

ADMINISTRATIVE PANEL DECISION

Crystal Lagoons B.V., Crystal Lagoons Tecnologías, Inc. v. Privacy service provided by Withheld for Privacy ehf / Barry Whyte
Case No. D2022-1728

1. The Parties

The Complainant is Crystal Lagoons B.V., Netherlands, and Crystal Lagoons Tecnologías, Inc., United States of America (“U.S.”), represented by Sol Muntañola & Asociados, Spain.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Barry Whyte, U.S.

2. The Domain Name and Registrar

The disputed domain name <crystal-lagoons.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 May 12, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on May 13, 2022, 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 and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 19, 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 an amendment to the Complaint also on May 19, 2022.

Moreover, the Center also sent an email communication in English and Spanish to the parties on May 19, 2022 regarding the language of the proceeding, as the Complaint has been submitted in Spanish and the language of the registration agreement for the disputed domain name is English. The Complainant submitted a request for Spanish to be the language of the proceeding on August 26, 2021. The Respondent did not comment on the language of the proceeding.

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 in English and in Spanish, and the proceedings commenced on May 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 21, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on June 29, 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 first Complainant, Crystal Lagoons B.V., is a company under Dutch law. The second Complainant, Crystal Lagoons Technologies, Inc., is incorporated in the U.S.

The Complainants are dedicated to develop and maintain clear lagoons for building development projects, and license their technology to real estate project developments. They operate in more than 60 countries.

The second complainant owns trademark rights for the CRYSTAL LAGOONS mark including European Union Trade Mark registration 006326391 registered on September 17, 2008 and U.S. registration 3881936 registered on July 20, 2010. The trademark CRYSTAL LAGOONS is also registered in approximately 135 jurisdictions around the world.

The Complainant owns the domain name <crystal-lagoons.com> (among others), which it has owned since its registration in 2007.

The disputed domain name was registered on December 5, 2021, and according to the evidence submitted with the Complaint, resolved to a website that contained pay per click ("PPC") advertising, but also provided evidence of its use for an email address in an apparent fraudulent email scheme.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to the Complainant's CRYSTAL LAGOONS trademark because it reproduces the CRYSTAL LAGOONS trademark, with the only difference of replacing the letter "g" of the word "lagoon" with a "q".

The Complainant also alleges that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent cannot claim to be making any legitimate noncommercial or fair use of the disputed domain name.

Lastly, the Complainant alleges that the Respondent has registered and used the disputed domain name in bad faith. The Complainants contends that the disputed domain name was registered for the purposes of fraud. In this respect, the Complainant puts forward that the Respondent has used the disputed domain name to send emails usurping the identity of the Complainant, to perform a fraud by using an email address associated with the disputed domain name to impersonate an employee of the Complainant.

The Complainant request the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the domain name holder is to submit to a mandatory administrative proceeding in the event that a third party (complainant) asserts to an ICANN-approved dispute resolution service provider that:

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

Under paragraph 14(b) of the Rules, the Panel shall draw such inferences from the Respondent's default as the Panel considers appropriate. Nevertheless, the Panel may rule in the Complainant's favor only after the Complainant has proven that the above elements are present.

A. Language of Proceedings

The complaint was filed in Spanish and the registration agreement is in English. The Complainant expressed that the Complainant representative uses Spanish as its language and the law firm representing the Complainant is located in Spain. Also part of the documents are in Spanish language.

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

In deciding whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that agreement, the Panel must have regard to all "the relevant circumstances" of the case. The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the Parties.

In this case, the Panel accepts all the submissions in Spanish sent by the Complainant, including the Complaint and its annexes. The Panel finds that it would not be appropriate to request the Complainant to file translations of said submissions, because this would impose an unreasonable burden on the Complainant, and doing so would also result in unnecessarily delaying the proceedings. Having stated that, in light of the registration agreement being English, the Panel finds that it is appropriate to exercise its discretion and allow the proceedings to be conducted in English.

B. Identical or Confusingly Similar

The Complainant has provided evidence that it has rights for the CRYSTAL LAGOONS trademark. The Complainant is a wholly owned member of the Crystal Lagoons (Curaçao) B.V. corporate group and has the right by virtue of a Board Resolution of Crystal Lagoons (Curaçao) B.V., which has been provided in evidence, to promote and defend the intellectual property interests of Crystal Lagoons (Curaçao) B.V. Accordingly, the Panel finds that the Complainant, or its corporate group, owns registered trade mark rights in the CRYSTAL LAGOONS mark for the purposes of the Policy.

The Complainant's trademark is clearly recognizable in the disputed domain name. The disputed domain name wholly incorporates the Complainant's CRYSTAL LAGOONS mark with the change of the "g" by the letter "q" in the word "Lagoons".

Accordingly, the Panel therefore finds that the domain name is confusingly similar to a trademark in which the Complainant has rights, and that paragraph 4(a)(i) of the Policy has been satisfied.

C. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

Paragraph 4(c) of the Policy lists the ways that a respondent may demonstrate rights or legitimate interests in the domain name:

(i) before any notice of the dispute, the respondent's 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) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

In this case, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Respondent has not submitted any arguments or evidence to rebut the Complainant's contention that it has never authorized, licensed or permitted the Respondent to use the CRYSTAL LAGOONS trademark in any way.

The Respondent is also not using the disputed domain name in connection with any *bona fide* offering of goods or services (see next section in this decision), nor is Respondent making a legitimate noncommercial or fair use of the disputed domain name. Rather, the illegal use of the disputed domain name can never confer rights or legitimate interests upon the Respondent. Section 2.13 of the [WIPO Overview 3.0](#).

Therefore, the Panel concludes that the Respondent does not have rights or a legitimate interests in the disputed domain name within the meaning of the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel finds that the Respondent was necessarily aware of the Complainant and its trademark at the time of the registration of the disputed domain name, since the disputed domain name has been used to create an email address from which the Respondent has sent fraudulent emails.

The Respondent attempted to impersonate the Complainant, and the Complainant contends that this fraudulent conduct is sufficient to find a bad faith use of the disputed domain name.

The Panel is of the view that the use of a domain name for illegitimate activity is considered as manifest evidence of bad faith (see [WIPO Overview 3.0](#), section 3.4; *Colas, Société Anonyme v. Concept Bale*, WIPO Case No. [D2020-2733](#); and *COLAS, Société Anonyme v. Elliott Murray*, WIPO Case No. [D2020-2417](#)).

Considering the above evidence and findings, the Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy has been satisfied.

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 <crystal-laqoons.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: July 12, 2022