

ADMINISTRATIVE PANEL DECISION

Carrefour SA, and Atacadão - Distribuição, Comércio E Indústria LTDA. v. Lohan Medina
Case No. D2023-1900

1. The Parties

The Complainants are Carrefour SA, France, and Atacadão - Distribuição, Comércio E Indústria LTDA., Brazil (collectively referred to as the “Complainant”), represented by IP Twins, France.

The Respondent is Lohan Medina, Brazil.

2. The Domain Name and Registrar

The disputed domain name <cartao-atacado.info> (the “Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 28, 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 for the Domain Name.

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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on June 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

The first Complainant, Carrefour SA, is the owner of the second Complainant, Atacadão – Distribuição, Comércio E Indústria LTDA. The group to which Complainant belongs, is an international market leader in the retailing sector and has more than 12,000 stores and is active in more than 30 different countries worldwide. Currently it employs 384,000 professionals serving 1.3 million unique visitors each day. Specifically, the second Complainant operates a Brazilian chain of warehouse stores established in 1960. In 2007, it was bought by the first Complainant. In 2022, the second Complainant had over 250 stores and distribution centers in all Brazilian states.

The Complainant is the owner of several trademark registrations comprising of the word element ATACADAO, including, but not limited to, the European Union Trade Mark registration for ATACADAO (word mark), with registration no. 012020194 and with a registration date of July 12, 2013, for services in class 35, and the Brazilian trademark registration for ATACADÃO (word mark), with registration no. 006785344 and with a registration date of October 10, 1978, for goods in class 31 (together in singular also referred to as the “Trademark”).

The Domain Name was registered on March 16, 2023, and does not resolve to any active website. Instead the Domain Name resolves to an error page.

5. Parties’ Contentions

A. Complainant

Insofar as relevant for deciding this matter, the Complainant contends the following.

The Domain Name is confusingly similar to the Trademark. More specifically the Domain Name consists of the Trademark in its entirety, preceded by a hyphen and the descriptive term “cartoa” (Portuguese for “card”), which relates to services provided under the Trademark.

The Respondent has no rights nor legitimate interests in the Domain Name, whereas the Respondent not acquired any trademark rights with respect to the Domain Name. Moreover, the Respondent is not commonly known by the Domain Name. The Respondent has also not secured a license nor any other authorization from the Complainant to use the Trademark. Lastly, the Domain Name is not being used for any genuine activities, considering the fact that the Domain Name resolves to an error page.

Furthermore, the Respondent has registered and uses the Domain Name in bad faith. The Respondent has registered the Domain Name with prior knowledge of the Trademark and the Complainant’s activities. This is because the Respondent chose to register the Domain Name that copies the well-known Trademark of the Complainant. Subsequently, the Respondent is intentionally using the Domain Name to attract Internet users by creating a likelihood of confusion with the Trademark. By doing so, the Respondent intentionally disrupts the Complainant’s business, whereas it prevents the Complainant from reflecting its Trademark in the corresponding domain names.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark. The Domain Name is comprised of the Trademark in its entirety to which the Respondent added a hyphen and the term "cartao".

The Trademark is the dominant element of the Domain Name, clearly recognizable in the Domain Name and as set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element.

Lastly, the Panel notes that, in accordance with section 1.11.1 of the [WIPO Overview 3.0](#), the generic Top-Level Domain is in principle disregarded under the first element. Moreover, for technical reasons, a space between words cannot be reflected in a domain name and are usually either omitted or replaced by a hyphen.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

First of all, there is no evidence that “cartao-atacado” is the Respondent’s name or that the Respondent is commonly known under the aforementioned name. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or has ever been authorized by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark in which the Complainant has longstanding rights.

Furthermore, the Respondent does not seem to make any use of the Domain Name, as the Domain Name does not resolve to an active website. The Respondent has also not put forward any evidence that would support the claim that the Respondent has used or made preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

Consequently, the Panel considers that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the Trademark and the Complainant’s activities are well-known, certainly in the country where the Respondent purports to be located. The Complainant is owner of numerous trademarks which were used and registered many years before the Domain Name was registered. Accordingly, in the Panel’s view, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. This is also supported by the fact that in the Domain Name the Respondent included the term “cartao” (Portuguese for “card”), which refers to one of the services offered by the second Complainant under the Trademark.

The fact that the Domain Name does not resolve to an active website, does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 [WIPO Overview 3.0](#)).

Finally, although the lack of a formal or substantive response by the Respondent to the Complaint, as such cannot by itself lead to the conclusion that there is registration and use in bad faith, this nonetheless supports for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 Domain Name, <cartao-atacado.info>, be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: June 20, 2023