

## **ADMINISTRATIVE PANEL DECISION**

Sourcis, INC. v. Nathan Richardson

Case No. D2022-4064

### **1. The Parties**

Complainant is Sourcis, INC., United States of America (“United States”), represented by Rothschild & Associates LLC, United States.

Respondent is Nathan Richardson, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <mexicobariatric.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email to Complainant on October 28, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 31, 2022.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 23, 2022. After sending the Notification of Respondent Default email, the Center received an email from Respondent on the same day.

The Center appointed Robert A. Badgley as the sole panelist in this matter on November 28, 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.

On November 30, 2022, and December 1, 2022, Respondent sent additional emails to the Center. In the November 30, 2022 email, Respondent wrote<sup>1</sup>:

“This is for the alleged trademark infringement of MexicoBariatric.com

[S. E.] is a business person from California who continues to use lawsuits and legal action to intimidate and bully. [S. E.], otherwise known as [R. E.], has sued many people and firms, and continues to do so on a regular basis. He has previously sued me, and even his own family.

[...]

Mr. [E.] has even sued two of his past attorneys, ostensibly so he doesn't have to pay them.

Mr. [E.] has burned many bridges in the California region, and is a 'known' person especially in Northern California. This is why he has hired an attorney in New York, who is less likely to know of his tactics, business dealing, and his countless previous lawsuits.

But irrespective of the motivations for doing a UDRP, these are the reasons why his claim is false:

He cannot claim this domain trademark, because it does not use his trademark. His trademark is 'Mexico Bariatric Center,' and not 'Mexico Bariatric.' In fact, he tried to trademark 'Mexico Bariatric', but was not allowed as it was too generic. 'Mexico Bariatric' is a generic term for the industry.

Furthermore, if he wanted this domain he could have registered it. This domain was available to register, yet he didn't. He is not trying to protect his trademark, he is trying to steal domain names from other people, especially since we have history.

Proving my point further, he can register MexicoBariatric.org and MexicoBariatric.net right now - but hasn't. Conversely, he has registered MexicoBariatricCenter.net and MexicoBariatricCenter.org - because those are his trademarks.

You cannot trademark 'Used Car Emporium', and register UsedCarEmporium.com, then do a UDRP on UsedCar.com. We all agree that would be ridiculous, because the domain UsedCar.com has a lot of value - and the term is widely known. In this case, MexicoBariatric.com is not widely known, however the reasoning why the previous example is specious, is the same here.

Instead of making an offer to buy the domain name or registering when it was available for less than [USD] 15, he continues to use the law and legal tools to his end.

MexicoBariatric.com is not his domain, nor is his trademark. However, he can make an offer to buy the domain if he so chooses.”

In his December 1, 2022 email, Respondent asked for a three-member panel to decide this case, and made another request, the substance of which is addressed in the Panel's Procedural Order No. 1, discussed below.

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<sup>1</sup> The Panel has redacted the name of a person mentioned in Respondent's email communication, as the Panel finds it is not relevant to disclose the name of this person in the present decision.

On December 14, 2022, the Panel issued Procedural Order No. 1, as follows:

“The Panel notes that, according to paragraph 5 of the Rules, the Response shall “state whether Respondent elects instead to have the dispute decided by a three-member panel”. However, the Panel notes that the due date for Response was November 22, 2022, the Center notified Respondent’s default on November 23, 2022, the Panel was appointed on November 28, 2022, and Respondent sent its email communications to the Center on November 30, 2022, and December 1, 2022.

In view of the arguments raised by Respondent in the email communications received by the Center on November 30, 2022, and December 1, 2022, the Panel requests Respondent to confirm whether the substantive contentions in the above-referenced communications constitute Respondent’s complete Response, or whether Respondent wishes to file a formal Response. The due date for Respondent to respond to the Panel’s request for confirmation and/or for the submission of a formal Response is December 28, 2022.

Furthermore, regarding Respondent’s request for a three-member panel, the Panel finds that the due date for submitting such request has passed, and therefore, the Panel denies this request. Consequently, the Panel also denies Respondent’s request for the “backgrounds and previous rulings for all panelists”. The Panel notes, however, that the Center has general information available online regarding its Domain Name Dispute Resolution Services, and the Uniform Domain Name Dispute Resolution Policy (UDRP).

The Panel reserves the right to seek additional information or documentation from the Parties.

The due date for decision in this proceeding is extended to January 16, 2022.”

On December 15, 2022, Respondent wrote to the Center and raised a variety of points. His email stated:

“A [sic] several different things to address here:

One thing is that you sent this formal UDRP when the US was during a holiday period, where my attention and my time in office was minimal. Therefore, I believe our request for a 3 person panel should be allowed. If not approved, again, I request further information on the 1-person panel including previous rulings and biography.

