

ADMINISTRATIVE PANEL DECISION

Grupo Rotoplas, S.A.B. de C.V. v. Enrique Salazar
Case No. D2023-3536

1. The Parties

The Complainant is Grupo Rotoplas, S.A.B. de C.V., Mexico, represented by Hurre Abogados, Mexico.

The Respondent is Enrique Salazar, Mexico.

2. The Domain Name and Registrar

The disputed domain name <rotoplasdistribuidores.com> is registered with PDR Ltd. d/b/a <PublicDomainRegistry.com> (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 22, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 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 August 24, 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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 26, 2023.

The Center appointed Mauricio Jalife Daher as the sole panelist in this matter on October 13, 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, Grupo Rotoplas, S.A.B. de C.V., is a Mexican multinational company dedicated to creating solutions for storing, conveying, purifying, and treating water. A significant portion of its activity involves the production and distribution of water tanks and water reservoirs, as well as spare parts for them.

The Complainant has a presence in 13 countries in the Americas (Mexico, Argentina, Brazil, Chile, Costa Rica, El Salvador, United States of America, Guatemala, Honduras, Nicaragua, Panama, Peru, and Uruguay).

The Complainant is currently positioned as the largest distributor of water storage products and derivatives in Mexico.

The Complainant has profusely used its ROTOPLAS trademark to distinguish water tanks and other products in Mexico and internationally.

The Complainant has obtained, among others, the following registrations to protect ROTOPLAS trademark in Mexico, in connection with its products and services:

Reg. 640070 ROTOPLAS, class 20, registered on January 31, 2000

Reg. 762776 ROTOPLAS, class 6, registered on September 22, 2002

Reg. 988272 ROTOPLAS and design, class 20, registered on June 19, 2007

Reg. 991776 ROTOPLAS and design, class 11, registered on July 9, 2007

The disputed domain name was registered on July 15, 2023.

The Mexican Institute of Industrial Property (IMPI) issued the office action number M.F.275/2022(G-7)15876 in February 2023 stating that ROTOPLAS is considered as a famous trademark, according with the Mexican Law, due to the well-known character of the mark in Mexico.

The Complainant is the owner of the domain name <rotoplas.com>, its official website, which was created on April 24, 2000.

The disputed domain name currently resolves to a website which reproduces the ROTOPLAS and design trademark and looks alike the official web site of the Complainant. The website contains a "contact information" section which requests personal information of the user (name, e-mail, telephone number). The Respondent does not appear as the owner nor as the responsible of the website, and there is no a disclaimer to avoid unfairly passing itself off as related to the Complainant. The content of the website is in Spanish.

The Respondent did not file any Response or documents in accordance with this proceeding.

5. Parties' Contentions

A. Complainant

The Complainant states that disputed domain name <rotoplasdistribuidores.com> is identical or confusingly similar to ROTOPLAS trademark in which the Complainant has rights, at least, since June 11, 1996, date of first use in its Mexican trademark registration No. 640070 ROTOPLAS.

The Complainant states that the disputed domain name <rotoplasdistribuidores.com> has been formed by (i) its trademark ROTOPLAS, (ii) adding wording which suggests that the website corresponds to authorized dealership or dealers of the famous ROTOPLAS products.

The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not a licensee nor an authorized distributor of ROTOPLAS products. (ii) the Respondent is not commonly known by the disputed domain name; (iii) the Respondent has made no legitimate use of the disputed domain name.

The Complainant states that the disputed domain name should be considered as having been registered and being used in bad faith for the following reasons: (i) the Complainant's ROTOPLAS trademark has been recognized by IMPI as a famous mark, prior to the date upon which the Respondent registered the disputed domain name (ii) the Respondent is using the disputed domain name to defraud the Complainant's customers as the Respondent is falsely presented itself as the Complainant on the website hosted by the disputed domain name, apparently with the purpose of defrauding Mexican consumers who wish to purchase the Complainant's products,

B. Respondent

The Respondent did not reply to the Complainant's contentions. Although this Panel is aware that the Respondent is not obliged to participate in a proceeding under the Policy, if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#). See also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#).

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name, <rotoplasdistribuidores.com>, reproduces the ROTOPLAS trademark, which is duly registered in Mexico, as evidenced by the Complainant. While the addition of other terms, here being the Spanish word "distribuidores" ("distributors" in English), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.8.

This Panel considers that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it has been recognized that this could result in the often-impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. The Complainant declared that: (i) it has not authorized the Respondent to register or use the disputed domain name; (ii) the Respondent is not commonly known by the disputed domain name; (iii) the Respondent has made no legitimate commercial or noncommercial use of the

disputed domain name (iv) the Respondent does not appear as the owner nor as the responsible of the website hosted by the disputed domain name.

The Respondent has not submitted any response to the Complainant's allegations and has therefore failed to invoke any circumstance that could have demonstrated any rights or legitimate interests in the disputed domain name.

This Panel considers that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith, in violation of paragraph 4(a)(iii) of the Policy.

The Respondent did not file a response to the Complaint, and there is no evidence nor allegation that the Respondent makes a fair use of the disputed domain name.

The Respondent registered the disputed domain name on July 15, 2023; 23 years after the Complainant register its ROTOPLAS trademark in Mexico.

The Respondent has provided evidence that ROTOPLAS has been recognized as a famous mark in Mexico by the IMPI.

The Respondent's address is located in Mexico, and the content of the website hosted by the disputed domain name is in Spanish, therefore it can be inferred that the Respondent was aware of the fame and goodwill associated with ROTOPLAS trademark.

The disputed domain name resolves to a website which reproduces the ROTOPLAS and design trademark and looks like the official web site of the Complainant. The website contains a "contact information" section which requests personal information of the user (name, e-mail, telephone number). The Respondent does not appear as the owner nor as the responsible of the website, and there is not a disclaimer to avoid unfairly passing itself off as related to the Complainant.

Therefore, this Panel considers that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain or illegal purposes, Internet users to its website by creating confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product on it.

Therefore, the Panel finds that the Respondent registered and used the disputed domain name in bad faith.

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, <rotoplasdistribuidores.com> be transferred to the Complainant.

/Mauricio Jalife Daher/

Mauricio Jalife Daher

Sole Panelist

Date: October 26, 2023