

ADMINISTRATIVE PANEL DECISION

Serveng Civilsan S/A. Empresas Associadas de Engenharia v. RSQ Designs
Case No. D2024-5091

1. The Parties

The Complainant is Serveng Civilsan S/A. Empresas Associadas de Engenharia, Brazil, represented by Pinheiro, Nunes, Arnaud E Scatamburlo, Brazil.

The Respondent is RSQ Designs, Canada.

2. The Domain Name and Registrar

The disputed domain name <serveng.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 December 10, 2024. On December 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 11, 2024, 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 (“Registration Private, Domains By Proxy, LLC”) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 16, 2024, 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 December 19, 2024.

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 December 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 12, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 20, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on January 23, 2025. 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 was founded in 1958 and has, since then, operated under its SERVENG CIVILSAN and SERVENG marks in the construction sector, building ports, airports, subways, railways, stadiums, hydroelectric plants, industrial assemblies, and renewable energy projects in Brazil.

The Complainant owns the domain name <serveng.com.br>, which it uses for its primary website and which it registered in 1999.

The Complainant's marks are the subject of various trademark registrations in Brazil, including:

- Trademark Registration No. 006443877 SERVENG CIVILSAN in national classes 37.05 and 37.40, having a registration date of August 10, 1976; and
- Trademark Registration No. 829925015 SERVENG in international class 42, having a registration date of December 28, 2010.

The disputed domain name was registered on February 13, 2003, and currently resolves to a website featuring pay-per-click ("PPC") advertising for various services, including advertisements in Portuguese and for services offered in Brazil.

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 was registered and has been used in bad faith in order to profit from confusion with the Complainant's well-known SERVENG mark.

B. Respondent

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

6. Discussion and Findings

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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's registered SERVENG mark is reproduced within the disputed domain name, without more, excluding the top-level domain ("TLD"). Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Although the Complainant's SERVENG simpliciter mark was registered after registration of the disputed domain name, the Panel accepts that the Complainant had developed a reputation and unregistered rights in that mark by the time the disputed domain name was registered. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Some of the PPC advertisements on the disputed domain name's website target the Complainant's jurisdiction of Brazil, where the Complainant is well known, suggesting an intention on the Respondent's part to capitalise on the Complainant's reputation, as elaborated on below. Use of a domain name to host PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation of the complainant's mark, as in this case. [WIPO Overview 3.0](#), section 2.9.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

For the following reasons, the Panel finds that it is more likely than not that the Respondent registered and has used the disputed domain name to take advantage of confusion with the Complainant's mark for the Respondent's commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy.

Panels have consistently found that the mere registration of a domain name that is identical to a famous or widely-known trademark, as in this case, by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Although the Complainant appears to be best known in Brazil, the Panel has, pursuant to its general powers articulated inter alia in paragraph 10 of the Rules, conducted limited Internet searches for the Complainant's SERVENG mark which were limited to search results published in the Respondent's jurisdiction of Canada. These searches returned results relating to the Complainant, showing knowledge of the Complainant within the Respondent's jurisdiction.

Some of the PPC advertisements featured on the disputed domain name's website are in Portuguese and are for services offered in the Complainant's country of Brazil, where the Complainant's mark is undoubtedly well known, and which could very likely lead to confusion. This points to the Respondent targeting the Complainant. Although the advertisements may be served programmatically by a third party, the Respondent cannot disclaim responsibility for them. [WIPO Overview 3.0](#), section 3.5.

The term "serveng" has no obvious generic or descriptive meaning that the Respondent could have been seeking to adopt in good faith. There do appear to be a limited number of other organizations that use the term; however, the Complainant seems to be the most well-known, which, combined with the fact that the PPC advertisements used at the disputed domain name's website are, in part, targeted towards the Complainant's jurisdiction where it is well known, suggests targeting of the Complainant.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for. [WIPO Overview 3.0](#), section 4.3.

The Panel finds that the Complainant has established the third element of the Policy.

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 <serveng.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: February 4, 2025