

ADMINISTRATIVE PANEL DECISION

Crystal Lagoons B.V. and Crystal Lagoons Technologies, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / conglomerates ships
Case No. D2022-2929

1. The Parties

The Complainants are Crystal Lagoons B.V., Netherlands (the “First Complainant”) and Crystal Lagoons Technologies, Inc., United States of America (“United States”) (the “Second Complainant”), represented by Sol Muntañola & Asociados, Spain.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / conglomerates ships, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <crystals-lagoons.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in Spanish with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2022. On August 9, 2022, 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 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 August 9, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent a communication to the Parties regarding the language of the proceeding. The Complainants filed an amendment to the Complaint in Spanish on August 10, 2022 in which they requested that the language of the proceeding be Spanish. 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, and the proceedings commenced on August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 7, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 19, 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 Complainants form part of the Crystal Lagoons group, which provides technology to construct and operate artificial lagoons for recreational use. The Second Complainant holds trademark registrations for CRYSTAL LAGOONS, including the following:

- European Union Trade Mark registration number 006326391, registered September 17, 2008, specifying services in class 42; and
- United States trademark registration number 3881936, registered November 30, 2010, specifying services in class 42. This registration contains a disclaimer of exclusive use of the word "lagoons" except as shown in the mark.

The above trademark registrations are currently valid. The Complainants also use the domain name <crystal-lagoons.com>, registered on February 27, 2007, in connection with a website where they provide information about the Crystal Lagoons group, its services, and its technology.

The Respondent is identified in the Registrar's Whois database as "conglomerates ships".

The disputed domain name was created on July 21, 2022. It does not resolve to any active website. The evidence shows that on the date of its registration, the disputed domain name was used to create an email address from which a communication was sent, that purported to be from the Complainants' technical director. The email was sent to a customer of the Complainants and sought to divert payments intended for the Complainants to a different bank account. The email was copied to email addresses that incorporated the disputed domain name and the usernames of other staff of the Complainants. The email also included a copy of an actual email thread between the Complainants and the customer in question.

According to evidence provided by the Complainants, the registration of the disputed domain name occurred two days after the notification of a decision of a panel in a prior proceeding under the UDRP ordering the transfer of the domain name <crystal-lagoons.com> to the Complainants. See *Crystal Lagoons B.V., Crystal Lagoons Technologies Inc. v. Privacy service provided by Withheld for Privacy ehf / Barry Whyte*, WIPO Case No. [D2022-1728](#). That domain name was used in an email address to impersonate the Complainant in fraudulent emails and it was registered using the same privacy service as the disputed domain name in the present proceeding.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainants' CRYSTAL LAGOONS mark.

The Respondent has no rights or legitimate interests with respect to the disputed domain name. There is no association or connection between the Complainants and the Respondent, who has of course never been authorized or licensed by the Complainants to use signs that are confusingly similar to their trademarks. The disputed domain name has only been used with the intention of usurping the identity of the Complainants' staff to divert payment for services contracted with the Complainants.

The disputed domain name has been registered and is being used in bad faith with the sole purpose of usurping identity for fraudulent ends.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Procedural Issues

A. Consolidation: Multiple Complainants

The Complaint was filed by two complainants against a single respondent. Both Complainants form part of the same corporate group. The Second Complainant owns registrations for the trademark CRYSTAL LAGOONS and the First Complainant is evidently a user of that trademark. The Panel finds that the Complainants have a common grievance against the disputed domain name registrant and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below separately and collectively as "the Complainant" except as otherwise indicated.

B. Language of the Proceeding

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 Registrar confirmed that the Registration Agreement for the disputed domain name is in English.

