

ADMINISTRATIVE PANEL DECISION

L'Anse du Portier v. Name Redacted
Case No. D2024-0461

1. The Parties

The Complainant is L'Anse du Portier, Monaco, represented by Monaco Intellectual Property (Mipro), Monaco.

The Respondent is Name Redacted.

2. The Domain Name and Registrar

The disputed domain name <mareterrarealestate.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 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 February 6, 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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 5, 2024.

The Center appointed John Swinson as the sole panelist in this matter on March 6, 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 construction company from Monaco that was established in 2014.

The Complainant is responsible for the realisation of “Mareterra”, a new district currently under construction in Monaco. This project is a land extension project, being a new district extending into the sea. The project was announced in 2013 and has been widely reported in the local and international press.

The Complainant has a website for this real estate project located at the domain name <mareterra.com>. On this website, there is a quote from HSH Prince Albert II of Monaco that states “Mareterra will integrate perfectly with our shoreline, and in a few years will be seen as a natural extension of our territory.”

The Complainant owns trademark registrations for MARETERRA and device, including the Monegasque Registration No. 20.00012, registered on January 14, 2020.

The disputed domain name was registered on April 25, 2023.

At the date of this decision, the disputed domain name resolves to a Registrar generated parking page with pay-per-click (“PPC”) links for vacation rentals and real estate listings.

According to the Registrar’s records, the Respondent is an attorney from Mexico with an email address at a Mexican law firm, but who has a physical address in California, United States of America, at a company that sells “superfoods”.

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 Respondent registered the disputed domain name in bad faith because the Respondent was likely aware of the Complainant’s reputation in view of the strong publicity regarding the construction of the new district MARETERRA in Monaco and the Complainant’s rights in its trademarks and domain names that include MARETERRA. The Complainant also contends that the association in the disputed domain name of the MARETERRA brand with the term “real estate”, directly referring directly to the Complainant’s field of activity, cannot be a coincidence.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Matter: Name Redaction

The Panel has redacted the name of the Respondent from this decision. This is because it is evident to the Panel that the person named in the Registrar’s records as the owner of the disputed domain name is unlikely

to be the true respondent in this case. This person is an attorney in Mexico. Accordingly, the Panel has redacted the name of this person (and the California corporation which is listed as the address for this person) from this decision. However, the panel has attached as Annex 1 to this decision an instruction to the Registrar which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar and has indicated that Annex 1 is not to be published due to the circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#); and *KWM Brands Pte Limited, King & Wood Mallesons v. Whois Agent, Whols Privacy Protection Service Inc. / Name Redacted*, WIPO Case No. [D2017-1721](#).

6.2 Substantive Matters

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

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

The onus of proving these elements is on the Complainant.

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's trademark registrations include the term "marterra" and design elements (and no other letters or words). To the extent that design elements would be incapable of representation in a domain name, these elements can be disregarded for purposes of assessing identity or confusing similarity under the first element. On this basis, trademark registrations with design elements would prima facie satisfy the requirement that the complainant show "rights in a mark" for further assessment as to confusing similarity. [WIPO Overview 3.0](#), section 1.10. Accordingly, 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.

While the Complainant's trademark consists of design elements, such elements do not overtake the textual element (i.e., "marterra") in prominence. Accordingly, the Panel finds the Complainant's mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "real estate") 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, and *L'Anse du Portier v. Registration Private, Domains By Proxy, LLC / Rebecca Whitlocke*, WIPO Case No. [D2021-0601](#), but see *Brisbane City Council v. Joyce Russ Advertising Pty Limited*, WIPO Case No. [D2001-0069](#) which is an old decision that should be confined to its specific and unusual facts.

The Complainant's real estate development uses the registered trademark MARETERRA (which means "Sea Land" in English). Until the Complainant commenced and named this development, there was no geographical place in Monaco called "Mareterra". As discussed above, the Complainant owns trademark registrations that include MARETERRA as the only words in the trademark. The fact that "Mareterra" may soon become a geographical location in Monaco does not prevent a finding in favour of the Complainant

under the first element. See, for example, *Sydney Markets Limited v. Nick Rakis trading as Shell Information Systems*, WIPO Case No. [D2001-0932](#); and *Sentosa Development Corporation v. Jang Shih Chieh*, WIPO Case No. [D2010-1082](#).

Contrast *Randall's Island Sports Foundation, Inc. v. Eric Theodor*, WIPO Case No. [D2011-0483](#), where the complainant had no registered trademark, the domain name referred to an existing geographical location, and the complainant's common law trademark was not recognizable in the domain name.

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.

Currently, the website at the disputed domain name resolves to a Registrar generated parking page with PPC links. Use of a domain name to resolve to a PPC advertising page, where the advertising is relevant to the trademark value of the domain name, does not establish rights or legitimate interests in respect of the disputed domain name. *American Farm Bureau Federation v. Portfolio16 Management Ltd.*, WIPO Case No. [D2023-1310](#).

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.

The Respondent's conduct demonstrates the Respondent's knowledge of the Complainant and the Complainant's trademark. By registering the disputed domain name which includes the Complainant's trademark along with the words "real estate", and then using the disputed domain name for a PPC website with links relating to real estate, demonstrates that the Respondent specifically knew of and targeted the Complainant.

The Respondent also used an apparently false name and address as set out in the Registrar's records.

The Respondent has not filed a formal Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel infers that none exists.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy. This also could disrupt the business of the Complainant.

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

/John Swinson/

John Swinson

Sole Panelist

Date: March 20, 2024