

## **ADMINISTRATIVE PANEL DECISION**

**Molinos & CIA S.A. v. Jorge Canepa**  
**Case No. D2023-2839**

### **1. The Parties**

The Complainant is MOLINOS & CIA S.A., Peru, represented by Timoteo Requejo Mejo, Peru.

The Respondent is Jorge Canepa, Peru.

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

The disputed domain name <molinoscia-peru.com> (“Domain Name”) is registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in Spanish with the WIPO Arbitration and Mediation Center (the “Center”) on July 3, 2023. On July 4, 2023 the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 10, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

The Center sent an email communication in English and Spanish to the parties also on July 10, 2023 regarding the language of the proceeding, as the Complaint has been submitted in Spanish and the language of the registration agreement for the Domain Name is English.

The Respondent did not comment on the language of the proceeding.

The Complainant submitted amended Complaint translated into English on July 12, 2023 and amended the name and contact information of the Respondent.

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 July 17, 2023.

In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 7, 2023.

The Center appointed Ana María Pacón as the sole panelist in this matter on August 11, 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 company incorporated in Peru mainly dedicated to the importation and commercialization of fertilizers.

The Complainant is owner of the trademark MOLINOS & CIA FERTILIZANTES registered in Peru in class 1 (Certificate No. 00264935) since May 25, 2018. This trademark is valid until May 24, 2028.

The Complainant owns several domain names, and operates a Facebook page (MOLINOS Y CIA FERTILIZANTES), for promoting its products. The domain name <molinosycia.com> was registered on October 21, 2014.

The Domain Name was registered on August 3, 2022. The Domain Name resolved to a website offering Complainant's goods and services under the MOLINOS & CIA FERTILIZANTES mark.

#### **5. Language of the proceeding**

According to the Rules, paragraph 11 (a), the proceeding shall be conducted in the language of the Registration agreement, unless the Panel determines otherwise, depending on the circumstances of the administrative proceeding.

In this case, the Language of the Registration agreement is English. After being informed of this fact, the Complainant submitted a Complaint translated into English. In light of the above, the Panel comes to the conclusion that the present proceeding should be continued in English.

#### **6. Parties' Contentions**

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

The Complainant argues the following:

##### **(i) Identical or confusingly similar**

The Complainant states that it has trademark rights in MOLINOS & CIA in the class 1.

The Domain Name is confusingly similar to one of their trademarks.

The similarities can be evidenced as follows:

- MOLINOS & CIA FERTILIZANTES (trademark registered by the Complainant)
- MOLINOSYCIA-PERU.COM (disputed domain name).

### **(ii) Rights or legitimate interests**

The Domain Name was registered on August 3, 2022. In contrast, the Complainant has maintained rights and a legitimate interest in its trademark MOLINOS & CIA FERTILIZANTES since 2018, dating back approximately five years.

Additionally, the Complainant registered its trademark derived from its company name, which is MOLINOS & CIA S.A. This denomination is recognized in the market. Furthermore, in line with the registered trademark, the Complainant created its Facebook page and website under the following names: MOLINOS & CIA FERTILIZANTES and “www.molinosycia.com”.

The Complainant contends that the Respondent lacks rights or legitimate interests concerning the Domain Name, as they do not possess a registration identifying it as a trademark, let alone granting them rights. Moreover, it is not recognized in the market under the aforementioned Domain Name.

### **(iii) Registered and used in bad faith**

Upon becoming aware of the registration of the Domain Name, the Complainant promptly visited the corresponding website. To its consternation, it discovered that the Respondent’s website was an exact replica of its own, bearing the Complainant’s trademarks.

In light of the unauthorized utilization of trademarks owned by the Complainant, it took the decisive action of reporting the matter as a cybercrime to the National Police of Peru.

Furthermore, the Domain Name is being employed with an abusive intent, encompassing a thorough replication and fraudulent impersonation of the Complainant’s trademarks. This encompassing replication even extends to the offering of the same products, notably fertilizers. Consequently, the Respondent is actively impeding the normal course of the Complainant’s business activities, resulting in both financial detriment and reputational harm.

The underlying motive of the Respondent is to deceive unsuspecting consumers and exploit the well-regarded reputation associated with the Complainant’s trademarks, all with the objective of obtaining an unjust and unfair advantage. Assuming the identity of the Complainant constitutes a deliberate act of bad faith aimed at misleading consumers. These unsuspecting consumers make purchases under the false belief that they are engaging directly with the Complainant, only to later realize that they have been misled.

The Respondent derives an unfair advantage from the Complainant’s established trademarks, which have garnered consumer trust due to the quality of products offered under said trademarks, specifically, MOLINOS & CIA FERTILIZANTES.

Furthermore, the Respondent concealed its information when registering the Domain Name, and their phone is disabled and unable to receive calls.

## **B. Respondent**

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

## 7. Discussion and Findings

### A. The Respondent's Default

Paragraph 10(a) of the Rules requires that the Panel ensure that each party is given a fair opportunity to present its case.

The Respondent was given notice of this proceeding in accordance with the Rules. The Center discharged its responsibility under Paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Panel further notes that the Registrar's Registration Agreement requires the Respondent to keep its contact information (including postal address) "up-to-date, complete and accurate". A respondent cannot hide behind the provision to the Registrar of either an incorrect or out-of-date postal address.

