

ADMINISTRATIVE PANEL DECISION

Empresas CMPC S.A. v. unittyexports unittyexports
Case No. D2023-1246

1. The Parties

Complainant is Empresas CMPC S.A., Chile, represented by Covarrubias & Cía, Chile.

Respondent is unittyexports unittyexports, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <cmpc-cl.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in Spanish with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2023. On March 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on April 18, 2023, 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 April 19, 2023.

On April 18, 2023, the Center informed the parties in English and Spanish, that the language of the registration agreement for the disputed domain name is English. On April 19, 2023, Complainant submitted the Complaint translated into English. Respondent did not submit any comment on the Complainant’s submission.

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 April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 11, 2023.

The Center appointed Fernando Triana, Esq., as the sole panelist in this matter on May 17, 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

Complainant owns the trademark CMPC in the National Institute of Industrial Property (“INAPI”) of Chile, registration No. 821252 (word mark), filed on January 17, 2008, in international classes 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34; among other registrations.

Complainant produces wood products, pulp, paper, packaging, and tissue in Latin America.

Complainant owns the domain name <cmpc.com>.

The disputed domain name was registered on October 11, 2022, and is being used as a part of a fraudulent email scheme to impersonate Complainant.

5. Parties' Contentions

A. Complainant

Complainant owns the trademark CMPC in INAPI, registration No. 821252 (word mark), filed on January 17, 2008, in international classes 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34; among other registrations.

Respondent is not related to Complainant in any way and has not been authorized or licensed to register the disputed domain name <cmpc-cl.com>.

The disputed domain name reproduces the trademark CMPC and includes the country code “cl”, which confuses the public as Chile is where the company is based.

The trademark CMPC is a well-known trademark.

Respondent has used the disputed domain name in bad faith, by generating fraudulent emails to obtain the payments meant for Complainant.

Respondent does not have rights or legitimate interests on the disputed domain name.

Respondent is not licensed or authorized to use the trademark in any way.

Respondent misleads consumer by impersonating Complainant's officers to divert the payment of Complainant's clients.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Likewise, paragraph 10(d) of the Rules, provides that “the Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

The Panel placed special emphasis on the evidence filed to prove assertions, which has been thoroughly studied in order to determine its relevance and weight in reaching a decision. The statements that have been accompanied by evidence have been given more importance than the mere unsubstantiated assertions.

Paragraph 4(a) of the Policy requires that Complainant prove each of the following three elements to obtain an order that the disputed domain name be transferred:

- (1) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (3) the disputed domain name has been registered and is being used in bad faith.

The findings, based on the evidentiary support submitted by Complainant, noting that Respondent did not reply to Complainant’s contentions, will be discussed as follows: first of all, the Panel will determine whether or not the disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights. Secondly, the Panel will verify if Respondent has any rights or legitimate interests in respect of the disputed domain name. Thirdly, the Panel will establish whether or not the disputed domain name has been registered and is being used in bad faith by Respondent.

6.1 Language of the proceedings

The language of the Registration Agreement is in English.

Complainant translated the Complaint into English.

Paragraph 11(a) of the Rules provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English.

A. Identical or Confusingly Similar

Complainant owns the trademark CMPC in INAPI, registration No. 821252 (word mark), filed on January 17, 2008, in international classes 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34; among other registrations.

Firstly, it is important to point out that paragraph 4(a) of the Policy requires the existence of a trademark or a service mark.

In this case, Complainant has proved its rights in the trademark CMPC in INAPI, as per annex 3 to the Complaint. Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a

UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 1.2.

Therefore, the Panel concludes that Complainant has demonstrated rights in the trademark CMPC for purposes of paragraph 4(a)(i) of the Policy.

On the first place, before establishing whether or not the disputed domain name is confusingly similar to Complainant’s trademarks, the Panel wants to point out that the addition of a generic Top-Level Domain (“gTLD”)“.com”, is generally disregarded when determining if the disputed domain name is identical or confusingly similar to the trademark. See [WIPO Overview 3.0](#) at section 1.11.

The Panel considers that the reproduction of the Complainant’s trademarks CMPC in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant’s trademark. See [WIPO Overview 3.0](#) at section 1.7.

Moreover, the addition the term “-cl” does not prevent the confusingly similarity between the Complainant’s trademark and the disputed domain name. See [WIPO Overview 3.0](#) at section 1.8.

In consequence, as per this reasoning, the Panel finds that, the disputed domain name is confusingly similar to Complainant’s trademarks and thus, the requirement set forth in paragraph 4(a)(i) of the Policy is duly complied with.

