

ADMINISTRATIVE PANEL DECISION

Asesorias y Producciones Fabula Ltda v. Ángel Pérez Hernández
Case No. D2023-5182

1. The Parties

The Complainant is Asesorias y Producciones Fabula Ltda, Chile, represented by Nereo Legal, S.C., Mexico.

The Respondent is Ángel Pérez Hernández, Mexico.

2. The Domain Name and Registrar

The disputed domain name <fabulacontenidosmx.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 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 (Redacted privacy, Konibit Mexico, S.A. de C.V.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 December 18, 2023.

The Center verified that the Complaint [together with the amendment to the Complaint/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 December 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on January 18, 2024. 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 Chilean company dedicated to audiovisual production, with offices in Chile, Mexico, and United States of America (“United States”).

The Complainant was founded in 2004 by the brothers Pablo and Juan de Dios Larraín Matte. Its projects include 25 feature films, 6 television series, more than 400 commercials and 5 production services for feature films. In 2018 the Complainant opened an office in Los Angeles and produced “Gloria Bell”, starring Julianne Moore, which premiered at the Toronto Film Festival to positive reviews and a wide theatrical release in the United States.

Previously, the Complainant produced “*Jackie*”, Pablo Larraín’s first English language film, which received three Academy Award nominations, including Best Actress for Natalie Portman. Larraín also directed “*The Club*”, winner of the Grand Jury Prize at the Berlinale 2015; “*No*” Oscar nominated in 2013, and awarded Best Film at the Quinzaine des Réalisateurs at the Cannes Film Festival 2012. The most recent nomination was in 2022 with Kristen Stewart’s Oscar nomination in the category Best Actress for her role in “*Spencer*”, Pablo Larraín’s latest film about Princess Diana.

The Complainant is the owner of the following trademarks for FABULA design mark, as detailed as follows:

Trademark	Reg. No.	Country	Application Date	Registration Date
FABULA	1081207	Chile	May 7, 2013	February 20, 2014
FABULA	1081205	Chile	May 7, 2013	February 20, 2014
FABULA	1080449	Chile	May 7, 2013	February 17, 2014

The Complainant also owns the domain name <fabula.cl>.

The disputed domain name was registered on October 27, 2021.

The website to which the disputed domain name resolves displays the following sentence in Spanish: “FÁBULA CONTENIDOS MX Compañía de contenidos de producción audiovisual fundada en Chile en 2004 por los hermanos Pablo y Juan de Dios Larraín (in English: “FÁBULA CONTENIDOS MX Audiovisual content production company founded in 2004 in Chile by the brothers Pablo and Juan de Dios Larraín”). The website allegedly offers services related to TV series, short and featured films, and advertising, and shows a contact form with the precise information of the Complainant’s office in Mexico.

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:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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 has been registered and is being used in bad faith.

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "contenidos" and "mx", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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 Panel notes that the disputed domain name reproduces the Complainant's trademark added by the terms "contenidos" (in English "content") and "mx" (an abbreviation for Mexico). In addition, the disputed domain name resolves to a website allegedly offering audiovisual services, the same services provided by the Complainant, with clear reference to the Complainant's creators, and includes the same address of the Complainant's Mexico office. In view of all of these circumstances, the Panel finds that the Respondent is using the disputed domain name to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity such as impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that:

- The Respondent registered the disputed domain name on October 27, 2021.
- The FABULA trademark registrations were filed and granted long before the registration of the disputed domain name.
- The disputed domain name resolves to a website that offers the same services as the Complainant (related to TV series, short and featured films, and advertising) using the same address of the Complainant's Mexico office.
- The Respondent is located in Mexico, where the Complainant also performs its activities, and;
- The Respondent is in default.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Previous Panels have also held that the use of a domain name for illegal activity such as impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <fabulacontenidosmx.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: February 1, 2024