

ADMINISTRATIVE PANEL DECISION

NETANY S.A. v. Domain Sales - (Expired domain caught by auction winner)

c/o Dynadot

Case No. D2022-5029

1. The Parties

- 1.1 The Complainant is NETANY S.A., Uruguay, represented by Mitrani, Caballero & Ruiz Moreno Abogados, Argentina.
- 1.2 The Respondent is Domain Sales - (Expired domain caught by auction winner) c/o Dynadot, United States of America.

2. The Domain Name and Registrar

- 2.1 The disputed domain name < ripioselect.com > (the "Domain Name") is registered with Dynadot, LLC (the "Registrar").

3. Procedural History

- 3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 29, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 4, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing contact details.
- 3.2 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").
- 3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 1, 2023.
- 3.4 The Center appointed Matthew S. Harris as the sole panelist in this matter on February 7, 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

- 4.1 The Complainant is a Uruguayan company that is part of the Ripio Holding group, and which has been dealing in financial products based on Blockchain technology since 2013. It is one of the largest cryptocurrency platforms in Latin America with over three million registered customers. It offers various products and services that use the “Ripio” name. They include “Ripio Select”, which is a trading service offered to both individuals and legal entities wishing to trade large volumes of cryptocurrency. The Complainant has benefited from a fair degree of publicity in international media and was recognised in the “Fintech100: Leading Global Fintech Innovators” report for 2018. The Complainant has recently received a license to operate in the United States of America.
- 4.2 The Complainant is the owner of a large number of registered trade marks and trade mark applications in various jurisdictions that comprise or incorporate the terms “Ripio” or “Ripio Select”. They include the following:
- (i) Brazilian registered trade mark no. 915790696 for “ripio” as stylised text in class 36, filed on September 3, 2018, and with a registration date of June 11, 2019;
 - (ii) European registered trade mark no. 018474845 for RIPIO as a word mark in classes 9 and 36, filed on May 20, 2021, and with a registration date of September 25, 2021; and
 - (iii) Mexican trade mark no 2435962 for RIPIO SELECT as a word mark in 36, filed on April 21, 2022, and with a registration date of August 11, 2022.
- 4.3 “Ripio Holding” of the Cayman Islands is also recorded at the United States Patent and Trade Mark Office as the owner of registered trade mark no, 5012417 for “ripio” as stylised text in class 36, filed on December 8, 2016, and with a registration date of August 2, 2016.
- 4.4 The Complainant operates a Spanish-language website that promotes its business from the domain name <ripio.com>.
- 4.5 The Domain Name was registered on May 6, 2022. It is not clear who exactly is the registrant of the Domain Name, but the Respondent name suggests that at some point it was acquired via an auction conducted by the Registrar following the Domain Name’s expiry. However, to what extent this statement is consistent with a creation date of May 6, 2022 is also unclear.
- 4.6 At some point prior to the commencement of these proceedings the Domain Name was listed on the Dan.com website as available for sale at a price of USD 4,995. The Domain Name continues to be so listed and offered for sale as at the date of this decision.

5. Parties’ Contentions

A. Complainant

- 5.1 The Complainant describes its business, trade mark applications, registered trade marks and domain names, and how the Domain Name has been used since registration. It claims that by reason of its use of the marks RIPIO and RIPIO SELECT worldwide (including the advertising and promotion of the same), those marks have become well known.

- 5.2 The Complainant contends that the Domain Name “contains” both the RIPIO and RIPIO SELECT trade marks. It further asserts that it has no relationship with the Respondent, has not authorised the Respondent to register any domain name that is identical or similar to its marks, and that the Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services, has not been commonly known by the Domain Name, and is not making a legitimate, noncommercial or fair use of the Domain Name. Accordingly, the Complainant contends that the Respondent has no right or legitimate interest in the Domain Name. In this respect it also contends that the term “ripio select” is “not common, generic or frequently used, and it is strictly related to the Complainant, [and that] it is impossible that Respondent randomly chose it and registered it as a domain name without knowing Complainant”.
- 5.3 The Complainant further contends that the Domain Name has been registered and is being held in bad faith. In this respect it rhetorically asks the question “[for what] reason could [the] Respondent have to choose the ... Domain Name other than to make a bad faith profit from it?” It further maintains that the fact that the Domain Name has been offered for sale demonstrates that the real reason why the Domain Name was registered was “to get a profit through the sale of it” and that this activity falls within the scope of paragraph 4(b)(iv) of the Policy.
- 5.4 In support of its contentions of bad faith the Complainant also claims that this “is not the first time that Respondent and the Registrar are involved in claims before the WIPO”. In this respect it provides copies of eight UDRP decisions. However, only two of these seem to have involved “respondents” with similar names to the “respondent” identified in this case. These are:
- *Quilter Labs, LLC v. Expired domain caught by auction winner. ***Maybe for sale on Dynadot Marketplace*** c/o Dynadot, WIPO Case No. [D2018-2130](#)*
 - *BASF SE v. Domain Sales - (Expired domain caught by auction winner) c/o Dynadot, WIPO Case No. [D2019-1096](#)*

B. Respondent

- 5.5 The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

- 6.1 There are no exceptional circumstances within paragraph 5(f) of the Rules that would prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of any Respondent to lodge a Response.
- 6.2 To succeed in these proceedings the Complainant must make out their case in all respects under paragraph 4(a) of the Policy. Namely, the Complainant must prove that:
- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (paragraph 4(a)(i)); and
 - (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and
 - (iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).
- 6.3 However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

