

ADMINISTRATIVE PANEL DECISION

Centro de Promociones Los Cabos San Lucas, S.A. de C.V. v. Juan Lopez
Case No. D2023-4829

1. The Parties

The Complainant is Centro de Promociones Los Cabos San Lucas, S.A. de C.V., Mexico, represented by CAYAD, S.C., Mexico.

The Respondent is Juan Lopez, Mexico.

2. The Domain Name and Registrar

The disputed domain name <grandsolmarmx.com> is registered with HOSTINGER Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 21, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 (Domain Admin Privacy Protect, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 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 November 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 November 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 18, 2023.

The Center appointed Reynaldo Uriaga Escobar as the sole panelist in this matter on December 20, 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.

The proceeding is conducted in English, this being the language of the disputed domain name's registration agreement, as confirmed by the Registrar.

4. Factual Background

The Complainant was legally established in Mexico as a corporation on December 21, 1989.¹

The Complainant is a hospitality group currently operating five hotels and resorts in Cabo San Lucas, Baja California Sur: "Playa Grande", "Solmar", "Grand Solmar", "The Ridge", and "Quinta del Sol", comprising more than 1,000 rooms and villas. The Complainant is currently developing a sixth hotel at Rancho San Lucas.

The Complainant has a division of timeshare sales and is currently venturing in real estate development. The Complainant also built restaurants in Cabo San Lucas, including "Romeo y Julieta", "Hacienda el Coyote", "Tequila and Lounge", "See Queen", and "Bohai".

The Complainant holds, *inter alia*, the following trademark registrations:

Mark	Country of registration	Reg. No.	Registration date	Goods or services
SOLMAR (and design)	Mexico	1149459	March 19, 2010	[43] Hotel and restaurant services
GRAND SOLMAR VACATION CLUB (and design)	Mexico	1500201	December 4, 2014	[43] Restaurant and temporary accommodation services

The SOLMAR trademark registration was timely extended for another ten years as of November 20, 2019, as proven with the Notice of Renewal submitted by the Complainant, and therefore, both Mexican trademark registrations relied on in the Complaint are in full force and effect.

The Complainant owns <solmar.com>, <grandsolmarresort.com>, <grandsolmarresort.solmar.com>, and <grand-solmar.com> and the websites hosted therein.

The disputed domain name was registered on October 5, 2023, and has not resolved to an active website since.

On the same date it registered the disputed domain name, the Respondent impersonated the Complainant by sending an email from "[...]"@grandsolmarmx.com" to a Complainant's customer, demanding a USD 18,000 remittance to supposedly process an unsolicited transfer of a membership contract.

¹ Complainant's incorporation date pulled from official records publicly available at <https://acervomarcas.impi.gob.mx/>

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- (i) The disputed domain name incorporates the Complainant's SOLMAR and GRAND SOLMAR marks in their entirety, thus misleading the public into thinking that the disputed domain name is somehow connected with the Complainant;
- (ii) Previous UDRP Panels have held that, where a domain name wholly incorporates a complainant's registered mark, that may be sufficient to establish confusing similarity for Policy purposes;
- (iii) The addition of the ".com" generic Top-Level Domain ("gTLD") does not affect a finding of confusing similarity;
- (iv) The addition of the "mx" suffix aggravates the confusion of the disputed domain name with the Complainant's SOLMAR and GRAND SOLMAR marks as the Complainant operates resorts in Mexico under those marks;
- (v) The Respondent maintains a passive holding of the disputed domain name;
- (vi) The Respondent sends emails from accounts associated with the disputed domain name, to the Complainant's clients and customers, using the Complainant's registered marks without the Complainant's permission, to fraudulently offer sales and reservation services to actual members or timeshare owners of the Complainant's resorts and hotels;
- (vii) The Respondent's scam communications reproduce the Complainant's GRAND SOLMAR VACATION CLUB word mark and logo, and provide fake names of alleged agents of the Complainant and telephone numbers of the Respondent instead;
- (viii) The Respondent's unauthorized use of the Complainant's registered marks and logos to divert and defraud customers from the Complainant does not in any way support a finding that the Respondent is making a *bona fide* offering of goods or services nor a fair use of the Complainant's marks;
- (ix) The Respondent has used the disputed domain name to perpetrate a fraud or phishing scheme by sending out emails impersonating the Complainant to obtain payments and information from the Complainant's customers, timeshare or condo owners;
- (x) The Respondent does not own registered trademark's rights in the United States of America or Mexico over the terms "grand solmar" (separately or combined), per the result of the searches carried out by the Complainant at the United States Patent and Trademark Office (USPTO) and the Mexican Institute of Industrial Property (IMPI), respectively;
- (xi) The Complainant has marketed its services under the SOLMAR and GRAND SOLMAR VACATION CLUB marks since 2009 and 2014, respectively, well before the Respondent's registration of the disputed domain name;
- (xii) The Respondent's phishing scheme not only demonstrates that the Respondent had knowledge of the Complainant's marks and business but also that the Respondent targeted such marks and business at the time of registering the disputed domain name when it impersonated the Complainant in a fake email;

