

ADMINISTRATIVE PANEL DECISION

AXA S.A. v. Jaime Moreno, Jaime Moreno
Case No. D2022-4887

1. The Parties

The Complainant is AXA S.A., France, represented by Selarl Candé Blanchard Ducamp Avocats, France.

The Respondent is Jaime Moreno, Jaime Moreno, Mexico.

2. The Domain Name and Registrar

The disputed domain name <segurosaxamexico.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 20, 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 December 23, 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 December 23 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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Response was filed with the Center on January 6, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on January 30, 2023. 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 the holding company for a group of related and affiliated insurance companies that provide insurance and asset management services under the AXA mark. The Complainant has its roots in the 18th century and adopted the trade name “Axa” in 1985. It is listed on the Paris and New York stock exchanges. The Complainant serves 95 million customers and employs over 110,000 people worldwide. Its corporate group is present in 50 countries worldwide, notably in Mexico through local entities named “Axa Partners”, “Axa Salud”, and “Axa Seguros”, the latter meaning “Axa Insurance”.

The Complainant is the owner of multiple registered trademarks for the AXA mark, including, for example, European Union Registered Trademark no. 008772766 for the word mark AXA, registered on September 7, 2012 in Classes 35 and 26. The Complainant is also the owner of multiple domain names reflecting said mark, including <axa.com>, registered on October 23, 1995, and <axa.mx>, registered on June 16, 2009. The latter domain name is used for a website presenting the activities of “Axa Seguros” in Mexico.

The disputed domain name was registered on June 5, 2012. The associated website is in the Spanish language. A machine translation indicates that it is entitled “AXA Insurance, Insurance Agent, Life Insurance, Insurance for Major Medical Expenses”. The site goes on to state “We are insurance agents specialized in life insurance and medical insurance from AXA Mexico. Our mission is to offer the client the best possible advice regarding the two insurance branches in which we work. The protection and growth of your heritage is our main objective, as well as planning a future without uncertainty for you and your loved ones”. A web form invites the submission of personal data in order to obtain a quotation for life insurance or to express an interest in retirement savings.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The disputed domain name reproduces the AXA trademark identically, which has no particular meaning, and is well-known and highly distinctive. Where a domain name incorporates the entirety of a complainant’s notorious or famous trademark, it is difficult, if not impossible, to distinguish such mark from the domain name regardless of added terms. The added term “seguros”, which means “insurance”, undoubtedly refers to the Complainant’s activities. There are strong chances that Internet users may believe the website associated with the disputed domain name is another official website of the Complainant, particularly in Mexico, given the addition of that term.

Rights or legitimate interests

The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register a corresponding domain name. The Respondent has adopted such mark for its own use without authorization. The Complainant issued three formal notices to the Respondent to stop using the disputed domain name on June 30, 2021, July 8, 2021, and July 16, 2021. The Complainant did not receive any answer to said formal notices. There is no relationship between the Parties and the Respondent has no prior rights or legitimate interests to justify the use of the Complainant’s trademarks. The Respondent has not been commonly known by the disputed domain name or even associated with the AXA name, and is not making a fair use of the domain name without intent for commercial gain or misleadingly diverting consumers. The Respondent is using the disputed domain name for a phishing page presented as the website of insurance agents of Axa Mexico which seeks consumers’ personal data by creating a false association or connection with the Complainant.

Registration and use in bad faith

The Respondent was aware of the Complainant's AXA trademarks at the time it acquired the disputed domain name. The AXA mark is internationally famous, enjoying a worldwide reputation. The Respondent purposely chose the disputed domain name using the Complainant's famous trademark in its entirety. The chances that Internet users would associate the disputed domain name with the Complainant's mark are even greater due to the use of the Spanish term for insurance, being one of the Complainant's main activities, which would be understood by 113 million Internet users from Spanish speaking countries.

The disputed domain name leads to a phishing page proposing a fake AXA website which appears to be an official site of the Complainant. Said website is presented as a website of insurance agents of AXA Mexico and uses the AXA logo. Said website seeks to capture the personal data of Internet users in a phishing or other reprehensible scheme.

