

## **ADMINISTRATIVE PANEL DECISION**

AB Electrolux v. Wellington Fernandes Braz De Lima, Smart Serv  
Case No. D2023-2504

### **1. The Parties**

The Complainant is AB Electrolux, Sweden, represented by SILKA AB, Sweden.

The Respondent is Wellington Fernandes Braz De Lima, Smart Serv, Brazil.

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

The disputed domain name <electroluxsalvador.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2023. On June 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 12, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 June 14, 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 June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent sent informal email communications in Portuguese to the Center between June 28, June 30 and August 14, 2023. The Center notified the Parties that it would proceed to panel appointment on July 25, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on August 14, 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 Swedish joint stock company founded in 1919 which is active in the field of kitchen and cleaning appliances for both consumers and professionals.

The Complainant owns numerous trademark registrations for ELECTROLUX, including:

- International trademark registration No. 836605, in International Classes 3, 7, 8, 9, 11, 12, 21, 25, 35, 37 and 39 of March 17, 2004.
- Brazilian trademark No 002625920, of August 30, 1949.

The Complainant owns numerous domain names comprising ELECTROLUX including <electrolux.com> which was created on April 30, 1996 and which directs to the Complainant's official website.

The disputed domain name was registered on July 22, 2019. The Respondent's identity was initially concealed by a privacy service.

The disputed domain name at the time of the Complaint and this Decision, redirects to a website "www.consertofogaosalvador.com" which provides repair services for stoves, cook tops, ovens and gas heaters of all brands and models and includes some images of the Complainant's branded products without including any disclaimer that the website is not related to the Complainant. The Complainant has submitted evidence showing that previously the disputed domain name resolved to a website offering technical assistance services for ELECTROLUX branded products in Salvador, with no disclaimer either.

In February 2023, the Complainant entered into a discussion with the Respondent via WhatsApp which ended in April 2023. In the said exchanges, the Complainant requested the Respondent to remove the trademark ELECTROLUX from the website and to delete the disputed domain name.

#### **5. Parties' Contentions**

##### **A. Complainant**

With regard to the first element of the Policy, the Complainant alleges to be the owner of multiple trademark registrations for ELECTROLUX. Furthermore, the Complainant underlines that its trademark is contained in entirety in the disputed domain name. The disputed domain name incorporates the city name "Salvador" but the said addition as well as the generic Top-Level Domain ("gTLD") ".com" are not sufficient to prevent a finding of confusing similarity.

With regard to the second element of the Policy, the Complainant says that the Respondent is not authorized to make use of the ELECTROLUX mark. The Complainant has found no evidence that the Respondent is commonly known by the disputed domain name or owns trademarks for the term "electroluxsalvador". In addition, the disputed domain name currently redirects to a website "www.consertofogaosalvador.com" which provides repair services for stoves, cook tops, ovens and gas heaters of all brands and models without including any disclaimer that the website is not related to the Complainant. Previously the disputed domain name resolved to a website purportedly offering technical assistance services for ELECTROLUX branded products in Salvador, with no disclaimer either. Considering that the disputed domain name incorporates the Complainant's well-known trademark in entirety, the Respondent sought to capitalize on the Complainant's reputation and goodwill, which does not constitute a legitimate or fair use.

With regard to the third element of the Policy, the Complainant states that the disputed domain name reproduces its ELECTROLUX trademark in full. A Google search shows that Internet users commonly associate the terms “Electrolux Salvador” with the Complainant and its products. The Respondent thus obviously had the ELECTROLUX trademark in mind when registering the disputed domain name. Furthermore, the disputed domain name is used in bad faith considering that it previously resolved to a website purportedly offering technical assistance services for ELECTROLUX branded products without showing a disclaimer. The current website redirects to a website offering repair services for kitchen appliances of all brands and models thus disrupting the Complainant’s business. The Respondent’s use of a privacy service for registering the disputed domain name is another indication of bad faith, as is the association of the disputed domain name with MX servers that enable the Respondent to create and use email addresses composed of “[...]@electroluxsalvador.com”.

## **B. Respondent**

The Respondent did not formally reply to the Complainant’s contentions other than by sending emails in Portuguese to the Center indicating that the disputed domain name would be cancelled.

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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

The Complainant has shown to have obtained trademark rights in ELECTROLUX in several countries.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark ELECTROLUX since it contains this mark in entirety. The addition of the term “salvador” in the disputed domain name does not prevent a finding of confusing similarity as the relevant trademark remains clearly recognizable within the disputed domain name. See section 1.8 of the [WIPO Overview 3.0](#). The gTLD “.com” is viewed as a standard registration requirement, and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

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

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient statements in order to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks. There is no evidence showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply substantially to the Complainant's allegations.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

The Panel notes that the disputed domain name was first linked to a website offering repair services for ELECTROLUX products and was later redirecting to another website offering such services for various kitchen appliances brands, even for kitchen appliances of the Complainant's competitors, and displaying some images of the Complainant's branded products without a disclaimer on the website site accurately and prominently disclosing that the Respondent has no rights in the trademark ELECTROLUX and has no affiliation with the Complainant of any nature.

Furthermore, the nature of the disputed domain name, incorporating the Complainant's well-known ELECTROLUX trademark in its entirety with the mere addition of the geographical term "salvador" does not show that the Respondent would have rights or legitimate interests in the disputed domain name and carries a risk of implied affiliation.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or 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 holder'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 holder 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 the respondent's 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 website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the fact that the disputed domain name identically reproduces the Complainant's well-known ELECTROLUX trademark and redirects to a website offering repair services for kitchen appliances including for ELECTROLUX goods, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant's trademark and business which has acquired a high level of notoriety since its creation and which is widely promoted worldwide.

In addition, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4.).

The Respondent has not contested the allegations made by the Complainant. To the contrary, the Respondent repeatedly expressed his intention to cancel the disputed domain name's registration.

The Panel therefore finds that the disputed domain name was registered and is being used in bad faith and that the conditions in paragraph 4(a)(iii) of the Policy are fulfilled in relation to the disputed domain name.

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

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: September 7, 2023