Regarding whether my rebuttal is the final. Yes, my response is final as this case is straightforward, does not merit additional information. However, if the panel wants further information I’d be happy to provide it.

You say that the, “The due date for decision in this proceeding is extended to January 16, 2023.” What does this mean that the next email we will receive is the determination on the case? A little more clarity would be appreciated on how these things play out from here. Is there a back and forth, more information to submit?”

#### **4. Factual Background**

According to Complainant’s main website, Complainant is a “medical tourism and healthcare marketing company.” One of Complainant’s two main operations is “providing medical tourism services in Mexico.” Specifically, Complainant operates the Mexico Bariatric Center, a destination for United States and Canadian obese patients seeking weight loss solutions.

Complainant holds a trademark registration for MEXICO BARIATRIC CENTER in connection with “bariatric procedures,” United States Patent and Trademark Office Reg. No. 4,512,884 (registered April 8, 2014 with a September 10, 2012 date of first use in commerce).

The Domain Name was registered on June 22, 2019. The Domain Name resolves to a website purporting to be a “Patient’s Complete Guide to Weight Loss in Mexico.”

According to Complainant:

"The goods/services provided by Respondent(s) entirely copy Complainant's goods/services. Further, the services offered for sale on Respondent's websites infringe on various United States trademark registrations and Copyright owned by Complainant. Complainant experiences actual consumer confusion to Complainant's detriment on a daily basis. For example, consumers regularly contact Complainant with customer service inquires and complaints related to services actually purchased from Respondent. Additionally, Respondent uses Complainant's trademark as a keyword for advertising to intentionally divert customers looking for Complainant to Respondent's websites. Moreover, Respondent's website contains provider profiles directly lifted from Complainant's website, misrepresenting Complainant's services as their own."

Respondent has not specially addressed any of the foregoing allegations. Rather, in a November 23, 2022 email to the Center, sent hours after Respondent had been notified of his default due to the passage of time with no Response, Respondent sent an email to the Center, stating:

"I don't agree with any of this. I need more time for my response. This is a malicious attack by a litigious entity. I do not approve anything related to this, nor do I understand your authority regarding a legally purchased domain.

If [S. E.] wants to buy the domain he can make an offer like any other person. Otherwise, he should have registered the domain like I did. He needs to make a [sic] offer."

Respondent did not dispute the allegation that "Respondent's website contains provider profiles directly lifted from Complainant's website." Nor, in any of Respondent's communications to the Center, did Respondent deny having knowledge of Complainant and its trademark at the time he registered the Domain Name.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

### **B. Respondent**

The entirety of Respondent's statements to the Center are quoted above, either in the "Procedural History" section or the "Factual Background" section.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent 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.

### **A. Identical or Confusingly Similar**

The Panel concludes that Complainant has rights in the trademark MEXICO BARIATRIC CENTER through registration demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The omission of the word “center” does not prevent a finding of confusing similarity, since the dominant portion of the mark – MEXICO BARIATRIC – is entirely reproduced in the Domain Name, and the first element of the Policy serves as a standing requirement.

Complainant has established Policy paragraph 4(a)(i).

### **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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 Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has had ample opportunity and time to respond to the basic factual allegations in the Complaint, but he has not done so. Complainant made a number of specific allegations about Respondent causing actual consumer confusion and lifting content from Complainant’s website, but these allegations went unchallenged.

Further, and despite having the opportunity to do so, Respondent has not articulated, much less proven, any legitimate basis on which he registered the Domain Name. Because the Domain Name resolves to a website that appears to compete with Complainant’s business, one would have expected Respondent to explain himself and his *bona fides*, and not merely assert that he got to the Domain Name before Complainant did.

It appears likely that Respondent was aware of Complainant’s business and MEXICO BARIATRIC CENTER trademark at the time he registered the Domain Name. This conclusion is buttressed by the fact that the profile of one of the surgeons at Respondent’s website describes that surgeon as being affiliated with the “Mexico Bariatrics Center,” and the abbreviation “MBC” is also used in that surgeon’s profile. It thus appears to the Panel that Respondent was using the Domain Name, and the corresponding website, to trade off the reputation of Complainant’s trademark.

Based on the record, which is largely undisputed as to the essential facts, the Panel concludes that Respondent lacks rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to 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) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section.

Based on the undisputed record, the Panel concludes, on a balance of probabilities, that Respondent more likely than not had Complainant's registered trademark MEXICO BARIATRIC CENTER in mind when registering the Domain Name.

The Panel also concludes, based on Respondent's operation of a commercial website to mimic Complainant and offer similar services constitutes bad faith use under the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

## **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 Domain Name <mexicobariatric.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: January 4, 2023