B. Respondent

In summary, the Respondent's contentions are as follows:

The Respondent is an authorized distributor of AXA in Mexico with a contract that allows it to use the name and logo of the insurer for the purposes of marketing its insurance. The disputed domain name is for use in Mexico and the Respondent can only sell to Mexicans and residents in Mexico. The Respondent does not understand there to be a dispute outside Mexico, nor does it understand the cause of the current dispute. Considering that the disputed domain name does not generate profits for the Respondent, and to avoid a dispute, the Respondent is no longer using the disputed domain name and requests that it be deleted and the matter closed. The Respondent is not going to use the disputed domain name again.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element assessment under the Policy is typically a two stage process. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark. Secondly, such trademark is compared to the disputed domain name, usually on a straightforward side-by-side comparison, to determine identity or confusing similarity. The generic Top-Level Domain of the domain name concerned (in this case ".com") may be disregarded for the purpose of this comparison exercise, on the basis that it is merely a technical requirement of registration. If, when compared, the trademark is alphanumerically identical to the disputed domain name, identity will generally be found. If the trademark is not so identical but is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its AXA registered trademark. Said mark appears in the disputed domain name between the words "seguros" and "Mexico". The former is a dictionary word meaning "insurance" and the latter is a geographic descriptor. The presence of neither of these terms affect the recognizability of the Complainant's mark in the disputed domain name.

The Panel notes in addition that the Respondent did not address or otherwise take issue with the Complainant's submissions on this topic.

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the Complainant has carried its burden under the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (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 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 consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Panel finds that the Complainant has made out the necessary *prima facie* case on the basis of its various submissions as outlined in the Parties' contentions section above. Notably, the Complainant asserts that it has given no permission to the Respondent to use its trademark in a domain name, that there is no relationship between the Parties, that the Respondent is not associated with the AXA mark, and is not making a legitimate fair use of the disputed domain name. Finally, the Complainant also asserts that the Respondent is engaging in a phishing scheme using the Complainant's name and logo, which could not confer rights or legitimate interests upon it on any view.

In light of the establishment of the Complainant's *prima facie* case on this topic, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might have in the disputed domain name. In the first instance, it must be noted that the Response does not contain the certification of completeness and accuracy in accordance with paragraph 5(c)(viii) of the Rules. The Panel will therefore treat any material statements of fact which arise exclusively from the Response with a degree of caution.

The Respondent's case is that it is an authorized insurance agent of the Complainant and has a contract permitting it to use the Complainant's name and logo. However, these matters are the subject of mere assertion in the Response and have not been evidenced in any way. Furthermore, the Respondent chooses not to engage to any extent with the Complainant's allegations that it has no permission to use the Complainant's logo or trademark, and that it is involved in a phishing scheme to capture Internet users' personal data for nefarious purposes. In the Panel's opinion, the latter allegation is particularly serious, and calls for an answer from the Respondent. No such answer has been tendered here. The Panel notes that the Respondent's website does have the appearance of that of an insurance agent of the Complainant.

Nevertheless, this would be the case whether the Complainant is right that the website is in fact operating a phishing scheme or that the Respondent is right that it is a duly authorized agent of one of the Complainant's group companies. Where the Complainant asserts that the Respondent has no such authorization and the Respondent asserts that it does, the Panel's view is that the onus is on the Respondent to bring forth evidence of the authorization that it claims. It has not done so here, despite the serious nature of the Complainant's allegations. In short, the Respondent's limited submissions and its actions here do not strike the Panel as those of a duly authorized insurance agent, which the Panel would reasonably expect to be maintaining copious records of its authorizations, not least for regulatory purposes, that would be readily available for exhibiting on demand. It should be noted that not only did the Respondent not provide the claimed authorizations in the context of the present proceeding but also that, according to the Complainant's uncontested submission, the Respondent chose not to answer any of the Complainant's three formal communications which it sent before the present Complaint was filed.

In all of these circumstances, it is not necessary for the Panel to consider the question of whether the Respondent is making fair use of the Complainant's mark in connection with an insurance agency business, whether authorized by the Complainant or not, because the Respondent has offered no evidence that any such agency or corresponding authorization exists while the Complainant denies the fact of such authorization. It should be noted in this context that the Respondent claimed in one of its informal communications that AXA Mexico (*i.e.*, the Complainant's Mexican subsidiary) had checked its website, making comments about color parameters and the use of the Complainant's logo. Yet the Respondent has not attempted to support this claim in any manner. The Panel assumes that had the Respondent's website been checked in this way there would be some form of evidence in the Respondent's hands, such as an exchange of correspondence with the Complainant or its Mexican subsidiary. Alternatively, at the very least, it would be reasonable to expect the Respondent to provide details of the person within AXA Mexico with whom it had allegedly engaged on this matter. No such information is forthcoming.

