

ADMINISTRATIVE PANEL DECISION

Carrefour SA, Atacadão - Distribuição, Comércio E Indústria LTDA v. Fledis
Goncalves

Case No. D2024-1625

1. The Parties

The Complainants are Carrefour SA, France (the “First Complainant”) and Atacadão - Distribuição, Comércio E Indústria LTDA, Brazil (the “Second Complainant”), represented by IP Twins, France.

The Respondent is Fledis Goncalves, Brazil.

2. The Domain Name and Registrar

The disputed domain name <atacado-varejista.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 April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 22, 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 April 24, 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 April 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2024.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on May 29, 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 First Complainant is a worldwide leader in the hypermarket segment since 1968. It operates more than 12,000 stores with more than 384,000 employees worldwide and there are 1.3 million daily visitors at its stores.

The Second Complainant is a Brazilian chain of wholesale stores established in 1960 and acquired by the First Complainant in 2007. With over 300 stores and distribution centers in all the Brazilian states and more than 70,000 employees, the Second Complainant is one of the largest wholesale networks in Brazil.

The Second Complainant began an internationalization program, expanding its activities to other countries beyond Brazil. Since the Second Complainant is part of the Carrefour Group, the companies opted to join in the present Complaint.

Both companies are hereinafter referred to as “the Complainant.”

The Complainant is the owner of several ATACADAO and ATACADÃO trademarks registered before the registration of the disputed domain name, such as:

- European Union trademark ATACADAO No. 012020194, registered on May 24, 2015, designating services in international class 35;
- Brazilian trademark ATACADÃO No. 006785344, registered on October 10, 1978, designating goods in class 31;
- Brazilian trademark ATACADÃO No. 006937497, registered on May 25, 1979, designating services in class 35.

The Complainant also owns numerous domain names comprising the mark ATACADAO, including the domain name <atacaao.com.br>, registered on October 9, 1997.

The disputed domain name was registered on September 1, 2023, and resolves to an error message informing that the website is currently unavailable. The disputed domain name previously resolved to a website offering various goods for sale.

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.

The Complainant argues that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to the Complainant's evidence, the disputed domain name resolved to a website offering various products for sale before the filing of the Complaint. The Respondent's former website gave the false impression that it was owned, operated or endorsed by, or affiliated with the Complainant.

There is no evidence that the Respondent has made demonstrable preparations to use the disputed domain name for legitimate purposes, nor is there any evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods and services.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant finds that the disputed domain name is used to take unfair advantage of the Complainant's rights for commercial gain, since Internet users and the Complainant's customers would inevitably associate the content related to the disputed domain name with the Complainant's prior trademarks.

The Complainant stresses that the Respondent is not commonly known by the term "atacadão."

According to the Complainant, it has prior rights over its trademarks and has not authorized the registration and use of the disputed domain name, nor the use of its trade name and trademarks by the Respondent.

The Respondent is not affiliated to or authorized by the Complainant to use or register the disputed domain name.

The Complainant's trademark rights predate the registration of the disputed domain name.

The Complainant argues that the Respondent was aware of the Complainant's rights and has clearly registered the disputed domain name to target the Complainant's trademark, and that the registration of the disputed domain name was conducted in bad faith.

The Complainant also argues that the Respondent has used the disputed domain name to sell various goods and that several customer reviews on the platforms ReclameAqui and Instagram suggest that the products sold were not delivered. Annexes 12 and 13 of the Complaint.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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.

A. Identical or Confusingly Similar

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

The Complainant's marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the addition of the term "varejista" does not prevent a finding of confusing similarity between the disputed domain name and the marks 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 finds the second element of the Policy has been established.

C. 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.

In the present case, the Panel finds that the Respondent was more likely than not aware of the Complainant's trademarks when the Respondent registered the disputed domain name, as the Complainant's business, trademark registrations, and its domain name predate the registration date of the disputed domain name. Moreover, the Complainant is well known in Brazil, where the Respondent is located. Accordingly, the Panel finds that the Respondent registered the disputed domain name to take unfair advantage of its significance as a trademark owned by the Complainant.

Moreover, the Panel finds that the Respondent has attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant and its trademarks.

The fact that the disputed domain name currently resolves to an error message informing that the website is currently unavailable, does not prevent a finding of bad faith.

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 <atacado-varejista.com> be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: June 12, 2024