As previously indicated, the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any other manner.

As set out in paragraph 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panelists is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a) that provides that to obtain the transfer of the Domain Name, the Complainant must prove the following three elements:

- the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- the Domain Name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules provides that the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

In addition, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

The Panel will now review each of the three cumulative elements set forth in paragraph 4(a) of the Policy to determine whether the Complainant has complied with such requirements.

### B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Panel to consider first whether the Complainant has established relevant trademark rights. The Complainant has supplied evidence that shows that it has registered the trademark MOLINOS & CIA FERTILIZANTES. The Panel is therefore satisfied that the Complainant has established relevant trademark rights.

The Panel is also required under paragraph 4(a)(i) of the Policy to examine whether the Domain Name is identical or confusingly similar to the Complainant's trademark. The dominant feature ("molinos&cia") of the MOLINOS & CIA FERTILIZANTES trademark is recognizable within the Domain Name. The addition of the term "peru" is insufficient to avoid the confusing similarity with the Complainant's trademarks. See section

1.8 of the [WIPO Overview 3.0](#): “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. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

Furthermore, it is widely accepted that the “.com” generic Top-Level Domain is generally irrelevant for the purpose of assessing identity or confusing similarity between a trademark and a domain name. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the Domain Name is confusingly similar to the Complainant’s trademark.

The Complainant has therefore satisfied paragraph 4(a)(i) of the Policy.

### **C. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the Complainant to demonstrate that the Respondent has no rights or legitimate interests in the Domain Name. Paragraph 4(c) of the Policy sets out a list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including but not limited to:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

A complainant is required to make a *prima facie* case that the respondent does not have rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name in question. If, however, the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

From the evidence presented by the Complainant, the Panel can observe that the Complainant has achieved recognition in the fertilizers industry in Peru and was engaged in the provision of its products as early as 2018, thereby significantly preceding the registration of the Domain Name.

Furthermore the Panel notes that the Respondent has not apparently been commonly known by the Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights.

The Respondent’s registration and use of the Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed or that the Respondent made a good faith use of the Domain Name.

The Respondent has not submitted any evidence or arguments which could demonstrate its rights to, or legitimate interests in the Domain Name. Neither it has rebutted any of the Complainant’s contentions. This also serves as an indication of the absence of rights or legitimate interests in the Domain Name.

There is no evidence in the case file which could indicate that the Respondent has used, or made demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services, or that the Respondent has made a legitimate noncommercial or fair use in relation to the Domain

Name. On the contrary, the Complainant has provided evidence in the form of screenshots demonstrating that the Respondent operated a website that was very similar to the Complainant's website. This website incorporated the Complainant's registered trademark and offered the same products.

Accordingly, the Complainant has made out the second of the three Policy elements.

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

Paragraph 4(a)(iii) of the Policy requires the Complainant to demonstrate that the Domain Name was registered and is being used in bad faith. Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that may indicate bad faith, including but not limited to:

(i) circumstances indicating that you have registered or you have 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

A number of UDRP decisions have arrived at a finding that registering a domain name with knowledge of another company's rights in the disputed domain name and with intention to divert traffic, may serve as evidence of bad faith registration (see *Digital Spy Limited v. Moniker Privacy Services and Express Corporation*, WIPO Case No. [D2007-0160](#); *PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov*, WIPO Case No. [D2002-0562](#); and *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)). This Panel considers the present situation to exemplify such a circumstance. It is inconceivable, within the scope of good faith, that the act of registering a domain name directing to a website indistinguishable from that employed by the Complainant, could have transpired.

Thus, the Panel does not accept on the evidence available to it that the Respondent had no knowledge of the MOLINOS & CIA trademark when it registered the Domain Name.

The Panel further finds that the Respondent's registration and use of the Domain Name for a commercial and potentially fraudulent website took unfair advantage of its registered trademark MOLINOS & CIA FERTILIZANTES, by causing substantial and inevitable confusion in the fertilize industry. Indeed, the Complainant has alleged that it became aware of the registration and use of the Domain Name because Internet users accessed the Respondent's website in an attempt to reach the Complainant's website, and incorrectly believed that the Complainant's website is affiliated, sponsored by or connected with the website that the Domain Name diverted.

The Panel considers that the Respondent has had the intention to attract traffic by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent or its web page.

In addition, the Panel notes that throughout this proceeding, the website to which the Domain Name resolves has undergone several modifications. According to the evidence provided by the Complainant, initially - as

previously mentioned - the website was a replica of the Complainant's website. Subsequently, the Panel observed that the website resolved to an inactive site, and currently, it resolves to a site that contains links – which presumably generate pay-per-click revenue for the Respondent - to various sites from different economic sectors (software, consultancy services, debt relief, and health services, among others).

Consequently, the Panel finds that the Respondent's website results in commercial gain to the Respondent. It is well known that many websites generate revenue from click-through advertising, by directing traffic to other websites, and other online marketing techniques. In the absence of any reply by the Respondent, the Panel finds that the Respondent's website generates revenue for the Respondent in that manner.

Thus, the Panel concludes that Policy paragraph 4(a)(iii) has been satisfied.

## **8. 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 <molinosycia-peru.com> be transferred to the Complainant.

*/Ana María Pacón/*

**Ana María Pacón**

Sole Panelist

Date: August 25, 2023