company established under the laws of the State of Delaware, United States and headquartered in Bardstown, Kentucky, United States. The Complainant distills and bottles tequila alcoholic beverages in Jalisco, Mexico and distributes them under the LUNAZUL mark. The Complainant operates a website at “www.lunazultequila.com”, a domain name it acquired in 2005.

The Complainant holds numerous trademark registrations for LUNAZUL or derivative marks in the United States and other jurisdictions. These include United States trademark registration number 3269778 (registered on July 24, 2007) for LUNAZUL as a standard character mark for tequila beverages in international class 33.

The Panel notes that the Complainant characterizes LUNAZUL as Spanish for “blue moon”, but that is not a dictionary word. Rather, it is a coined term suggestive of the words “luna azul” (“luna” for “moon” and “azul” for blue), which the mark makes into a single term, dropping an “a”.

The Registrar reports that the disputed domain name was registered on January 3, 2024, to the Respondent “C Walker”, showing a post office box in the State of Colorado, United States and using a Gmail contact email address. The Respondent replied to communications from the Center and submitted a Response after requesting a four-day extension of time, identifying herself as an individual residing in Colorado who owns a rental property said to be called “Casa de la Luna Azul” located in Baja California Sur, Mexico.

At the time of this Decision, the disputed domain name does not resolve to an active website. The Complaint attaches a screenshot of the website to which it resolved on March 7, 2024. At the time, the disputed domain name resolved to a parking page headed with the Registrar’s name and the message, “This domain has recently been registered with Namecheap”. The page also displayed what appeared to be pay-per-click (“PPC”) advertising links for third parties selling contact lenses and solar systems.

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 name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its registered LUNAZUL marks, arguing that the disputed domain name deliberately misspells the mark as an instance of typosquatting and adds the term “mx” (an abbreviation for “Mexico”) to further suggest that the disputed domain name is associated with the Complainant. The Complainant argues that the Respondent has no permission to use the mark and no association with the Complainant, is not known by a corresponding name, and has used the disputed domain name only for PPC advertising, which cannot be considered a bona fide commercial offering. The Complainant concludes that the Respondent’s typosquatting is “presumptive of registration in bad faith” and that the Respondent has used the confusingly similar domain name to misdirect Internet users to other sites for commercial gain through PPC advertising, an example of bad faith under the Policy.

B. Respondent

The Respondent, who is not represented by counsel, contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name. The Respondent does not question the Complainant’s trademarks but observes that they consist of an invented term, LUNAZUL, and are used for alcoholic beverages. The Respondent recounts that she purchased a rental property in Baja California, Mexico. The house is white with a blue dome, which is why it is called “Casa de la Luna Azul” (“House of the Blue Moon”). The Response attaches a photograph of the sign attached to the

house with the name “Casa de la Luna Azul” and an image of a sea turtle, as well as a receipt from Etsy showing that the Respondent commissioned and purchased the sign online on May 26, 2023. (The Respondent points out that the Complainant’s logo depicts a coyote howling at a full moon, not a sea turtle.) The Respondent states that although she registered the disputed domain name in January 2024 to create a “web presence” for the rental property, she does not intend to go “live” until after “completing the remodel of the home and further business development”. The Respondent demonstrates that several search engines produce only error messages for the disputed domain name and denies any connection to the Registrar’s PPC landing page.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under 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”.

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (here, LUNAZUL) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name, as it differs by only the addition of a letter “a” and the suffix “mx” (that commonly refers to the country Mexico). Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the letter “a” and the suffix “mx”) may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Based on the arguments and evidence presented, it appears that before notice to the Respondent of the dispute, the Respondent used or made demonstrable preparations to use a name corresponding to the disputed domain name in connection with a bona fide offering of hospitality services. [WIPO Overview 3.0](#), section 2.2. The Respondent has not yet mounted a corresponding website or opened the property in question for rental business, but the Respondent, through the submission of its Response and supporting

evidence, has made demonstrable preparations for such business beyond acquiring the disputed domain name. The Respondent claims it acquired the rental property and commissioned – in May 2023, and placed a custom sign with a corresponding name and logo on the property before this dispute arose. Moreover, the Respondent’s house name and logo correspond to an actual Spanish phrase and are relevant to the rental property (said to have a blue dome) and locale (a coastal property in Mexico), rather than imitating the Complainant’s own deliberate misspelling of the Spanish terms “blue moon”. The Panel notes that while no picture of the actual house was provided, on the website at the Respondent’s professional photography site, there are a number of pictures of sea turtles (which corresponds to the chosen logo) tagged as being from Los Barriles Mexico – which is in the Municipality of Baja California Sur, Mexico, and thus corroborate the claimed intent. Hence, the Panel accepts the Respondent’s allegations, as sufficiently substantiated by the evidence provided, and finds it more likely that the Respondent selected the disputed domain name for its dictionary meaning, which was relevant for the Respondent’s intended purpose, than for suggesting its association with a beverage trademark.

Accordingly, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark. As discussed above in connection with the second element, the Respondent appears to have legitimate reasons to select a correctly spelled Spanish phrase describing her rental property in Mexico, which she had already acquired and on which she had already installed signage with a corresponding name. The Panel finds the Respondent’s motivation in this respect credible, and unlikely to be a ruse to attack a tequila trademark.

The Respondent is mistaken, however, in denying all responsibility for the Registrar’s default PPC landing page. While this is a common practice of many registrars, registrants remain responsible under the registration agreement to ensure that the domain name is not used in a manner that harms others, such as exploiting a trademark for third-party advertising while the registrant is merely holding onto an undeveloped domain name. See [WIPO Overview 3.0](#), section 3.5. Registrants can avoid this risk simply by directing the domain name to a landing page with a “Coming Soon” or similar message. In this case, the Panel notes that the PPC parking was brief and did not steer users to the Complainant’s competitors nor had any references to the Complainant or its business. In these circumstances, the Panel does not find it indicative of bad faith. . Accordingly, the Panel finds the third element of the Policy has not been established.

The Panel’s decision in this proceeding should be considered to be without prejudice to the Complainant refiling a UDRP complaint in the event that the disputed domain name is used for advertising unrelated to the Respondent’s relevant business pursuits, or which competes with or capitalizes on the Complainant’s mark.

7. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: May 2, 2024