

ADMINISTRATIVE PANEL DECISION

Carrefour SA, Atacadão S.A. v. ELAINE APARECIDA ZINATTO ZINATTO
Case No. D2024-0107

1. The Parties

The Complainants are Carrefour SA, France, and Atacadão S.A., Brazil, represented by IP Twins, France.

The Respondent is ELAINE APARECIDA ZINATTO ZINATTO, Brazil.

2. The Domain Name and Registrar

The disputed domain name <atacado.cloud> (the “Disputed Domain Name”) 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 January 11, 2024. On January 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 12, 2024, 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 FOR PRIVACY / Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2024, 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 amended Complaint on January 16, 2024.

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 January 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2024.

The Center appointed Mariia Koval as the sole panelist in this matter on February 14, 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 Complainants are Carrefour SA and Atacadão S.A. The Complainant Carrefour SA is a worldwide leader in the hypermarket segment since 1968, operating more than 12,000 stores with more than 384,000 employees worldwide and there are 1.3 million daily visitors at its stores.

The Complainant Atacadão S.A. is a Brazilian chain of wholesale stores founded in 1960 and acquired by the Complainant Carrefour SA in 2007. With over 300 stores and distribution centers in all the Brazilian states and more than 70,000 employees, Atacadão S.A. is the largest wholesale network in Brazil. In 2010 Atacadão S.A. began an internationalization program, expanding its activities in other countries beyond Brazil.

The Complainant is the owner of numerous ATACADAO trademark registrations (the "ATACADAO Trademark") around the world, among which are:

- Brazil Trademark Registration No. 006937497, registered on May 25, 1979, in respect of services in class 35;
- Argentina Trademark Registration No. 2426312, registered on February 24, 2011, in respect of services in class 35;
- European Union Trademark Registration No. 012020194, registered on May 24, 2015, in respect of services in class 35.

The Complainant operates numerous domain names identical to, or comprising, the ATACADAO Trademark, both within generic and country code top-level domains. For instance, <atacado.com.br> has been registered since 1997. The Complainant also established a social media presence and uses the ATACADAO Trademark to promote its goods and services on social media platforms such as Facebook, Instagram and X (Twitter).

The registration date of the Disputed Domain Name is December 23, 2023. As at the date of this Decision, the Disputed Domain Name resolves to an inactive website. However, according to the evidence presented by the Complainant (Annex 9-1), the Disputed Domain Name previously resolved to a webpage with the following warning message: "Dangerous site Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone, or credit card number. Chrome strongly recommends going back to safety."

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 claims that the Disputed Domain Name is identical to the Complainant's ATACADAO Trademark since the Disputed Domain Name reproduces the Complainant's ATACADAO Trademark in its entirety.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Complainant submits that it has made a prima facie case of the Respondent's lack of rights or legitimate interests in the Disputed Domain Name;
- no ATACADAO trademark owned by the Respondent has been found by the Complainant;
- there is no evidence that the Respondent has been commonly known by the Disputed Domain Name as an individual, business or other organization;
- the Respondent reproduces the Complainant's earlier registered ATACADAO Trademark in the Disputed Domain Name without any license or authorization from the Complainant;
- the Respondent has not, before the original filing of the Complaint, used or made preparations to use the Disputed Domain Name in relation to a bona fide offering of goods or services;
- the navigation towards the website under the Disputed Domain Name is blocked to the Complainant's representative by the browser's Phishing and Malware Protection feature and the warning message regarding the dangerous content of the website.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following. The Complainant's ATACADAO Trademark registrations significantly predate the registration date of the Disputed Domain Name. The Complainant submits that it is difficult to believe that the Respondent ignored the Complainant or its earlier rights, considering that the Disputed Domain Name is identical to the Complainant's name and ATACADAO Trademark. Moreover, the Respondent is a resident of Brazil, the country where the Complainant is headquartered and where it is undoubtedly well-known.

The Complainant contends that it is very likely that the Respondent chose the Disputed Domain Name with the purpose of misleading the Internet users who are searching for the Complainant's services and products and would instead come across the website under the Disputed Domain Name, and to carry out a fraudulent phishing scheme.

Moreover, the current use of the Disputed Domain Name may not be considered a good faith use. By simply maintaining the Disputed Domain Name, the Respondent is preventing the Complainant from reflecting its ATACADAO Trademark in the corresponding domain name. In addition, the use of the Disputed Domain Name in connection with a website containing potentially harmful material or used for fraudulent purposes, as reported by Google Safe Browsing, cannot be regarded as a good faith use under the Policy.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (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.

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 Panel finds the Complainant's ATACADAO Trademark is completely reproduced within the Disputed Domain Name with addition of the generic Top-Level Domain ".cloud". Accordingly, the Disputed Domain Name is identical to the Complainant's ATACADAO Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use its ATACADAO Trademark or to register the Disputed Domain Name which is identical to the ATACADAO Trademark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name.

The composition of the Disputed Domain Name carries a high risk of implied affiliation with the Complainant (see [WIPO Overview 3.0](#), section 2.5.1). The Panel is of opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. As at the date of this Decision, the Disputed Domain Name resolves to an inactive website. However, in accordance with the evidence presented by the Complainant (Annex 9-1), the Disputed Domain Name previously resolved to a webpage containing the warning message regarding possible phishing and malware distribution. Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13). Therefore, the Panel cannot consider such use of the Disputed Domain Name as bona fide offering of goods or services, or a legitimate noncommercial or fair use.

With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant's ATACADAO Trademark.

The fact that the Disputed Domain Name currently resolves to inactive website is further evidence that the Respondent lacks rights or legitimate interests.

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

C. Registered and Used in Bad Faith

The Complainant obtained the registration of the ATACADAO Trademark almost 45 years earlier than the Respondent registered the Disputed Domain Name in 2023. Considering all circumstances of this case, it is highly likely that the Respondent was very well aware of the Complainant's business and its ATACADAO Trademark when registering the identical Disputed Domain Name that completely incorporates the Complainant's Trademark. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's ATACADAO Trademark so as to create a false association or affiliation with the Complainant.

Given the use of the Disputed Domain Name, namely previously in connection with possible phishing and/or malware distribution, the Respondent obviously chose to register the Disputed Domain Name, which is identical to the Complainant's ATACADAO Trademark, for the only purpose of misleading unsuspecting Internet users by creating a likelihood of confusion with the Complainant's ATACADAO Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent. Use of a domain name for phishing, identity theft, or malware distribution may constitute bad faith ([WIPO Overview 3.0](#), section 3.4).

The Disputed Domain Name currently resolves to an inactive website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding.

The Panel is also of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is identical to the Complainant's ATACADAO Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant's official website. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Moreover, in accordance with section 3.6. of the [WIPO Overview 3.0](#), there are recognized legitimate uses of privacy and proxy registration services; the circumstances in which such services are used, including whether the respondent is operating a commercial and trademark-abusive website, can however impact a panel's assessment of bad faith. The Panel considers that, taking into account all circumstances of this case, the Panel considers that the Respondent's use of privacy service constitutes further evidence of bad faith registration and use of the Disputed Domain Name.

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 <atacado.cloud> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: February 28, 2024