

ADMINISTRATIVE PANEL DECISION

Centro de Promociones Los Cabos San Lucas, S.A. de C.V. v. Jennifer Astrid
Case No. D2023-1688

1. The Parties

The Complainant is Centro de Promociones Los Cabos San Lucas, S.A. de C.V., Mexico, represented by CAYAD, S.C., Mexico.

The Respondent is Jennifer Astrid, Mexico.

2. The Domain Name and Registrar

The disputed domain name <sol-mar.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details and contact information in 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").

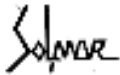



In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 26, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on June 5, 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 Mexican hotel group founded in 1973 and it currently operates five hotels, comprising more than 1,000 rooms.

The Complainant is the owner of several trademark registrations, among others, the following:

Trademark	Registration No.	Jurisdiction	Date of Registration
SOLMAR 	541422	Mexico	January 31, 1997
SOLMAR 	1149459	Mexico	March 19, 2010
SOLMAR RESORT 	1149458	Mexico	March 19, 2010
SOLMAR 	6004850	United States of America	March 10, 2020

The Complainant is also the owner of multiple domain names, among others <solmar.com>, which resolves to the Complainant's official website.

The disputed domain name was registered on November 4, 2021, and it resolves to an inactive website. The disputed domain name was used as part of a fraudulent email scheme.

5. Parties' Contentions

A. Complainant

I. Identical or Confusingly Similar

That the Complainant's trademarks mentioned in the Complaint contain the word "solmar" as the essential and distinctive component thereof.

That said trademarks are in full force in Mexico and that all of them were registered years before the date of registration of the disputed domain name by the Respondent.

That such trademarks are used for providing hotel and restaurant services, the same services in relation to which the Respondent used the disputed domain name to send fraudulent emails from accounts associated with the disputed domain name, with the intention of misleading and defrauding customers of the Complainant.

That the disputed domain name incorporates the SOLMAR trademarks in their entirety. That, therefore, the disputed domain name leads the public to think that the disputed domain name is somehow connected to the owner of the trademark registrations.

That the addition of the generic Top-Level Domain (“gTLD”) “.com” does not affect a finding of confusing similarity between the trademarks and the disputed domain name.

II. Rights or Legitimate Interests

That the Respondent has no rights to, or legitimate interests in respect of the disputed domain name.

That the Respondent does not act as an individual or business independently offering legitimate services to customers in the market.

That the website to which the disputed domain name resolves does not show any content, nor does it advertise the Respondent’s services, or permits contact between potential consumers and the Respondent.

That no activity is being conducted under the disputed domain name. That, therefore, the Respondent has not used the disputed domain name in connection with an offering of goods and services.

That the Respondent is engaged in the passive holding of the disputed domain name.

That the disputed domain name has an email service associated thereto, and that the Respondent has sent emails to the Complainant’s clients using the Complainant’s trademarks without authorization or license, to offer sales, renewals, transfers, and/or reservation services, in order to defraud customers and mislead them.

That the Respondent is carrying out a phishing scheme by sending emails from “[...]@sol-mar.com” to the Complainant’s customers in an attempt to defraud them and to obtain sensitive information such as bank account data.

That the Respondent registered the disputed domain name on November 4, 2021, whereas the Complainant’s trademarks were registered since at least 2009, well before the registration date of the disputed domain name.

That, although the disputed domain name does not resolve to an active website, it is being used to send emails by means of which the Respondent has been passing off as the Complainant to fraudulently obtain payments and information from customers, time-share clients, or condominium owners.

That the Respondent has used the Complainant’s trademark to perpetrate a fraud or phishing scheme by sending emails that claimed to be originated in the Complainant, which include false directions, offers, or requests.

III. Registered and Used in Bad Faith

That the Respondent has demonstrated a knowledge of and familiarity with the Complainant’s trademarks and business, because it has used the disputed domain name in a phishing scheme by sending emails in which it passed off as the Complainant, with fake requests made to the Complainant’s customers.

That the Respondent has demonstrated a vicious intent to capitalize on the goodwill of the Complainant’s trademarks for profit, by creating a likelihood of confusion between the Complainant’s trademarks and the disputed domain name, leading to misperceptions as to the source, affiliation, or endorsement of the disputed domain name.

That the disputed domain name was created over ten years after the dates of first use of the trademarks owned by the Complainant.

That the phishing scheme perpetrated by the Respondent demonstrates that the Respondent not only knew of the Complainant, its business, and its trademarks, but that she targeted and attempted to pass off as the said Complainant.

That it is clear that the disputed domain name is being used to send emails purportedly from the Complainant to fraudulently obtain information and payments from customers. That this is an indicator that the Respondent has registered the disputed domain name primarily to disrupt the business of the Complainant.

That, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is 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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules, (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech* WIPO Case No. [D2006-0292](#), and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#)).

A. Identical or Confusingly Similar

The disputed domain name <sol-mar.com> is confusingly similar to the SOLMAR trademarks since it includes them entirely. The incorporation of a hyphen between the terms "sol" and "mar" does not prevent a finding of confusing similarity, because the Complainant's trademark SOLMAR is recognizable in the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"; see also *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. [D2000-0076](#); *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#); and *Six Continents Hotels, Inc., Inter-Continental Hotels Corporation v. South East Asia Tours*, WIPO Case No. [D2004-0388](#)).

