

ADMINISTRATIVE PANEL DECISION

Coty Geneva S.A. Versoix v. Domain Administrator, See PrivacyGuardian.org / dulongzhuan, du longzhuan
Case No. D2022-2251

1. The Parties

The Complainant is Coty Geneva S.A. Versoix, Switzerland, represented by Daniel Advogados, Brazil.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America ("United States") / dulongzhuan, du longzhuan, Philippines.

2. The Domain Name and Registrar

The disputed domain name <lojacoty.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 22, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 June 24, 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 on June 27, 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 29, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 4, 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 Complainant is part of the globally trading Coty group of companies. The group manufactures, markets and distributes perfume, cosmetics and related products around the world under the brand name COTY.

Amongst other things, the Complainant's corporate group markets and sells its products in Brazil from a website at "www.lojacoty.com.br". (In Portuguese, "loja" means "store".)

The Coty group owns at least 30 registered trademarks around the world for COTY. These include:

- (a) United States Registered Trademark No. 3,917,222, COTY, which has been registered since February 8, 2011 in respect of perfumery in International Class 3 and which claims first use in commerce from 1905;
- (b) United States Registered Trademark No. 5,018,003, COTY, which has been registered since August 9, 2016 in respect of perfume and face powder in International Class 3 and which also claims first use in commerce since 1905;
- (c) United States Registered Trademark No. 6,668,933, COTY, which has been registered since March 15, 2022 in respect of a range of perfumery and cosmetics in International Class 3, cosmetics bags in International Class 18 and retail services in International Class 35;
- (d) International Registration No. 1368200, COTY, which has been registered since June 26, 2017 in respect of a range of perfumery and cosmetics in International Class 3, cosmetics bags in International Class 18 and retail services in International Class 35 and designates (in addition to the United States) Switzerland, China, India, the Republic of Korea, Mexico, the Russian Federation and Singapore;
- (e) European Union Registered Trademark No. 002950780, COTY, which has been registered on December 9, 2003 with effect from November 29, 2002 in respect of soaps, perfumery, cosmetics, essential oils and hair care products in International Class 3;
- (f) European Union Registered Trademark No. 016439069, COTY, which has been registered since June 28, 2017 in respect of a range of perfumery and cosmetics in International Class 3, cosmetics bags in International Class 18 and retail services in International Class 35;
- (g) Brazilian Registered Trademark No. 006757782, COTY, which has been registered since September 10, 1978 in respect of a range of perfumery goods in International Class 3; and
- (h) Brazilian Registered Trademarks Nos. 912828110 and 912828170, COTY which have been registered since October 16, 2018 in respect of a range of perfumes and cosmetic goods in International Class 3 and retailing services in International Class 35, respectively.

The disputed domain name was registered on May 17, 2021.

Since its registration, it has resolved to a website in Chinese characters with provides links to gambling, gaming and pornography sites.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery as the address provided in the Whois record does not exist. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven members of its corporate group own numerous registered trademarks for COTY around the world, some of which have been identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See *e.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the term "loja". As noted above, "loja" translates from Portuguese to mean "store" in English. As this requirement under the Policy is essentially a standing requirement, the addition of such a term to the

Complainant's trademark does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] 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 [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent¹ registered the disputed domain name after the Complainant had registered its trademark and also long after the Complainant's group began using its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

In these circumstances, the combination of the Complainant's trademark, COTY, with "loja" which together mean "Coty Store" in Portuguese means that the disputed domain name carries a very high risk of misrepresenting an association between the holder / user of the disputed domain name and the Complainant

¹ As the first-named Respondent is a privacy service, the Panel will refer to the second-named Respondent as the Respondent unless the context requires the contrary.

or its corporate group. See for example section 2.5.1 of the [WIPO Overview 3.0](#).

The website to which the disputed domain name resolves is plainly commercial. The services or activities being offered through the website are wholly unconnected with the Complainant and its corporate group and so in the circumstances of this case could not give rise to a claim of fair use.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd.*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The already mentioned combination of the terms “loja” and “Coty” provides a very strong inference that the Respondent was well aware of the Complainant and its trademark particularly in circumstances where the Complainant’s group has been using the trademark COTY for a very long time over a very wide extent including using exactly that phrase for its online store in Brazil and especially where there is no apparent connection between “Coty” and either the Respondent’s name or the activities of gambling, gaming and pornography.

Given that, as the Complainant contends, it is also appropriate to infer from the way the Respondent is using the disputed domain name that the Respondent registered the disputed domain name to take advantage of its resemblance to the Complainant’s trademark and attract people to the Respondent’s website by mistake.

The Panel finds that constitutes registration in bad faith.

The use of the Complainant’s trademark in the disputed domain name in connection with a gambling, gaming and pornography website without permission from the Complainant clearly constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <lojacoty.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: August 18, 2022