For completeness, the Panel notes that even if the Respondent had demonstrated to the Panel's satisfaction that it was operating some form of insurance agency (in the absence of express permission of the Complainant to use its name, logo and mark) the composition of the disputed domain name, namely (i) a word describing the service in respect of which the Complainant's well-known mark is registered, (ii) the mark itself, and (iii) a geographical term, points against a finding of rights and legitimate interests under the Policy. A domain name composed in this way carries a risk of implied affiliation, sponsorship or endorsement, such that it would not typically be regarded by panels under the Policy as entitling the respondent to claim fair use (see, for example, *Dell Inc. v. Raj Kumar, Itel Computer Solutions*, WIPO Case No. [D2018-2042](#), a case involving a domain name with a very similar composition, namely <dellserviceindia.com>).

In these circumstances, the Panel finds that the Respondent has no rights and legitimate interests in the disputed domain name and that the Complainant has carried its burden under the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have 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 your documented out of pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

In the present case, the Complainant's submissions are focused on an allegation that the website associated with the disputed domain name is presented as an official site of the Complainant (or at least appears to be sponsored, endorsed or otherwise authorized by the Complainant) yet is engaged in a phishing scheme to capture the personal details of Internet users. For its part, the Respondent does not expressly deny the Complainant's assertions but rather claims that it is an authorized insurance agent of the Complainant whose website has been inspected and approved on behalf of the Complainant's Mexican subsidiary.

The Panel accepts that the Complainant's trademark is well-known. The registration and use of a domain name containing such a trademark in connection with a phishing scheme targeting the trademark owner would typically indicate a finding of registration and use in bad faith in terms of the third element of the Policy. The Panel notes that the disputed domain name has been in existence for more than a decade. In the Panel's experience, this would be an unusually long period for a phishing scheme to operate. However, the Panel is not aware of whether the Respondent is the original registrant of the disputed domain name. Even if it were, there is no hard and fast rule that the Panel could apply on that particular issue, and the fact that the disputed domain name is of a longstanding nature does not necessarily act on its own to counter the Complainant's allegations of phishing activity.

No particular assistance can be gleaned by the Panel from the Respondent's website content, which, as noted earlier, would likely have the same appearance whether the Respondent was an authorized insurance agent or a bad actor engaged in a phishing scheme. There is nothing further that the Complainant could provide to the Panel by way of evidence of actual phishing taking place. Such evidence is usually only available in a case where the scheme proceeds by way of deceptive emails, and the Complainant comes by a copy from a third party. That is not the basis of the alleged scheme here, whereby personal details are said to be being harvested by the website itself.

This leaves the Panel in a position where it requires to balance the Parties' cases based upon their respective submissions alone. The allegation that the Respondent is engaged in a phishing scheme has been made by the Complainant. Based on the appearance of the Respondent's site, such allegation is not implausible. For example, as far as the Panel can tell from a machine translation, such site contains details of no authorizations, regulatory information, or licenses that would reasonably be expected of a legitimate insurance agent. Yet the Respondent claims to be operating just such a legitimate business that has been expressly authorized by the Complainant.

In these circumstances, the Panel considers that it is incumbent upon the Respondent to bring forth evidence of the legitimacy of its activities. The bulk of this material is likely to be in its own hands. As noted in the preceding section, a respondent operating as a duly authorized insurance agent can be expected to maintain copious official documentation which should swiftly be accessible to it in support of claims such as those of the Respondent in this case. That the Respondent has offered no such documentation, nor has engaged with the Complainant's preliminary correspondence, speaks volumes to the Panel, as does its failure to file a formal Response containing the necessary certification of completeness and accuracy in this case.

In all of these circumstances, the Panel finds that the balance of probabilities favors the Complainant, and that the Complainant has carried its burden under the requirements of paragraph 4(a)(iii) 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 <segurosaxamexico.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: February 13, 2023