

ADMINISTRATIVE PANEL DECISION

Timbro Trading S/A v. Matin Martin, MMatin LLC
Case No. D2024-1477

1. The Parties

The Complainant is Timbro Trading S/A, Brazil, represented by Salusse Marangoni Advogados, Brazil.

The Respondent is Matin Martin, MMatin LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain name <timbrotrading.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2024. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 16, 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 amendment to the Complaint on April 18, 2024.

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 April 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 14, 2024.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on June 4, 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 factual findings pertinent to the decision in this case are that:

1. the Complainant is a Brazilian import/export company providing services under the trademark, TIMBRO;
2. the Complainant is the owner of Brazilian trademark registration No. 903115018, from April 15, 2014, for the trademark, TIMBRO;
3. the Complainant is the registrant of the domain name <timbrotrading.com> (registered on August 12, 2010); and
4. the disputed domain name was registered on February 28, 2024, and has been used to generate emails posing as having originated from the Complainant.

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.

In particular, the Complainant asserts trademark rights in TIMBRO and submits that the disputed domain name is confusingly similar to its trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use its trademark or register any domain name incorporating the trademark. The Respondent has no trademark rights of its own. Finally, the disputed domain name has been used for a nefarious purpose.

The Complainant submits that in view of the above, the disputed domain name was registered and used in bad faith.

The Complainant petitions the Panel to order transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trademark rights. A trademark registered with a national or pan-national authority is evidence of trademark rights for the purposes of the Policy.¹ The Complainant provides evidence of its Brazilian national registration of the trademark TIMBRO and so the Panel finds that the Complainant has trademark rights.

¹See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level Domain (“gTLD”) “.com” can be disregarded for the purposes of comparing the disputed domain name with the trademark.² Thereafter, the disputed domain name adds an additional letter “t” to the trademark, and appends the word “trading” to this variation of the trademark. The entirety of the mark is reproduced within the disputed domain name and the Panel finds that the added matter does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark.³

The Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant need only make out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, after which the burden of production shifts to the Respondent to rebut that case by demonstrating those rights or interests.⁴

The name of the underlying disputed domain name owner as disclosed by the Registrar does not carry any suggestion that the Respondent might be commonly known by the disputed domain name. The Complainant states that it has not authorized use of the trademark and there is no evidence that the Respondent has any trademark rights of its own. Finally, the disputed domain name has been used to send emails posing as having originated from an employee of the Complainant with the intention of fraudulently diverting payments from the Complainant’s customers to a bank account having no connection with the Complainant.

Panels have held that the use of a domain name for illegal activity such as this can never confer rights or legitimate interests on a respondent.⁵ The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted the Complainant’s 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 finds that the Respondent has not rebutted the Complainant’s prima facie case, and finds the Respondent has no rights or interests. The Complainant has satisfied the second limb of the Policy.

²See section 1.11.1 of the [WIPO Overview 3.0](#).

³See sections 1.7 to 1.9 of the [WIPO Overview 3.0](#).

⁴See, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

⁵See section 2.13.1 of the [WIPO Overview 3.0](#).

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and used in bad faith.

Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four circumstances, any one of which is taken to be evidence of the registration and use of a domain name in bad faith if established.

The four specified circumstances are:

“(i) circumstances indicating that [the respondent has] 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 the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, internet users to [the respondent’s] website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on the site or location.”

The Panel finds that the Respondent’s conduct falls under paragraph 4(b)(iv) above. The Panel has already found the disputed domain name to be confusingly similar to the trademark. The illegal activity just described is clearly for commercial gain. In terms of the Policy, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to an on-line location by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of that location or of a service on that location. More broadly, the Panel finds registration in bad faith, the composition of the disputed domain name clearly shows the Respondent’s knowledge of the Complainant’s trademark and its domain name <timbrotrading.com>, and also finds that the fraudulent use of the disputed domain name is patently use in bad faith.⁶

The Panel finds that the Complainant has satisfied the third and final 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 <timbrotrading.com> be transferred to the Complainant.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: June 14, 2024

⁶See section 3.4 of the [WIPO Overview 3.0](#)