

ADMINISTRATIVE PANEL DECISION

Unimed Fortaleza Sociedade Cooperativa Médica LTDA v. Domain Administrator, Fundacion Privacy Services LTD
Case No. D2022-3248

1. The Parties

The Complainant is Unimed Fortaleza Sociedade Cooperativa Médica LTDA, Brazil, internally represented.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <unimedfortaleza.com> is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing its contact details.

The Center verified that 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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for filing a Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 10, 2022.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on October 17, 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 a healthcare provider which belongs to the cooperative Unimed do Brasil Confederação Nacional das Cooperativas Médicas. In its capacity of member of said Confederation, the Complainant has rights over the UNIMED trademark in Brasil, which registrations are owned by such Confederation:

Trademark	Registration no.	Registration Date	Classes
UNIMED	760283494	July 12, 1983	39: 10
UNIMED	826361676	May 27, 2008	44
UNIMED	910874115	April 3, 2018	44

The Complainant is the owner of the domain name <unimedfortaleza.com.br>, which was registered on January 4, 2001.

The disputed domain name was registered on June 29, 2004 and resolves to a parked website comprising pay-per-click links, which are related to the Complainant's services.

5. Parties' Contentions

A. Complainant

I. Identical or Confusingly Similar

That the disputed domain name is identical to the domain name <unimedfortaleza.com.br> and the UNIMED trademark, which fact could cause confusion among customers, and could lead to illegal practices, endangering the personal information of the Complainant's clients.

II. Rights or Legitimate Interests

That the Respondent has no rights to or legitimate interests in the disputed domain name.

That the disputed domain name is for sale at auction on "sedo.com" with an initial bid of USD 500, which shows that the Respondent lacks legitimate interests.

That the Respondent is making an illegitimate use of the disputed domain name to obtain undue commercial advantage.

That the use of the disputed domain name will result in commercial gain to the Respondent arising from deceitful practices.

That the Respondent's cybersquatting practice could harm the Complainant's credibility, which could lead to financial losses.

III. Registered and Used in Bad Faith

That the Respondent uses the disputed domain name for the sole purpose of trying to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves by creating confusion with the Complainant.

That the disputed domain name was registered in bad faith to create a risk of confusion in relation to the services provided by the Complainant, which are directly associated with the UNIMED trademark.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The Complainant belongs to *Unimed do Brasil Confederação Nacional das Cooperativas Médicas*, owner of trademark registrations for the trademark UNIMED in Brazil.

The disputed domain name is confusingly similar to the trademark UNIMED, as it incorporates said trademark entirely, with the addition of the geographical term "fortaleza". The inclusion of the geographical term "fortaleza" does not prevent a finding of confusing similarity under the first element (see sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The addition of the generic Top-Level Domain ("gTLD") ".com" to the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"). It has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

Therefore, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights to or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed 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 disputed domain name, even if it did not acquire 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.

The UNIMED trademark has been declared to be renowned by the Brazilian Trademark Office.

The Complainant has mentioned that the Respondent has not been commonly known by the disputed domain name (see *Philip Morris USA Inc. v. Serkan Kapu* WIPO Case No. [D2018-0236](#)). The Respondent did not contest this allegation.

The Respondent's election of the disputed domain name, which fully comprises the renowned trademark and name UNIMED and the term "fortaleza" (part of the Complainant's name Unimed Fortaleza Sociedade Cooperativa Médica LTDA), shows that the Respondent has targeted the Complainant, its trademark, and its activities. The website to which the disputed domain name resolves consists of a parked website comprising pay-per-click links, which are related to the Complainant's services. Therefore, the Respondent's conduct cannot be considered as a legitimate noncommercial or fair use of the disputed domain name (see *Wachovia Corporation v. Peter Carrington*, WIPO Case No. [D2002-0775](#), *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#), *McKenzie Global Holdings Limited v. Paul Strube*, WIPO Case No. [D2017-1857](#), and *Government Employees Insurance Company ("GEICO") v. Registration Private, Domains By Proxy, LLC / Kanetria Kitchens*, WIPO Case No. [D2022-2284](#)).

Paragraph 4(c) of the Policy establishes that the aforementioned conduct cannot constitute a *bona fide* offer, because said pay-per-click links capitalize on the reputation and goodwill of the Complainant's name and the trademark UNIMED, or otherwise mislead Internet users into thinking that there is some sort of relationship or association between the Complainant and the Respondent (see section 2.9 of the [WIPO Overview 3.0](#); see also *ABSA Bank Limited v. Domain Administrator, See PrivacyGuardian.org / Sidoti Parmer*, WIPO Case No. [D2020-2992](#); *Archer-Daniels-Midland Company v. Wang De Bing*, WIPO Case No. [D2017-0363](#); *Fontem Holdings 4, B.V. v. J- B-, Limestar Inc.*, WIPO Case No. [D2016-0344](#); *Barceló Corporación Empresarial, S.A. v. Hello Domain*, WIPO Case No. [D2007-1380](#); and *Merck Sharp & Dohme Corp. v. Domain Administrator, PrivacyGuardian.org / George Ring, DN Capital Inc.*, WIPO Case No. [D2017-0302](#)).

In sum, the Complainant made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant's assertions.

In light of the above, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

Given the renowned status of the trademark UNIMED, and considering that it is a fanciful trademark and that it is not a dictionary word, this Panel finds that the Respondent knew or should have known the Complainant and the existence of the trademark UNIMED at the time of registration of the disputed domain name, which constitutes bad faith registration under the Policy (see section 3.2.2 of the [WIPO Overview 3.0](#)).

The fact that the Respondent registered the disputed domain name which entirely reproduces the name of the Complainant and the renowned trademark UNIMED and the term “fortaleza” (part of the Complainant’s name Unimed Fortaleza Sociedade Cooperativa Médica LTDA) shows that the Respondent has targeted the Complainant and its activities. This conduct constitutes opportunistic bad faith registration under the Policy (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L’Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#); and *Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur*, WIPO Case No. [D2019-0208](#)).

Moreover, as stated in the discussion of the preceding factor of the Policy, the disputed domain name resolves to a parked website comprising pay-per-click links, some of which are related to the Complainant’s activities. Therefore, this Panel considers that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant by misleading Internet users, for commercial gain, to the disputed domain name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of said disputed domain name, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#), see also *Fontem Holdings 4, B.V. v. J- B-, Limestar Inc., supra*; *Archer-Daniels-Midland Company v. Wang De Bing, supra*, and *Merck Sharp & Dohme Corp. v. Domain Administrator, PrivacyGuardian.org / George Ring, DN Capital Inc., supra*).

In light of the above, the third element of the Policy has been proven.

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 <unimedfortaleza.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: October 31, 2022