- 6.4 The Panel will deal with each of the requirements of paragraph 4(a) of the Policy in turn, but before doing so makes a number of brief observations as to the “respondent” disclosed by the Registrar in this case.
- 6.5 “Domain Sales - (Expired domain caught by auction winner) c/o Dynadot”, which is the name recorded for the Respondent in this case, is obviously not the name of any real person or entity. As has already been observed by the Panel, this instead appears to be an entry in the Whois details for the Domain Name purporting to record that the Domain Name was acquired via an auction conducted by the Registrar following its expiry. Presumably the Registrar was responsible for this entry. However, if this is so, this is curious and potentially of concern.
- 6.6 The normal practice of registrars in cases where a domain name has been registered in the name of a privacy or proxy service, is to disclose the underlying registrant in response to the Center registrar verification request email. That practice and how the Center deals with that disclosure is recorded in section 4.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). This Panel has also set out in a number of decisions the importance of that practice to the proper operation of the UDRP. One of those cases was *Nishimura & Asahi v. Super Privacy Service LTD c/o Dynadot* Case WIPO No. [D2019-2070](#), which also involved the Registrar and where the failure of the Registrar to initially provide that disclosure was subject of criticism by the Panel.
- 6.7 In the present case, the registration details provided do not expressly identify any privacy or proxy service. But if the words “Domain Sales - (Expired domain caught by auction winner) c/o Dynadot”, are meant to record the fact that there is some third party who has acquired and now controls the Domain Name, it is difficult to see why the same analysis is not applicable. And if so, the question arises as to why the Registrar has not disclosed the underlying registrant of the Domain Name.
- 6.8 That said, the Panel is not entirely clear what has actually occurred in this case and why no underlying registrant details were provided. As far as the Panel can tell, the Registrar has not previously been requested to explain this practice. The Panel could have issued a further procedural order asking for clarification of this point from the Registrar. But that would result in further delay to a decision being issued in this case and at this late stage would be unfair to the Complainant. However, it does invite the Center on publication of this decision to bring paragraphs 6.5 to 6.8 of this decision expressly to the Registrar’s attention. This is also an issue that parties, the Center, the Registrar and/or any future panel may wish to consider further in any similar case in future in light of the comments of the Panel in this decision.

A. Identical or Confusingly Similar

- 6.9 The Complainant has satisfied the Panel that it has extensive registered trade mark rights in RIPIO. The Complainant has also referred to a large number of trade mark applications for the term “RIPIO SELECT”. A trade mark application is not generally considered to provide relevant rights for the purposes of the Policy (see section 1.1.4 of the [WIPO Overview 3.0](#)). However, at least some of those applications proceeded to grant prior to the filing of the Complaint. Therefore, the Panel is satisfied that the Complainant also has trade mark rights in this term.
- 6.10 In order to demonstrate the first element of the Policy, it is usually sufficient for a complainant to show that the relevant mark is “recognizable with the disputed domain name” (see section 1.7 of the [WIPO Overview 3.0](#)). The Domain Name can only be sensibly understood as the term “ripio select” combined with the “.com” generic Top-Level Domain. Therefore, both the RIPIO and RIPIO SELECT marks of the Complainant are clearly recognisable in the Domain Name.
- 6.11 The Complainant has, therefore, satisfied the Panel that the Domain Name is at least confusingly similar to more than one trade mark in which it has rights and it has thereby made out the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

6.12 The Panel accepts the Complainant's claims that it is not associated with the Respondent and that none of the examples of rights or legitimate interests set out in the Policy apply in this case. As is addressed in the context of the assessment of bad faith later on in this decision, the Panel is also of the view that the Domain Name deliberately impersonates the Complainant's business and marks. There is no right or legitimate interest in such impersonation (section 2.5.1. of the [WIPO Overview 3.0](#)). The Complainant has, therefore, made out the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

6.13 The Panel is satisfied that the Domain Name was registered and /or acquired with knowledge of the Complainant's business and marks. In this respect, the Panel accepts that the Complainant's business and marks are well known at least in Latin America and that the Complainant has also benefited from extensive publicity elsewhere in the world. However, even more compelling is the nature of the Domain Name itself. As has already been stated, the Domain Name can only sensibly be read as comprising the term "ripio select". The Complainant has effectively contended that this term is one that is uniquely associated with the Complainant. It is a contention that is inherently credible and is undisputed.

6.14 Given this, the Panel also accepts that the Domain Name inherently and deliberately impersonates the Complainant. To deliberately register and hold such a domain name is likely to involve registration and use in bad faith, regardless of what exactly is the Respondent's intended use of the Domain Name at the time that the Domain Name was acquired.

6.15 Further and in any event, there is the past and continuing offer for sale of the Domain Name for USD 4,995. The Panel is satisfied that this demonstrates that the most likely explanation for the Respondent registering and holding the Domain Name is for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name. This falls within the scope of the example of circumstances evidencing bad faith set out in paragraph 4(b)(i) of the Policy.

6.16 The Complainant has, therefore, made out the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

7.1 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, <ripioselect.com>, be transferred to the Complainant.

/Matthew S. Harris/

Matthew S. Harris

Sole Panelist

Date: February 21, 2023