The inclusion of the gTLD ".com" in the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"), and therefore has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

In light of the above, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) the respondent is 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 Complainant has proven to be the owner of several registrations for the SOLMAR trademark in Mexico, where the Respondent appears to reside.

The Complainant has asserted that there is no relationship between the Complainant and the Respondent, that it has not granted any authorization or license to the Respondent to use its trademarks SOLMAR in the disputed domain name, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#); and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The Complainant has submitted evidence showing that the Respondent has used the disputed domain name to impersonate the Complainant, by sending a fraudulent e-mail from the e-mail address “[...]@sol-mar.com” to a Complainant’s customer, in order to try to obtain sensitive information like bank information, and a payment.

The aforementioned behavior constitutes fraudulent conduct and therefore cannot be deemed to have taken place in good faith (see *Instagram, LLC v. Temp Name Temp Last Name, Temp Organization*, WIPO Case No. [D2019-0249](#); *TRAVELGENIO, S.L. v. Rosabel Maduro*, WIPO Case No. [D2017-1392](#); *Olayan Investments Company Establishment v. Namesco Limited d/b/a Globaldomainprivacy.net / Jeffrey Nicholson*, WIPO Case No. [D2012-1303](#)). On the contrary, the acts of impersonation and phishing perpetrated by the Respondent are illegal, and thus cannot confer rights to or legitimate interests in the disputed domain name to the Respondent (see section 2.13.1 of the [WIPO Overview 3.0](#); see also: *Salesforce.com, inc. v. Registration Private, Domains By Proxy, LLC / Doug Todd* WIPO Case No. [D2022-2152](#), “The Panel concludes that Respondent has no rights or legitimate interests in the disputed domain name. The evidence supports Complainant’s assertion that the disputed domain name is being used in connection with a phishing scheme. The use of a domain name in connection with illegal or fraudulent activity cannot establish rights or legitimate interests on a respondent.”).

The Respondent’s use of the disputed domain name shows that the Respondent has targeted the Complainant. Therefore, the Respondent’s conduct cannot be considered as a legitimate, noncommercial, or fair use of the disputed domain name (see *Wachovia Corporation v. Peter Carrington*, WIPO Case No. [D2002-0775](#); and *Edmunds.com, Inc. v. Digi Real Estate Foundation* WIPO Case No. [D2006-1043](#)).

In sum, the Complainant has presented a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant’s assertions.

Accordingly, the requirements of the second element of the Policy have been met.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or the respondent has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the 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 the respondent has engaged in a pattern of such conduct; or
 - (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
 - (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's web site or location or of a product or service on its web site or location.

The fact that the Respondent chose to register the disputed domain name, which comprises the Complainant's trademark divided by a hyphen, and that it has reproduced the Complainant's trademarks in a fraudulent email, suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name. Therefore, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

As discussed previously, the disputed domain name resolves to an inactive website. However, the Complainant has submitted evidence showing that the Respondent has impersonated the Complainant, as part of a phishing scheme to obtain sensitive information and a payment from a customer of the Complainant, by sending fraudulent emails. This fraudulent conduct clearly constitutes bad faith use under the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *National Westminster Bank plc v. Sites / Michael Vetter*, WIPO Case No. [D2013-0870](#); *Instagram, LLC v. Whois privacy protection service / Olga Sergeeva / Ivan Ivanov / Privacy Protect, LLC (privacy Protect.org)*, WIPO Case No. [D2020-0521](#); *Télévision Française 1 v. Kenechi Arene*, WIPO Case No. [D2019-1578](#): "Although there is no evidence in the case record indicating that the disputed domain name has resolved to an active website, it is clear that the Respondent has actively been using the disputed domain name to generate an email address to impersonate an employee of the Complainant in order to lure a third party to make a financial payment to the Respondent.").

According to the evidence submitted by the Complainant and not contested by the Respondent, the Respondent appears to have implemented a phishing scheme by sending fraudulent emails passing off as the Complainant, in an attempt to obtain sensitive information and payments from the Complainant's customers. Therefore, it has attempted to impersonate the Complainant for commercial gain, which action constitutes bad faith under the Policy (see also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#): ("This Panel considers that, in appropriate circumstances, a failure to pass the impersonation test may properly lead to a finding of registration and use in bad faith because of the fact that, at its heart, such a domain name has been selected and used with the intention of unfairly deceiving Internet users, notably those who are (actual or potential) consumers of the trademark owner."); *Philip Morris Products S.A. v. Domain Administrator, Registrant of iqosatismaganiz.com (apiname com) / Anl Girgin, Teknoloji Sarayi*, WIPO Case No. [D2019-0466](#); *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#); and *Friedman and Soliman Enterprises, LLC v. Gary Selesko, M&B Relocation and Referral, LLC*, WIPO Case No. [D2016-0800](#)) These facts constitute bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#) "the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith.").

The abovementioned facts show that not only did the Respondent registered the disputed domain name in bad faith, but also that the Respondent has used the disputed domain name in bad faith (see *BHP Billiton Innovation Pty Ltd. v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#), "The findings above would be sufficient for the Panel to find bad faith use and registration, but the Panel further concludes that the use of an email address associated with the disputed domain name, to send a phishing

email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith.”).

Therefore, the third element of the Policy has been proven.

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, <sol-mar.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: June 19, 2023