

ADMINISTRATIVE PANEL DECISION

Vivara Participações S.A. v. ultra descontos, IBIUNA; Erick Moura, Erick Marketing; Domain Privacy, Above.com Domain Privacy; João de Lima
Case No. D2023-5348

1. The Parties

The Complainant is Vivara Participações S.A., Brazil, represented by Salusse, Marangoni, Parente e Jabur Advogados, Brazil.

The Respondents are ultra descontos, IBIUNA, Brazil; Erick Moura, Erick Marketing, Brazil; Domain Privacy, Above.com Domain Privacy, Australia; and João de Lima, Brazil.

2. The Domain Names and Registrar

The disputed domain name <avivaralojas.com>, <vivara-brasil.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, and <vivarapromonatal.com> are registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 23, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 26, 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, also informing the disputed domain name <vivarabrasil.com>, initially object of the Complaint, was repossessed and could be transferred to the Complainant via suspension and settlement. On January 8, 2024, the administrative proceedings were suspended for the implementation of the settlement related to the domain name <vivarabrasil.com>. On the same date, the Complainant transmitted to the Center the Standard Settlement Form for the transfer of the <vivarabrasil.com>, domain name. Upon receipt of the confirmation by the Complainant over the implementation of the settlement, the administrative proceeding was dismissed regarding the domain name <vivarabrasil.com> as of January 15, 2024.

The Center sent an email communication to the Complainant on January 15, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity.

The Complainant filed an amendment to the Complaint on January 18, 2024, also requesting the addition of the domain name <vivaraoficialbr.com> to the dispute.

On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the <vivaraoficialbr.com> disputed domain name. On the same date, 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 Respondents and thus, also requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed a new amendment to the Complaint on January 22, 2024.

The Center verified that the Complaint together with the amendments 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 Respondents of the Complaint, and the proceedings commenced on January 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 12, 2024. The Respondent Erick Moura/ Guarnieri sent an email communication to the Center on January 15, 2024.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on February 16, 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 company that manufactures and sells jewelry and accessories, with hundreds of points of sale in Brazil.

The Complainant owns a large portfolio of VIVARA trademarks in Brazil, including the Brazilian Trademark Registration No. 811205029, registered on September 4, 1984.

The Complainant also owns trademark registrations for LIFE VIVARA in Brazil, such as the Brazilian Trademark Registration No. 908577567, registered on October 31, 2017.

The disputed domain names were registered by the Respondents on the following dates:

Domain name	Respondent	Registration Date
<avivaralojas.com>	Erick Moura	December 4, 2023
<vivara-brasil.com>	Domain Privacy	December 1, 2023
<vivara-br.com>	ultra descontos	November 29, 2023
<vivara-lifebr.com>	ultra descontos	December 14, 2023
<vivaraoficialbr.com>	João de Lima	January 14, 2024
<vivarapromo.com>	Erick Moura	November 30, 2023
<vivarapromonatal.com>	Erick Moura	December 8, 2023

The Panel accessed the disputed domain names on February 26, 2024, when <avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com> and <vivarapromonatal.com> were not pointing to any active website, presenting just error messages. Differently, the disputed domain name <vivara-brasil.com> was linked to a Pay-Per-Click (“PPC”) advertising scheme.

The Complainant brought evidence that the disputed domain names <vivara-br.com>, <vivaraoficialbr.com>, and <vivarapromonatal.com> were recently linked to an e-commerce website that reproduced the Complainant's copyrighted promotional materials and logo, purportedly offering the Complainant's VIVARA products at discounted prices.

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 names. Notably, the Complainant contends that:

- The disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights. All of the disputed domain names reproduce the Complainant's well-known VIVARA trademark with the addition of hyphens and/or generic or geographical terms. The composition chosen by the Respondents clearly characterize intentional reproductions of the Complainant's trademark, thus being confusingly similar therewith. The likelihood of confusion is evident given that Internet users will immediately associate the disputed domain names with the Complainant's prior trademarks, tradename and domain name, believing that they relate to the same company, and that the products that might be eventually offered by the Respondents under the disputed domain names originate from the same source - what is not true given the undue registrations made by the Respondents.

- The Respondents have no rights or legitimate interests in respect of the disputed domain names. "vivara" is not a generic term, nor descriptive of the Complainant's services, and is not a dictionary words either in the Portuguese, English, French, Italian or Chinese languages. There would be no reason for the Respondents to register the disputed domain names, except for a clear attempt of causing confusion with the Complainant's prior trademarks and specially with the prior domain name <vivara.com.br>. Moreover, updated screen captures from the Brazilian Trademark Office ("BPTO")'s database on the existing applications and registrations do not show applications or registrations for the terms used by the Respondents to compose the disputed domain names. The disputed domain names <vivara-br.com> and <vivarapromonatal.com> were used to impersonate the Complainant, reproducing the Complainant's copyrighted promotional materials and logo, purportedly offering the Complainant's products at discounted prices. The Respondents are also using at least two of the disputed domain names to profit from PPC links. All of the disputed domain names have active mail servers associated to them. The Respondents have not been authorized by the Complainant to use the VIVARA or LIFE VIVARA trademarks and there is no business relationship between the Complainant and the Respondents.

