

ADMINISTRATIVE PANEL DECISION

Sourcis, Inc. v. Name Redacted
Case No. D2023-2433

1. The Parties

Complainant is Sourcis, Inc., United States of America (“United States”), represented by Roths & Associates LLC, United States.

Respondent is Name Redacted¹.

2. The Domain Names and Registrar

The disputed domain names <mexico-bariatric-center-dr-gutierrez.com>, <mexico-bariatric.com>, and <sourcis-inc.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint.

The Center sent an email communication to Complainant on June 9, 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 June 9, 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”).

¹ Due to the reasons explained in the decision, the Panel has redacted the Respondent’s name from said decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 16, 2023. In accordance with the Rules, paragraph 5, the due date for the Response was July 6, 2023. The Response was filed with the Center on June 16, 2023.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on June 29, 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 is a company based in California, United States that operates the Mexico Bariatric Center, a bariatric surgery clinic in Mexico.

It is the proprietor of the following trademarks, which disclaim exclusive rights to the words "Bariatric Center":

- United States Trademark Registration No. 5610986 for MEXICO BARIATRIC CENTER (word mark), registered on November 20, 2018 for services in class 44, claiming a date of first use of September 10, 2012;
- United States Trademark Registration No. 4512884 for MEXICO BARIATRIC CENTER (word mark), registered on April 8, 2014 for services in class 44, claiming a date of first use of September 10, 2012.

Complainant claims common-law rights in the mark SOURCIS, which Complainant states it has used in commerce for services related to medical marketing and medical tourism since at least 2012. Complainant operates a website at the domain name <srcis.com>.

The disputed domain names <mexico-bariatric-center-dr-gutierrez.com> and <mexico-bariatric.com> were registered on April 1, 2023. The disputed domain name <srcis-inc.com> was registered on April 4, 2023. They resolve to websites containing content related to bariatric surgery services in Mexico. For example, the website at "www.mexico-bariatric-center-dr-gutierrez.com" displays a header stating "Dr. Gutierrez-Warnings" and the following content:

"Dr. Gutierrez works with Mexico Bariatric Center and this website will contain more information about the doctor.

This website is not affiliated with Dr. Gutierrez or with Mexico Bariatric Center.

For now, you can visit our website for Mexico Bariatric Center Warnings to get the information we already have: mexico-bariatric-center-warning.com.

You can also visit our website Mexico Bariatric to see the general information we collected about Bariatric treatment in Mexico."

The website at <mexico-bariatric.com> offers general information on bariatric surgery in Mexico, including several clinics the website recommends and two clinics, including Complainant's, that it does not recommend.

The website at <srcis-inc.com> displays a header stating "Sorcis, Inc.-Warnings" and includes the following content and links to Respondent's other websites:

"Sorcis, Inc. is the owner of "Mexico Bariatric Center" and this website will contain more information about the company. This website is not affiliated with Sorcis, Inc., and only exists to provide information about the

company that may not be publicly known. For now, you should visit the our website for warnings about Mexico Bariatric Center to get the information we already have: mexico-bariatric-center-warning.com".

Respondent is an individual who states that he or she has had experience with bariatric surgery in Mexico, and has registered the disputed domain names and operates websites for the purpose of providing warnings to others.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that Respondent's domain names are confusingly similar insofar as MEXICO BARIATRIC conveys the same meaning to a typical consumer as MEXICO BARIATRIC CENTER, and a typical consumer will believe that the website is controlled and endorsed by Complainant. Sourcis, Inc. is the owner of MEXICO BARIATRIC CENTER, and a typical consumer will also believe that the website at the location "www.sourcis-inc.com" is controlled by Complainant, and the contents of the website are endorsed by Complainant. Moreover, the goods/services provided by Respondent entirely copy Complainant's goods/services. Further, the content of websites infringe on various United States trademark registrations and Copyright owned by Complainant, and contain content that is defamatory and libelous to the Complainant. Complainant experiences actual consumer confusion to Complainant's detriment on a daily basis. Moreover, in some instances, Respondent's websites contains information that is directly lifted from Complainant's website. Complainant believes that all of Respondent's actions are taken with the intention of damaging Complainant's reputation and redirecting business to other competitors in the marketplace.

Under the second element, Complainant states that Respondent should be considered as having no rights or legitimate interests in respect of the domain names that are the subject of the Complaint. Respondent's use of the domain is a direct infringement on Complainant's trademark registration, in order to steal business from Complainant and create consumer confusion in the marketplace.

Under the third element, Complainant states that the disputed domain names were registered primarily for the purpose of disrupting the business of a competitor. By using the domain names, Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with 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 the Respondent's web site or location. Respondent has cloned Complainant's website, business model, content, and products for the purpose of disrupting Complainant's business, and attracting commercial gain for Respondent.

Complainant requests transfer of the disputed domain names.

