

## **ADMINISTRATIVE PANEL DECISION**

Estafeta Mexicana, S.A. de C.V. v. Lesin nestor Kassap  
Case No. D2023-1859

### **1. The Parties**

The Complainant is Estafeta Mexicana, S.A. de C.V., Mexico, represented by Olivares & Cia, Mexico.

The Respondent is Lesin nestor Kassap, Spain.

### **2. The Domain Name and Registrar**

The disputed domain name <corporativoestafeta.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 26, 2023. On April 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 2023, 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 May 10, 2023.

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 May 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2023. The Respondent did not submit a formal response, but sent email communications to the Center on May 17, 2023, May 23, 2023 and June 23, 2023. The Center informed the parties that it will proceed to panel appointment on June 16, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 23, 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 company operating in the field of packaging delivery and supply chain management.

The Complainant is the owner of the following trademark registrations for the sign “ESTAFETA” (the “ESTAFETA trademark”):

- the Mexican trademark ESTAFETA with registration No. 546615, registered on April 24, 1997 for services in International Class 39;
- the Mexican trademark ESTAFETA with registration No. 1060130, registered on September 9, 2008 for services in International Class 39; and
- the Mexican trademark ESTAFETA with registration No. 2042804, registered on September 26, 2019 for services in International Class 39.

The Complainant is also the owner of the domain name <estafeta.com> registered on March 27, 1996, which resolves to the Complainant’s official website.

The disputed domain name was registered on February 23, 2023. It is currently inactive. At the time of filing of the Complaint, the disputed domain name directed to a website that displayed the Complainant’s ESTAFETA trademark and purportedly offered cars for sale.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant submits that the disputed domain name is confusingly similar to its ESTAFETA trademark, because it consists of the trademark and the Spanish dictionary word “corporativo” (meaning “corporate” in English).

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known by the disputed domain name and has no relevant trademark rights, and has not used the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant points out that the Respondent’s website at the disputed domain name has the same look and feel as the Complainant’s official website, displays the Complainant’s ESTAFETA trademark with its design elements which has been widely advertised and is well-known in Mexico, and offers retail services featuring cars, using the Complainant’s address but indicating telephone numbers that do not correspond to the Complainant’s. According to the Complainant, the Respondent thus impersonated the Complainant for fraudulent purposes.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant maintains that its ESTAFETA trademark was registered many years before the disputed domain name and is well-known, that the disputed domain name is confusingly similar to the ESTAFETA trademark, and that the website at the disputed domain name is used for fraudulent activities and phishing. The Complainant adds in this regard that an email address has been created at the disputed domain name.

The Complainant submits that the Respondent’s actions show that it intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s well-known ESTAFETA trademark as to the source, sponsorship, affiliation or endorsement of the

Respondent's website, in an attempt to impersonate the Complainant and take advantage of the goodwill of its trademark.

## **B. Respondent**

The Respondent did not submit a formal Response. In its informal communications to the Center, the Respondent made the following statements:

"Hello, I registered that domain for a client because I am a web developer and hosting provider, we have already suspended the service, I am not interested in having ownership of that domain if you wish I can deliver it to you I am only the web developer who did the register to give you hosting service, thank you." (first email of May 17, 2023)

"This is the person who requested the domain and hosting service. I am only the hosting provider in Spain and that person requested the hosting and domain service and we did it as anyone would without knowing that we are having problems because of that person, since We canceled your hosting service and we have deleted your website so it is no longer online or anything like that, we apologize, we did not know anything about that because I am not even from Mexico, I am only a hosting provider in Spain, thank you." (second email of May 17, 2023)

"We are not interested in that domain, and that domain is no longer in use. Who should pay the amount of money to the plaintiff and how much should they reimburse? Also, why do they make a domain available on namecheap if they are going to remove it later?" (third email of May 23, 2023)

"We have already said that I am not interested in having that domain since a client asked us to register it and namecheap had it available and the registration was done regularly, if the domain has problems then why namecheap allowed its registration? In any case You can cancel the domain or you can make the transfer of said domain since I am not interested in having that domain and it is not in use or working, I do not want that domain you can take it with you, I have accessed that panel that you sent me but I don't know Not even what to do there is a lot of information and I don't even understand how to use that panel, what should I do there?" (fourth email of June 23, 2023)

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the ESTAFETA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the ESTAFETA trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "corporativo" – a Spanish dictionary word for "corporate") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the ESTAFETA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The disputed domain name is confusingly similar to the ESTAFETA trademark of the Complainant, which was registered many years earlier, and represents a combination of this trademark and the Spanish dictionary word for “corporate”. This combination may create the impression in Internet users that the disputed domain name refers to a website of the Complainant for corporate users. The associated website features the ESTAFETA trademark and its design and contains commercial offers of various cars, without including any disclaimer for the lack of relationship with the Complainant. The Respondent has not submitted a proper Response, and in its informal communications to the Center it does not dispute the Complainant’s contentions or provide any reasons why it should be regarded as having rights or legitimate interests in the disputed domain name. The Respondent first alleged that the disputed domain name was registered for a client, without indicating the name of this client, but then stated that “[w]e are not interested in that domain, and that domain is no longer in use”. As provided in Paragraph 1 of the Rules, the “Respondent” means the holder of a domain-name registration against which a complaint is initiated, and here, the Registrar has confirmed that the Respondent is the holder of the registration of the disputed domain name. Therefore, and in the lack of any evidence to the contrary, the Panel considers the

Respondent as being the person in control of the disputed domain name and as being properly constituted as the respondent whose conduct should be considered for the purposes of the Policy.

Taking all the above considerations into account, the Panel concludes that it is more likely that the Respondent, being aware of the Complainant and its ESTAFETA trademark, has registered and used the disputed domain name in an attempt to impersonate the Complainant in order to confuse and attract Internet users to its website for commercial gain. The Panel does not regard such conduct as giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

As discussed above in relation to the issue of rights and legitimate interests, the circumstances of this case support a finding that it is more likely than not that the Respondent knew of the Complainant when it registered the disputed domain name which is confusingly similar to the Complainant's ESTAFETA trademark, and that its registration and use were made targeting the Complainant in an attempt to attract Internet users to the associated website for commercial gain by misleading them that the website and the commercial offers on it are related to the Complainant. Such conduct represents a typical example for the registration and use of a domain name in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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, <corporativoestafeta.com>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: July 7, 2023