

ADMINISTRATIVE PANEL DECISION

Pacific Logistics Corp. v. David Czinczenheim
Case No. D2023-0863

1. The Parties

The Complainant is Pacific Logistics Corp., United States of America, represented by Milord & Associates, PC, United States of America.

The Respondent is David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <pacificlogisticsservices.com> is registered with Australe Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 25, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 2023, 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 (Registered owner of <pacificlogisticsservices.com>) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

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 March 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 17, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on May 2, 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 a logistics company. The Complainant is the owner of the following registered trademarks:

- United States of America Trademark No. 5,954,839 for PACIFIC LOGISTICS CORP, registered on January 7, 2020, in International Class 35;
- United States of America Trademark No. 6,349,055 for PACIFIC LOGISTICS, registered on May 11, 2021, in International Class 39;
- United States of America Trademark No. 6,349,056 for PACIFIC LOGISTICS, registered on May 11, 2021, in International Class 35;

The disputed domain name was registered on October 22, 2022, well after the Complainant secured rights in the abovementioned trademarks. The Panel has disregarded the Whois information provided by the Complainant in Annex 1 to the Complaint since this related to a different domain name than the disputed domain name, <pacificlogisticservices.com> rather than <pacificlogisticsservices.com>.

According to evidence submitted by the Complainant, the disputed domain name used to resolve to a website for a company called “Pacific Logistics Services” based in Bhosari, India, which purportedly offers logistics services. However, the Panel notes that the website screenshots provided by the Complainant as Annex 4 to the Complaint were captured by the Internet Archive’s WayBack Machine on January 3, 2019, and therefore predate the abovementioned, most recent registration date of the disputed domain name¹. Archived pages from WayBack Machine dated February 22, 2023, which the Panel retrieved on the date of this Decision, show that the disputed domain name did not resolve to an active website prior to the Registrar’s lock of the disputed domain name². At the date of this Decision, the disputed domain name resolves to a parking page of “dan.com”, a marketplace of domain names, indicating that the domain name is for sale for an amount of EUR 599.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that each of the three elements specified in paragraph 4(a) of the Policy are met. The three elements being: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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.

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant contends that the disputed domain name is identical or confusingly similar to its

¹ Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 3.9, the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith.

² Pursuant to [WIPO Overview 3.0](#), section 4.8, noting in particular the general powers of a panel under paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matter of public record if it would consider such information useful to assessing the case merits and reaching a decision.

trademarks since it incorporates the PACIFIC LOGISTICS mark in its entirety.

- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant confirms that the Respondent is in no way associated with the Complainant and has not been authorized to use the Complainant's trademarks. Furthermore, the Complainant contends that there is no evidence of the Respondent's use of the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

- (iii) The disputed domain name has been registered and is being used in bad faith.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith. The Complainant claims that the Respondent had or should have had knowledge of the Complainant's trademarks and business at the time when it registered the disputed domain name. Furthermore, the registration of the disputed domain name prevents the Complainant from registering and using it. Finally, the Complainant asserts that the disputed domain name was registered and is being used for the illegitimate purposes of attracting Internet users to the Respondent's business and creating a likelihood of confusion.

B. Respondent

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

6. Discussion and Findings

The Panel finds that it has jurisdiction to hear this dispute as the Policy has been incorporated by reference into the registration agreement between the Registrar and the Respondent.

The Panel notes that while the Respondent has been duly notified, it did not reply to the Complainant's contentions within the time period established by the Rules. Pursuant to paragraph 14 of the Rules the Panel shall nonetheless proceed to a decision on the Complainant's Complaint and it may draw such inferences from the Respondent's failure to respond as it considers appropriate.

Paragraph 4(a) of the Policy requires that in order for its complaint to succeed, the Complainant must prove that the following three elements are present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

The above three elements will each be discussed in further detail below.

A. Identical or Confusingly Similar

The Complainant is required to establish: (1) that it owns rights in a trademark or service mark, and, if so, (2) that the disputed domain name is identical or confusingly similar to its trademarks.

Firstly, the Panel finds that the Complainant has clearly evidenced that it owns registered trademark rights to PACIFIC LOGISTICS. The Panel is satisfied with the evidence provided in support of the existence of trademarks for or containing the word "pacific logistics". It should be noted that paragraph 4(a)(i) of the Policy does not set minimum requirements as to the jurisdictions of the trademarks a complainant relies on, nor as to the number, nature or scope of protection of such trademarks.

Secondly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks since it incorporates the PACIFIC LOGISTICS mark of the Complainant in its entirety (see [WIPO Overview 3.0](#), section 1.7, as well as *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); *Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#); and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. [D2000-0113](#)). As the PACIFIC LOGISTICS mark is recognizable within the disputed domain name, the addition of "services" does not prevent the Panel's finding of confusing similarity under the first element. It is a well-established view of UDRP panels, with which the Panel agrees, that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see for instance: *Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd.*, WIPO Case No. [D2001-0110](#); *Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#); *M/s Daiwik Hotels Pvt. Ltd v. Senthil Kumaran S, Daiwik Resorts*, WIPO Case No. [D2015-1384](#); and *BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#)).