(xiii) By creating confusion between the disputed domain name and the Complainant's marks leading to misperceptions as to source, affiliation, or endorsement of the disputed domain name, the Respondent has shown a vicious intent to capitalize on the goodwill of the Complainant's marks for the Respondent's own profit (direct or indirect);

(xiv) The fact that the disputed domain name is inactive does not negate a finding of bad faith as a result of the Respondent's use of the disputed domain name to send emails purportedly from the Complainant with a view to fraudulently eliciting information and payment from the Complainant's customers.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed in this administrative proceeding, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to trademarks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the bases of statements and documents submitted and in accordance with the Policy, the Rules, and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the marks SOLMAR and GRAND SOLMAR VACATION CLUB for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel readily recognizes the mark SOLMAR within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to that mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Likewise, the dominant features of the GRAND SOLMAR VACATION CLUB mark are noticeable in the disputed domain name, thus triggering confusing similarity with respect to that mark as well.

Although the suffix "mx" in the disputed domain name 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. [WIPO Overview 3.0](#), section 1.8.

In sum, the disputed domain name is confusingly similar to the Complainant's SOLMAR and GRAND SOLMAR VACATION CLUB registered marks.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant has submitted documentary evidence showing that on the same day it registered the disputed domain name, the Respondent used an email address associated with the disputed domain name to impersonate the Complainant with the intent to defraud a Complainant’s customer by requesting a remittance of USD 18,000 under the guise of a supposed fee to process an unsolicited transfer of the customer’s membership to a third party. The Complainant’s customer was provided with bank account particulars of an entity other than the Complainant.

The Complainant’s customer was also required to disclose personal information in a sham “Transfer Annex Form” provided by the Respondent.

The Respondent’s use of the disputed domain name for illegal purposes, including fraud, phishing, and impersonation/passing off, negates the existence of rights or legitimate interests within the meaning of the Policy. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Pursuant to Policy, paragraph 4(a)(iii), in order to be granted relief, the Complainant must show that the disputed domain name was registered and is being used in bad faith.

Paragraph 4(b) of the Policy sets forth the following non-exhaustive grounds of bad faith registration and use:

- “(i) circumstances indicating that you [the respondent] have registered or 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 your [the respondent’s] documented out-of-pocket costs directly related to the domain name; or
- (ii) you [the respondent] 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 [the respondent] have engaged in a pattern of such conduct; or

(iii) you [the respondent] have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, you [the respondent] have intentionally attempted to attract, for commercial gain, Internet users to your [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 your [the respondent's] website or location or of a product or service on your [the respondent's] website or location."

In the Policy context, bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1 of the [WIPO Overview 3.0](#).

As explained in section 6B *supra*, as soon as it registered the disputed domain name, the Respondent used it to create fake email accounts impersonating the Complainant with the intention to defraud the Complainant's customers and extract personal information from them.

This is conclusive evidence of bad faith under the Policy. See section 3.4 of the [WIPO Overview 3.0](#) and *Veolia Environnement SA v. Whois Privacy Protection Foundation / Name Redacted*, WIPO Case No. [D2022-0785](#) (use of the disputed domain names for the purpose of impersonating the complainant as part of a fraudulent phishing scheme amounts to bad faith).

Moreover, one of the documents attached to the Respondent's October 5, 2023 email addressed to the Complainant's customer, includes a letterhead with the logo of the Complainant's GRAND SOLMAR VACATION CLUB mark², which shows that the Respondent targeted and abused the Complainant's said mark to profit from an illegal scheme implicating deception, fraud, and phishing.

The Panel also notes that the Respondent provided a false or incomplete mailing address while registering the disputed domain name since the written notice could not be delivered as evidenced in the case file.

All these circumstances leave no doubt in the Panel's mind that the disputed domain name was registered in bad faith and is being used in bad faith.

The Complainant has discharged its burden in relation to 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 <grandsolmarmx.com> be transferred to the Complainant.

/Reynaldo Urtiaga Escobar/

Reynaldo Urtiaga Escobar

Sole Panelist

Date: January 9, 2024

² Exactly the same logo that is registered by the Complainant (Mexican trademark Reg. No. 1500201).