B. Rights or Legitimate Interests

Regarding the second element of paragraph 4(a) of the Policy, UDRP panels have unanimously found that requiring the complainant to prove the lack of rights or legitimate interests of the respondent in the disputed domain name is often an impossible task. It is not only proving a negative but also demands access to information that is mostly within the knowledge of the respondent.

In [WIPO Overview 3.0](#) at section 2.1, it is stated that:

“While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

Therefore, Complainant is required to make a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Once this *prima facie* case is made, the burden of production shifts to Respondent, who must come forward with concrete evidence of its rights or legitimate interests. If Respondent fails to do so, Complainant is deemed to have met the second element of paragraph 4(a) of the Policy.

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name because of the following: i) Respondent is not affiliated or related to Complainant, nor has Respondent been licensed, permitted or otherwise authorized by Complainant to use the trademark CMPC; ii) Respondent registration and use of the disputed domain name is fraudulent and to commit illegal acts; and iii) Respondent impersonated a Complainant’s employee to defraud a Complainant’s client and steal payments.

The Panel accepts these assertions as a *prima facie* case made by Complainant that shifts the burden of production to Respondent.

Paragraph 4(c) of the Policy includes a non-limited listing of circumstances that serve to prove Respondent's rights or legitimate interests in the disputed domain name:

- (i) before any notice of the dispute, Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent did not file any Response, thus, failed to rebut Complainant's *prima facie* case, and to show its rights or legitimate interests in the disputed domain name. Hence, as per paragraph 14 of the Rules, the Panel shall draw such inferences therefrom as it considers appropriate:

- Respondent's use of the disputed domain name is not in connection with a *bona fide* offering of goods or services, as Respondent had a clear illegal intention, such as, defrauding third parties.
- There is no evidence within the file proving that Respondent is commonly known by the disputed domain name.
- There is no evidence within the file proving that Complainant licensed or otherwise permitted any use by Respondent of its trademark.
- There is no evidence within the file justifying the choice of the trademark CMPC to create the disputed domain name for a *bona fide* purpose. There is enough evidence within the file to prove the intention of using the trademark CMPC in bad faith.
- There is no evidence within the file proving Respondent's rights over the trademark CMPC anywhere in the world.
- There is no evidence within the file proving that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without the intention of commercial gain by misleadingly divert consumers.

The Panel thus concludes that Respondent lacks rights or legitimate interests in the disputed domain name.

Therefore, the second requirement of paragraph 4(a) of the Policy is met.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that Respondent has registered or has acquired the disputed 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 Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed 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) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his/her website or location or of a product or service on his/her website or location.

For the Panel, it is evident that Respondent knew of the existence of Complainant's trademarks when registering the disputed domain name, in particular, Respondent impersonated Complainant in a fraudulent email scheme attempting to divert payments meant for Complainant to Respondent. Further, it is not a coincidence that the disputed domain name is confusingly similar to Complainant's widely-known trademark. Thus, the Panel finds that Respondent deliberately registered the disputed domain name with Complainant's trademark in mind.

Respondent registered the disputed domain name with clear and evident knowledge of the existence of the trademark and the ownership that Complainant has of it. Evidence of that is that Respondent impersonated Complainant in an email sent to Complainant's client the day after registering the disputed domain name (Annex 6 to the Complaint).

Panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. That conclusion applies in the present case. The selection of the trademark and the email sent to Complainant's clients clearly denotes that the decision was not random. In fact, it is absolutely clear that Respondent not only had prior knowledge, but also intended to register the disputed domain name to take advantage of Complainant's trademark deceiving Complainant's clients.

Complainant had the clear intention of attracting Complainant's clients to obtain a fraudulent commercial gain, requesting a payment that was not legally owed to it, taking advantage of the Complainant's trademark and making Internet users believe that Complainant and Respondent are the same person, when this is not true.

Previous UDRP panels have considered that impersonating a third party is *per se* an illegal activity and clear evidence of bad faith, since the illegal activity carried out by Respondent disrupts Complainant's commercial activity and affects its reputation. See [WIPO Overview 3.0](#) at section 3.4.

Consequently, in the present case, there is no doubt that Respondent registered and uses the disputed domain name in bad faith and, thus, the requirement of paragraph 4(a)(iii) of the Policy is fully complied with.

Therefore, the third element of the Policy, paragraph 4(a) is satisfied in the present case in respect to Respondent's bad faith registration and use of the disputed domain name.

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, <cmppc-cl.com> be transferred to Complainant.

/Fernando Triana, Esq./
Fernando Triana, Esq.
Sole Panelist
Date: May 31, 2023