Finally, as for the applicable Top-Level Domain ("TLD"), *i.e.*, the suffix ".com", the Panel holds that this can be disregarded under the first element confusing similarity test (*CANAL + FRANCE v. Franck Letourneau*, WIPO Case No. [DTV2010-0012](#); *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); and *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, this Panel finds and concludes that the disputed domain name is confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that shall demonstrate a right or legitimate interest:

"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."

It is a well-established view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant is generally sufficient to satisfy the requirements under paragraph 4(a)(ii) of the Policy, and the burden of production shifts to the respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name (*AGUAS DE CABREIROA, S.A.U. v. Hello Domain*, WIPO Case No. [D2014-2087](#); *Spigen Korea Co., Ltd., Spigen Inc. v. Domain Admin, Whols Privacy Corp.*, WIPO Case No. [D2016-0145](#); and *HubSpot, Inc. v. WholsGuard Protected, WholsGuard, Inc. / Steve Johnson*, WIPO Case No. [D2016-1338](#)).

The Panel notes that the Respondent has not responded to any of the Complainant's contentions, let alone submitted evidence to the contrary, and that, pursuant to paragraph 14 of the Rules, the Panel may draw such inferences from the Respondent's failure to respond as it considers appropriate. In the present case, taking into consideration the Respondent's default, this Panel finds that the Complainant has made out an

unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, in view of the circumstances of this case, including the following factors.

The Panel finds that there is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. In reaching this finding, the Panel has not taken into account the evidence of use of the disputed domain name submitted by the Complainant since this predates the (most recent) date of registration of this domain name. As mentioned above, the Panel found through its own research that the the disputed domain name did not resolve to an active website and is currently being offered for sale. This finding is further supported by the fact that the disputed domain name carries a risk of implied affiliation with the Complainant since it is confusingly similar to the Complainant's trademarks and includes a descriptive term ("services").

In addition, the Complainant asserts that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademarks. The Panel has taken note of the Complainant's confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Finally, the Panel notes that there is no evidence that the Respondent has been commonly known by the disputed domain name. The name of the Respondent does not have any similarity with the disputed domain name and neither does the Respondent appear to be trading under such name.

For all the foregoing reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy non-exhaustively lists four circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the 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 on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel finds that the circumstances and evidence presented by the Complainant offer sufficient proof that both the Respondent's registration and current use of the disputed domain name are in bad faith.

The Panel will first discuss the Respondent's registration of the disputed domain name. The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's abovementioned registered trademarks. The disputed domain name was registered very recently, while the Complainant has been using and registered its abovementioned trademarks years ago. In addition, a simple Google search of "pacific logistics" or "pacific logistics services" would have led the Respondent directly to the Complainant. Finally, the disputed domain name incorporates the mark PACIFIC LOGISTICS in its entirety and the Respondent has not submitted a response containing evidence of rights or legitimate interests in the disputed domain name or offered any explanation as to the choice of the domain name. Consequently, the Respondent's knowledge of the Complainant's registered trademarks may be inferred from these circumstances (*SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#), and *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. [D2007-0950](#)).

Regarding the use of the disputed domain name, the Panel already concluded above that, contrary to the Complainant's claims and evidence, the disputed domain name has not been used since its registration on October 22, 2022, and currently resolves to an offer for sale on the domain name marketplace, "dan.com". However, the fact that the disputed domain name is not being actively used does not prevent a finding of bad faith use. It is a well-established view of UDRP panels, including in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#), that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. The Panel notes that the Respondent did not submit a response and hence there is no evidence of any actual or intended use of the disputed domain name in good faith. Given that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant, the Panel considers that the retention of control of the disputed domain name represents an implied and ongoing threat to the Complainant, which further supports a finding of bad faith. Furthermore, the Panel notes that the Respondent has been the respondent in various prior UDRP proceedings in which domain names containing third-party trademarks were transferred, illustrating the fact that the Respondent has engaged in a pattern of bad faith registrations. See, e.g., *La Société Nexity contre David Czinczenheim*, Litige Case No. [D2022-2989](#); *Blackbaud, Inc. v. David Czinczenheim*, WIPO Case No. [D2022-4527](#); *Aldi GmbH & Co. KG and Aldi Stores Limited v. David Czinczenheim*, WIPO Case No. [D2023-0751](#).

Lastly, given the disputed domain name's offer for sale, the Panel also finds that the current use of the disputed domain name reflects the Respondent's intent to sell the disputed domain name in likely excess of the Respondent's out-of-pocket expenses relating to the registration of the disputed domain name.

In light of the above, the Panel finds that the disputed domain names were registered and are being used by the Respondent in bad faith.

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, <pacificlogisticsservices.com>, be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: May 16, 2023