- The disputed domain names were registered and are being used in bad faith. The Respondents do not have any relation with the "vivara" term (it is not included in their names, nor does it correspond to their names, surnames or nicknames), nor have they sought an authorization or license to use the VIVARA trademark or own any trademark in Brazil or elsewhere. Furthermore, the Respondents evidently knew of the existence of the Complainant's prior trademarks rights and domain name, which were matters of public record, before registering the disputed domain names. Thus, the Respondents must have had knowledge of the Complainant's prior rights in "vivara" and "life vivara" as trademarks, as well as tradename and domain name. If the Respondents were not actually aware of the Complainant's rights, then they did not fulfill their responsibility to determine whether the desired domain name registration infringes or violates someone else's rights. Indeed, at least two of the disputed domain names were being used/are being used in connection with fraudulent webpages impersonating the Complainant and seeking to defraud the Complaint and its customers by the reproduction of the same layout as the Complainant's official website, purportedly offering the Complainant's products at discounted prices; and two others are being used to generate undue PPC revenues; whereas the remaining disputed domain names are being passively held. Such present inactive use of part of the disputed domain names, amounts to the fact that the Respondents have no rights or legitimate interests over the disputed domain names. A final element to be taken into account and which

corroborates the Respondents' bad faith is its choice to retain a privacy protection service so as to conceal the true identity of the underlying registrant.

B. Respondents

The Respondents did not reply to the Complainant's contentions. On January 15, 2024, the Center received an email communication from the Respondent Erick Moura/ Guarnieri inquiring on the procedure.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

(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. Preliminary Procedural Issue - Consolidation of Multiple Respondents

The Complainant requests the consolidation of multiple Respondents in this single Complaint, stating that it would be procedurally more efficient to have all of the disputed domain names dealt with at the same proceeding.

Paragraph 3(c) of the Rules states that "The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder." For this assessment, paragraph 10(e) of the Rules states that "A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules."

Thus, it is for the Panel to decide, in the light of the evidence produced and the submissions made, whether the disputed domain names in this case are registered by the same domain name holder. As demonstrated in a number of previous cases under the Policy, the question of whether the respective disputed domain names are in fact registered by the same holder, directly or indirectly, may be less than straightforward to answer. See *Valeant Pharmaceuticals International, Inc., Inova Pharmaceuticals (Australia) Pty Limited v. Luca Radu, Fundacion Private Whois, Maxim Conovalov, Vasju Pere*, WIPO Case No. [D2013-1918](#).

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), with reference to consolidation at paragraph 4.11.2, includes the following considerations:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue,

(viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).”

The arguments used by the Complainant to justify the consolidation of multiple Respondents in this specific case were that all of the disputed domain names (i) share a similar naming pattern incorporating the Complainant’s well known trademark in its entirety with the addition of hyphen and/or generic or geographical terms that refer to the Complainant’s products or the location of the Complainant; (ii) were registered using the same Registrar (GoDaddy.com, LLC); (iii) were registered within a short period of time (November 29, 2023 – January 14, 2024); (iv) were registered using privacy protection services so as to conceal the Respondent’s true identity; (v) have active mail servers associated to them; as well as that none of the named Respondents (vi) holds trademark rights related to the disputed domain names; nor (vii) have been commonly known by the disputed domain names.

The Panel considers that the consolidation of multiple Respondents is possible in six out of the seven disputed domain names in the present case.

Some characteristics are common to all disputed domain names: as for the registrar chosen to register the disputed domain names, they all use the same one; and in terms of how the disputed domain names are formed, they all adopt the VIVARA trademark together with descriptive or geographical terms, and eventually a definite article or a hyphen.

However, in registering the seven disputed domain names, four registrant names were adopted: Erick Moura for <avivaralojas.com>, <vivarapromo.com> and <vivarapromonatal.com>; ultra descontos for <vivara-br.com> and <vivara-lifebr.com>; João de Lima for <vivaraoficialbr.com>; and Domain Privacy for <vivara-brasil.com>.

The registration dates were all very close together, always a few days apart, not repeating the same date, even if the registrant name is the same.

Six of the disputed domain names (<avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, and <vivarapromonatal.com>) have name servers at <domaincontrol.com> and just one (<vivara-brasil.com>) at <abovedomains.com>.

The same six disputed domain names (<avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, and <vivarapromonatal.com>) referred to registrant’s addresses in Brazil – not forgetting that the Complainant’s VIVARA is a Brazilian brand. The last one (<vivara-brasil.com>), to an address in Australia.

Finally, also the same six disputed domain names (<avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, and <vivarapromonatal.com>) are not currently pointing to any active website, presenting just error messages. Differently, the disputed domain name <vivara-brasil.com> is linked to a PPC advertising scheme.

