

ADMINISTRATIVE PANEL DECISION

Software Brokers of America Inc. d/b/a Intcomex v. Domains By Proxy, LLC /
Anabelle Debellaire
Case No. D2022-0434

1. The Parties

The Complainant is Software Brokers of America Inc. d/b/a Intcomex, United States of America (“United States”), represented by Ferraiuoli LLC, Puerto Rico, United States.

The Respondent is Domains By Proxy, LLC, United States / Anabelle Debellaire, Mauritius.

2. The Domain Names and Registrars

The disputed domain names <inicomex.com> and <inlcomex.com> are registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2022. On February 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed amendments to the Complaint on February 14 and 23, 2022.

The Center verified that the Complaint together with the amendment to 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 February 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2022. On April February 28, 2022, the Center received a communication from a third party stating that the Respondent’s physical address information is incorrect. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 7, 2022.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on April 25, 2022. 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 factual findings pertinent to the decision in this case are that:

- (1) the Complainant distributes computer products by reference to the trade mark INTCOMEX (the “Trade Mark”);
- (2) the Trade Mark is the subject of United States Patent & Trademark Office (“USPTO”) Reg. No. 2,216,461, registered January 5, 1999; and
- (3) the disputed domain names were registered on October 18, 2021, and have been used in email addresses as described later.

5. Parties’ Contentions

A. Complainant

The Complainant asserts trade mark rights in INTCOMEX. It holds a national registration for the Trade Mark and submits that the disputed domain names are confusingly similar to the Trade Mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain names because they have not been used for a *bona fide* purpose. In particular, it asserts that the disputed domain names are linked to email addresses associated with correspondence aimed at deceiving the Complainant’s customers into misdirecting payments to an account unconnected with the Complainant.

The Complainant alleges that the Respondent registered and used the disputed domain names in bad faith having targeted the Complainant’s business.

The Complainant requests the Panel to order the transfer of the disputed domain names.

B. Respondent

The Respondent did not submit a Response.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trade mark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national or international trade mark authority is evidence of trade mark rights for the purposes of the Policy.¹ The Complainant provides evidence of its USPTO registration of the Trade Mark and so the Panel finds that the Complainant has trade mark rights.

The Complainant submits that the domain names are “visually and phonetically confusingly similar” to the Trade Mark. For the purposes of comparing the disputed domain names with the Trade Mark, the generic Top-Level Domain (“gTLD”) “.com” can be disregarded.² Whilst the Panel does not necessarily agree that the compared terms are phonetically similar, the alternations to the Trade Mark made by replacing the letter “t” with either the letter “i” or the letter “l” are trivial and the Trade Mark remains sufficiently recognizable in the disputed domain names for the purposes of the Policy.³

The Panel finds that the disputed domain names are confusingly similar to the Trade Mark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain names. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by providing evidence demonstrating rights or legitimate interests in the disputed domain names.⁴

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The publicly available Whois data obscured from public view the name of the underlying domain names’ holder behind a privacy service. In consequence of these proceedings, the Registrar identified the domain

¹ See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

² See section 1.11.1 of the [WIPO Overview 3.0](#).

³ See section 1.9 of the [WIPO Overview 3.0](#).

⁴ See, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

names' holder as "Anabelle Debellaire", which does not suggest that the Respondent might be commonly known by either of the disputed domain names. The Panel finds no other evidence that the Respondent might be commonly known by either disputed domain name.

Further, there is no evidence of an association between the parties nor evidence that the Respondent has any trade mark rights of its own. There is also no evidence the disputed domain names have been used in connection to a *bona fide* offering of goods or services, or for a legitimate noncommercial or fair use. The relevant evidence accompanying the Complaint is a single email written in Spanish, translated by the Complainant into English as follows:

"Good day Mr. Escobedo

A pleasure to greet you

Before acknowledging my following electronic message, we hereby inform you that our wire transfer routing number has changed. This was caused by and because our usual bank was charging us taxes and commissions, that we cannot allow.

May you please acknowledge safe receipt of this message so we can provide our updated information? Looking forward

Thank you"

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The email was sent for a nefarious purpose, intending to divert lawful payments away from the Complainant's business. Whilst the author of the email used only one of the disputed domain names to send the message, the other disputed domain name formed part of an email address copied into the primary message and so the Panel's findings relate equally to both names.

Absent a Response, the Respondent has not rebutted this *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, and so finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

As discussed, the evidence provided with the Complaint shows that the disputed domain names are linked to email addresses used in correspondence calculated to deceive the Complainant's customers. The intention is clearly for commercial gain, and it is clear that the Respondent knew of and sought to take advantage of the Complainant and its Trade Mark when registering and using the disputed domain names. The Panel finds that the Respondent's conduct falls squarely under paragraph 4(b)(iv) above.

The Panel finds that the Complainant has satisfied the third and final 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 names, <inicomex.com> and <inlcomex.com>, be transferred.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: April 27, 2022