The Complainant requests that the language of the proceeding be Spanish. Its main arguments are that Spanish is the mother tongue of the person within the Complainant responsible for communications in this matter; the Complainant's legal representative in this proceeding is a law firm based in Spain; some of the annexes to the Complaint are in Spanish; and the Complainant presumes that the Respondent will have no difficulty understanding the Complaint and can, if it wishes, require a translation into English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that, in the present proceeding, the Complainant has chosen to file the Complaint and amendment to the Complaint in Spanish, even though the Complainant's website is in English, most of the annexes to the Complaint are in English, and the Complainant does not claim it cannot understand English. In fact, the evidence shows that both Parties corresponded with a customer of the Complainant in English prior to this dispute and are indeed able to communicate in that language, while nothing on record gives rise to the inference that the Respondent understands Spanish. Nevertheless, despite the Center having sent the Respondent an email regarding the language of the proceeding and a notice of the Complaint in both

English and Spanish, the Respondent did not comment on the issue of language or express any interest in participating otherwise in this proceeding. Therefore, in the circumstances of the present case, the Panel considers that requiring the Complainant to translate the Complaint into English would create an undue burden and delay whereas accepting it in Spanish and rendering this decision in English does not create unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the Complaint as filed in Spanish without translation.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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.

Failure to prove any one of the above elements will lead to denial of the Complaint. The Complainant bears the burden of proof of each of the above elements.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the CRYSTAL LAGOONS mark.

The disputed domain name incorporates the CRYSTAL LAGOONS mark, adding only a plural “s” after “crystal”, and a hyphen between the words. These minor additions do not avoid a finding of confusing similarity to the mark for the purposes of the first element of the Policy because the CRYSTAL LAGOONS mark remains clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The only other element in the disputed domain name is the generic Top-Level Domain (“gTLD”) extension, “.com”. As a standard requirement of domain name registration, the gTLD extension may be disregarded in the comparison between the disputed domain name and the Complainant’s trademark for the purposes of the first element of the Policy.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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.

As regards the first and third circumstances set out above, the disputed domain name does not resolve to any active website but is used in connection with an email address. According to the evidence, an email was sent from that address impersonating the technical director of the Complainant in an attempt to perpetrate fraud. The Complainant submits that there is no association or connection between itself and the Respondent and that it has never authorized or licensed the Respondent to use signs confusingly similar to its trademark. In the Panel's view, this evidence constitutes a *prima facie* case that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Further, the Panel recalls that use of the disputed domain names in connection with attempted fraud cannot ever confer legitimate rights or interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

As regards the second circumstance, the Respondent's name is listed in the Registrar's Whois database as "conglomerates ships", not the disputed domain name. There is no evidence indicating that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he or she did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

With respect to registration, the disputed domain name was registered in 2022, long after the registration of the Complainant's CRYSTAL LAGOONS trademark. The disputed domain name incorporates the Complainant's trademark and is almost identical to the domain name that the Complainant uses for email (<crystal-lagoons.com>). On the day of its registration, the disputed domain name was used to create an email address from which an email was sent impersonating the technical director of the Complainant, addressed to a client of the Complainant, including a thread of an actual email exchange with the Complainant, and showing the usernames of various employees of the Complainant. In these circumstances, it is clear that the Respondent knew of the Complainant and targeted its CRYSTAL LAGOONS trademark when he or she registered the disputed domain name.

Moreover, the disputed domain name was registered within two days of the notification of a decision to transfer another domain name that targeted the same mark, that was registered using the same privacy service, and that was used according to the same *modus operandi* as that at issue in the current proceeding. The Panel infers that the Respondent is the same person or under common control with the respondent in the prior proceeding, which is further evidence that he or she acted with full knowledge of the Complainant's rights in bad faith when registering the disputed domain name. See *Crystal Lagoons B.V., Crystal Lagoons Technologies Inc. v. Privacy service provided by Withheld for Privacy ehf / Barry Whyte, supra*.

With respect to use, the disputed domain name is used in connection with an email address that is almost identical to that of the technical director of the Complainant. On the date of creation of the disputed domain name, an email sent from that address impersonated the technical director of the Complainant in an attempt to perpetrate fraud. The Respondent provides no explanation of any other actual or potential use of the disputed domain name. In these circumstances, the Panel finds that the Respondent's primary motive in relation to the registration and use of the disputed domain name was to capitalize on, or otherwise take advantage of, the Complainant's trademark rights, by creating a likelihood of confusion with the Complainant's mark with the intent to unlawfully profit therefrom. See [WIPO Overview 3.0](#), section 3.4; and *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. [D2016-2213](#).

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <crystals-lagoons.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 3, 2022