Thus, despite the differences in some of the information provided in the registration of the disputed domain names, the various elements mentioned above are sufficient to convince this Panel that at least the disputed domain names <avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, and <vivarapromonatal.com> are subject to common control, justifying the consolidation of the respective multiple Respondents.

Regarding the disputed domain name <vivara-brasil.com>, it stands out from the rest, reason why the Panel rejects the Complainant’s request to consolidation, without prejudice to the right of the Complainants to seek to refile the remaining Complaint (*Minnetonka Moccasin Company, Inc. v. wei liang, wangli, xiahong,*

baohan, lipai, li hong, xuwei, hu yurui, hu mo, fang wei, hu haonan, liu ruyun, ma ling, wenfang, tangling, jiang yilan, ma qing, yang shuoqing, lisai, chenyang, chenliang, bailianhua, WIPO Case No. [D2012-0821](#)).

B. 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 3.0](#), section 1.7.

Annex 7 to the Complaint shows registrations of VIVARA and LIFE VIVARA trademarks obtained by the Complainant in Brazil, respectively in 1984 and 2017.

The trademark VIVARA is wholly encompassed within the disputed domain names, together with the additions of hyphens and the terms "a" and "lojas"; "-br"; "-lifebr"; "oficialbr"; "promo"; and "promonatal".

The disputed domain name <vivara-lifebr.com> also incorporates the trademark LIFE VIVARA, in a different order of words, and with the addition of a hyphen and of the suffix "br".

All the disputed domain names also present the generic Top-Level Domain ("gTLD") ".com".

Although the addition of symbols and other terms 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well established that the addition of a gTLD, such as ".com", is typically disregarded when determining whether a domain name is confusingly similar to a complainant's trademark as such is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds 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 Panel finds the disputed domain names are confusingly similar to the Complainant's trademark. The Complainant has established the first element of the Policy.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondents 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 Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have 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 names such as those enumerated in the Policy or otherwise.

The Panel finds no indication that the Respondents are commonly known by the disputed domain names.

Also, the Complainant has asserted that the Respondents are not authorized representatives, nor have obtained any permission for such reproductions of trademarks.

Besides the hyphen symbol and the definite article “a”, the disputed domain names are basically formed by the Complainant’s marks VIVARA or LIFE VIVARA together with terms suggesting it is an official website (“oficial”) or related to (i) the Complainant’s commercial operations (“lojas”, meaning “stores” in English; “promo” and “promo natal”, “natal” meaning “Christmas” in English) or (ii) to the Complainant’s country of origin (“Brazil” or “br”).

Therefore, the Panel finds that the nature of the disputed domain names carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) can never confer rights or legitimate interests on a respondent. [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.

D. Registered and Used in Bad Faith

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.

The disputed domain names include the distinctive trademark VIVARA, which has no dictionary meaning in Portuguese, nor in English.

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The Panel considers that the addition of the terms “a” and “lojas”, for <avivaralojas.com>; “-br”, for <vivara-br.com>; “-lifebr”, for <vivara-lifebr.com>; “official” and “br”, for <vivaraoficialbr.com>; “promo”, for <vivarapromo.com>; and “promo” and “natal”, for <vivarapromonatal.com>, may even enhance the perception that the disputed domain names are sponsored or endorsed by the Complainant, in the present case, as they may suggest official VIVARA websites in Brazil, operated by the Complainant or by an authorized online representative.

Furthermore, when the disputed domain names were registered (in 2023 and 2024) the VIVARA trademark was already famous and strictly connected with the Complainant’s stores and jewelry in Brazil.

Therefore, the Panel concludes that it is not feasible that the Respondents were not aware of the Complainant’s trademark and that the registration of the disputed domain names – with such additions – were mere coincidences.

Actually, the fame of VIVARA trademark in Brazil suggests that the Respondents are intentionally attempting to attract, through the registration and use of the disputed domain names together with such descriptive terms, the Complainant’s customers, for commercial gain, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website.

From the Panel’s search, the disputed domain names do not currently resolve to any active website.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The lack of any plausible interpretation for the adoption of the terms “avivaralojas”, “vivara-br”, “vivara-lifebr”, “vivaraoficialbr”, “vivarapromo”, and “vivarapromonatal” by the Respondents, the evidence provided by the Complainant’s demonstration of previous uses of the disputed domain names <vivara-br.com> and <vivarapromonatal.com>, and the subsequent change in use of the disputed domain names are sufficient elements in this Panel’s view to characterize bad faith registration and use in the present case.

Therefore, having reviewed the record, the Panel finds the registration and use of the disputed domain names constitute 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 names <avivaralojas.com>, <vivara-br.com>, <vivara-lifebr.com>, <vivaraoficialbr.com>, <vivarapromo.com>, <vivarapromonatal.com> be transferred to the Complainant.

For the reasons stated above, the Complaints are denied in respect of the disputed domain name <vivara-brasil.com>, without prejudice to the right of the Complainants to seek to refile it.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: March 3, 2024