

## **ADMINISTRATIVE PANEL DECISION**

YPF S.A. v. Hector Rodriguez, pubistarargetina  
Case No. D2024-1776

### **1. The Parties**

The Complainant is YPF S.A., Argentina, represented by Berken IP, Argentina.

The Respondent is Hector Rodriguez, pubistarargetina, Argentina.

### **2. The Domain Name and Registrar**

The disputed domain name <serviclub-promo2024.club> 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 26, 2024. On April 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 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 (Whois Agent, GoDaddy.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 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 May 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 May 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 5, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on June 12, 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 YPF S.A. is one of the largest oil companies in Argentina. It is the proprietor of several trademark registrations including the word SERVICLUB, such as: Argentine trademark SERVICLUB and Design registrations No. 2804519 of May 9, 2016, renewal of No. 1805681, in class 16; No. 2804520 of May 9, 2016, renewal of No. 1.805.682, in class 35; No. 2.804.521 of May 9, 2016, renewal of No. 1.805.683, in class 36, No. 513908, in class 35, No. 2718331 in class 16, among many others.

The Complainant is also the owner of the domain name <serviclub.com.ar> registered on October 14, 1998 which redirects to the site <serviclubypf.com> with the official YPF Serviclub loyalty program that rewards its members with exclusive benefits and products in a variety of areas such as tourism, entertainment and shopping, among others.

The disputed domain name <serviclub-promo2024.club> was registered on January 1, 2024.

At the time of filing the complaint, the disputed domain name resolved to a website that was using without authorization the Complainant trademark with the following legend in Spanish language: "Sign up now and get 7500 points to exchange them for whatever you want. You will also participate in the draw for a 0 km. Create an account with an email in a few minutes. Register Now YPF SERVICLUB by clicking here". The disputed domain name is currently not active.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the mark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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. 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 entirety of the mark is reproduced 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 like "promo", "2024" and the hyphen (-) 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 name and the mark 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 composition of the disputed domain name, comprising the Complainant's trademarks in their entirety and the addition of the generic terms "promo" and "2024", together with the content of the website at the disputed domain name carries a risk of Internet user confusion.

Furthermore, panels have held that the use of a domain name for illegal activity like impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that:

- The disputed domain name resolves to a website that purports to be an official YPF Serviclub loyalty program collecting personal data from consumers online, without the Complainant authorization.
- the Respondent website is using trademarks from the Complainant's website without the Complainant's authorization.
- the Respondent is in default.

Panels have held that the use of a domain name for illegal activity, here possible phishing of the Complainant's clients, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. 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 <serviclub-promo2024.club> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: June 26, 2024