B. Respondent

Respondent's contentions may be summarized as follows:

Respondent is a natural person, is not a company or any other commercial entity, is not affiliated with any bariatric commercial entity. Respondent has experience with people who underwent bariatric surgery in Mexico, and was involved with an attempt to obtain surgery via Complainant. Respondent is not a competitor Complainant but is providing information about several bariatric facilities in Mexico from research and experience, including information about Complainant.

Respondent does not deny that some of the disputed domain names (and others not listed in the complaint) have been registered for the purpose of criticizing Complainant.

The websites clearly state that they are not affiliated with Complainant nor any other bariatric surgery provider in Mexico.

The information and the reviews on the websites were either taken from publicly available sources, such as “Yelp” and “Google”, or from Respondent's personal experience. Respondent created the websites for the sole purpose of educating the public and has gained no monetary value from producing the websites. Respondent has no agreement, contract, nor other obligation to report about any bariatric facility. Respondent is in the process of registering more domains and establishing websites to educate the public on bariatric surgery in Mexico.

The website at <mexico-bariatric.com> is about bariatric surgery and treatment in Mexico, and is not identical to Complainant's trademark. The website at <sourcis-inc.com> is intended to provide information about Complainant and its relationship to the Mexico Bariatric Center. The website has not been completed. Similarly, the website at <mexico-bariatric-center-dr-gutierrez.com> has not been completed and is meant to educate. It clearly states that it is not affiliated with the company or the physician.

Respondent is not a commercial entity and does not provide goods or services. Therefore, it cannot copy Complainant's goods or services, and it is not engaged in stealing business. It is not affiliated with any competitor of Complainant.

Complainant states that Respondent infringes its trademarks and copyright, and copies information from its website. Respondent's websites give reviews, and provide links to reviews available elsewhere. Complainant has not contacted Respondent to correct any of the information provided. Respondent has not taken any information from Complainant's website and the images used were taken from the public domain.

Complainant states that there has been actual confusion, but provides no evidence of such confusion. Respondent has not completed the work to promote the websites and there is very little traffic to them.

Respondent asserts his or her rights and legitimate due to personal experience with bariatric treatment and the right to publish noncommercial reviews on bariatric facilities in Mexico under the First Amendment and under United States Federal law.

Respondent is an individual and does not seek publicity. Respondent requests that his or her name be redacted from the Decision.

6. Discussion and Findings

6.1 Redaction of Respondent's Identity

Paragraph 1 of the UDRP Rules defines the respondent as “the holder of a domain name registration against which a complaint is initiated”.

Paragraph 10(a) of the UDRP Rules states that “the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules”.

Respondent has requested that their name be redacted from the Decision to protect their privacy.

While it is not clear to the Panel that any exceptional circumstances exist to justify the normal presumption of including party names in posted decisions (as one example, owing to the UDRP criteria of a pattern of bad faith), given e.g., that Respondent seems to be advancing views on a matter generally (in addition to criticizing Complainant), the Panel is prepared to redact Respondent's name; notably, given that there has been a Response. This would not represent any inconvenience to Complainant.

6.2 Substantive Matters

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) Respondent has registered and is using the disputed domain names in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall 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”.

A. Identical or Confusingly Similar

As a threshold matter, the Panel must decide whether Complainant has standing to bring a UDRP action. We will first consider Complainant’s standing based on unregistered trademark rights in the SOURCIS mark.

The Panel finds that Complainant has established its unregistered rights in the SOURCIS mark. Panels may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8. Accordingly, the Panel was able to confirm at “www.wayback.com”, that the domain name <sourcis.com> has been used by Complainant for a *bona fide* offering of goods and services, since at least 2004. It is evident that the mark has, through use, become a distinctive identifier, which consumers associate with Complainant’s goods and services. The Panel finds that the mark does not consist solely of descriptive terms. The Panel finds that Complainant has provided evidence of use of this mark in its domain name and on its website. Such use predates the registration of the disputed domain name and supports Complainant’s assertion of acquired distinctiveness of an unregistered mark. See, for example, *UITGERVERIJ CRUX v. W. FREDERIC ISLER*, WIPO Case No. [D2000-0575](#). See also [WIPO Overview 3.0](#), section 1.3.

Next, Complainant has provided evidence establishing that it has trademark rights in the MEXICO BARIATRIC CENTER mark – with a disclaimer, which is notably relevant here under the second and third elements – through registration in the United States. On that basis, Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

In comparing Complainant’s marks with the disputed domain names, the Panel finds the following:

- the disputed domain name <sourcis-inc.com> is confusingly similar to Complainant’s unregistered SOURCIS trademark as the trademark is clearly recognizable within the disputed domain name, followed by the term “inc.”. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8;
- the disputed domain name <mexico-bariatric-center-dr-gutierrez.com> is confusingly similar to Complainant’s MEXICO BARIATRIC CENTER mark as this mark is reflected in its entirety and therefore clearly recognizable with the disputed domain name (See [WIPO Overview 3.0](#), sections 1.7 and 1.8);

