

ADMINISTRATIVE PANEL DECISION

**Carrefour SA and Atacadão - Distribuição, Comércio E Indústria LTDA v.
Lohan Medina
Case No. D2023-1992**

1. The Parties

The Complainants are Carrefour SA, France, and Atacadão - Distribuição, Comércio E Indústria LTDA, Brazil, represented by IP Twins, France.

The Respondent is Lohan Medina, Brazil.

2. The Domain Name and Registrar

The disputed domain name <atacaao-fatura.top> 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 May 4, 2023. On May 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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. The Center sent an email communication to the Complainants on May 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on May 12, 2023.

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 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 any response. Accordingly, the Center notified the Respondent’s default on June 12, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on July 10, 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

Carrefour SA, a French company, is a worldwide operator of retail services, with a turnover in 2018 of EUR 76 billion. It operates more than 12,000 stores in more than 30 countries, with more than 384,000 employees worldwide.

Atacadão-Distribuição, Comércio e Indústria LTDA is a Brazilian chain of warehouse stores, established in 1960. It has over 250 stores and distribution centers in all Brazilian states.

The Complainant Atacadão-Distribuição, Comércio E Indústria LTDA is the proprietor of, *inter alia*, Brazilian Trademark Registration No. 006937497, registered on May 25, 1979, in respect of the trademark ATACADAO, and Brazilian Trademark Registration No. 006785344, registered on October 10, 1978, in respect of the trademark ATACADÃO.

The disputed domain name was registered on February 3, 2023, and currently resolves to an error page.

5. Parties' Contentions

A. Complainants

The Complainants allege that the disputed domain name is confusingly similar to its ATACADAO trademark, containing the trademark in its entirety, together with merely the term "fatura".

The Complainants allege that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, to the best of the Complainants' knowledge, the Respondent is not commonly known by the disputed domain name, and the Complainants have never granted permission to the Respondent to use their ATACADAO trademark in connection with the registration of a domain name, or otherwise.

The Complainants allege that the disputed domain name was registered in bad faith, and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

As Carrefour SA is the proprietor of Atacadão-Distribuição, Comércio E Indústria LTDA, the Panel finds it appropriate that the two companies are joint Complainants. Both companies are hereinafter referred to as "the Complainant".

A. Confusing Similarity

The Panel finds that the Complainant has rights to the trademark ATACADAO for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed domain

name. The Panel finds that the “.top” gTLD may be disregarded in the circumstances of the present case.

The Complainant’s ATACADAO trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademark. The addition of the term “fatura”, which is the Portuguese word for “invoice”, to the trademark ATACADAO does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name.

B. Rights or Legitimate Interests

The Panel considers that the Complainant’s allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the disputed domain name.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that the Respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainant’s ATACADAO trademark was deliberately appropriated in the disputed domain name, are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

Since the decision in *Telstra Corporation v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), it has become well-established in subsequent decisions that non-use of a disputed domain name does not prevent the finding of bad faith if a complainant can demonstrate that any good faith use of the domain name is implausible. The circumstances of the present case are such that implied affiliation with the Complainant would automatically arise with any use of the disputed domain name. In these circumstances, the Panel considers that a finding of bad faith is appropriate, and so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

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, <atacadoao-fatura.top> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: July 26, 2023