- the disputed domain name <mexico-bariatric.com> is confusingly similar to Complainant's MEXICO BARIATRIC CENTER mark as a recognizable part of the mark is reflected within the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

It is the well-established view of UDRP panels that a generic Top Level Domain ("gTLD") such as ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) 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 Panel finds that Respondent is not associated with Complainant in a way that could give rise to any licence, permission, or other right by which Respondent could own or legitimately use Complainant's marks in an ordinary commercial manner. Respondent has also provided no evidence to demonstrate that it has become commonly known by the disputed domain names. Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The disputed domain names are being used to host websites that provide information on bariatric surgery and that are, in varying degrees, critical of Complainant. The Panel finds that Respondent's explanation of his or her intentions for the websites appears plausible. Complainant has not provided any evidence for its assertion that Respondent is engaging in a commercial activity and, on the minimal evidence provided by both Parties, it appears more likely than not that Respondent is indeed engaging in what he or she believes to be a genuine public information campaign that is entirely noncommercial. This Panel shares the view of previous Panels that criticism is not in itself tarnishment. See, for example, *Towers on the Park Condominium v. Paul Adao*, WIPO Case No. [D2012-1054](#). See also [WIPO Overview 3.0](#), section 2.6.1

The issue before the Panel is whether Respondent's use of Complainant's marks in the disputed domain names, without qualifying or derogatory terms that would alert Internet users, amounts to legitimate noncommercial fair use of Complainant's marks.

In respect of the disputed domain name <sourceis-inc.com>, the Panel finds that, on balance, the composition of the disputed domain name creates an impermissible risk of user confusion through impersonation. It is nearly identical to Complainant's entity name and very similar to Complainant's own domain name at <sourceis.com>. Nothing in the composition of the domain name alerts the Internet user to the fact that it is associated with a site critical of Complainant. The SOURCEIS mark is not comprised of purely descriptive elements. Therefore, the Panel finds that Respondent has not established rights or legitimate interests in respect of this domain name. See [WIPO Overview 3.0](#), section 2.6.2, and cases cited thereunder, such as *The First Baptist Church of Glenarden v. Melvin Jones*, WIPO Case No. [D2009-0022](#).

In respect of the disputed domain name <mexico-bariatric-center-dr-gutierrez.com>, the Panel finds that, again, the composition of the disputed domain name creates an impermissible risk of user confusion through impersonation. The disputed domain name reflects Complainant's registered mark in its entirety, together with the name of one of Complainant's physicians. The Panel finds that, while the domain name is being used in relation to noncommercial content, the composition is too closely associated with Complainant's mark and business to overcome the risk of confusion by impersonation. See also [WIPO Overview 3.0](#), section 2.6.2.

In respect of the disputed domain name <mexico-bariatric.com>, the Panel finds that, while Complainant's mark is sufficiently similar to permit a finding of standing to bring a complaint under the first element, the domain name is not identical to the trademark. The elements reflected in the domain name are of low distinctiveness, and the Panel notes that the website primarily contains information of a general nature about bariatric surgery in Mexico. The domain name is sufficiently general and descriptive that it does not create an association with Complainant – and here it is noted that parts of the relevant mark are disclaimed, further supporting such finding. For this reason, the Panel finds that Complainant has not shown that Respondent lacks a legitimate interest in registering such a domain name for this activity. See [WIPO Overview 3.0](#), section 2.6.1.

C. Registered and Used in Bad Faith

Based on the finding under the second element above, the Panel need not come to a determination on whether Complainant has established the third element under paragraph 4(a) of the Policy in respect of the domain name <mexico-bariatric.com>.

In respect of the domain names <sourcis-inc.com> and <mexico-bariatric-center-dr-gutierrez.com>, the Panel finds that, as Respondent has registered and is using these disputed domain names with the intention of creating an audience for his or her criticism by misleading Internet users as to the source, sponsorship, affiliation or endorsement of the websites. The Panel notes that Complainant has failed to provide any evidence in support of its allegations concerning Respondent's motivations of a commercial nature; it has not been established that Respondent copied Complainant's website. Under the circumstances – namely the use of domain names that are identical in part and which are therefore intentionally confusingly similar to the relevant marks, and consistent with UDRP practice, however, the Panel must find that Respondent has registered and is using these disputed domain names in bad faith. See, for example, *The First Baptist Church of Glenarden v. Melvin Jones*, WIPO Case No. [D2009-0022](#) and *Joseph Dello Russo M/D. v. Michelle Guillaumin*, WIPO Case No. [D2006-1627](#).

The Panel notes that the facts of this case, including the lack of evidence supporting Respondent's connection to the disputed domain names, distinguish it from such cases as *Towers on the Park Condominium v. Paul Adao*, WIPO Case No. [D2012-1054](#).

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 names <sourcis-inc.com> and <mexico-bariatric-center-dr-gutierrez.com>, be transferred to Complainant.

For the foregoing reasons, the Complaint is denied in respect of the disputed domain name <mexico-bariatric.com>.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: July 12, 2023