

## **ADMINISTRATIVE PANEL DECISION**

Vivara Participações S.A. v. Estrutura Vivara, Jhones Gomes Carvalho, Thiago Elias de Paula, Minha Loja, Douglas Ferreira da Silva, Lucas Silva, Juliano Joel Ruis Nogueira, Nayara Azevedo Azevedo, Paulo Macaubas and Adierlei dos Santos Fonseca.  
Case No. D2024-1780

### **1. The Parties**

The Complainant is Vivara Participações S.A., Brazil, represented by Salusse, Marangoni, Parente e Jabur Advogados, Brazil.

The Respondents are Estrutura Vivara, Jhones Gomes Carvalho, Douglas Ferreira Silva, Lucas Silva, Thiago Elias de Paula, Minha Loja, Juliano Joel Ruis Nogueira, Nayara Azevedo Azevedo, Paulo Macaubas and Adierlei dos Santos Fonseca, Brazil.

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

The disputed domain names <joiasvivara.com>, <quiz-vivara.com>, <quizvivara2024.online>, <resgatevivara.online>, <vivara-brasil.shop>, <avaliacaovivara.shop>, <avaliadorvivara.store>, <quizvivara.shop>, <vivaralifebr.store> and <vivaralife.tech> are registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024 initially in regard to the domain names <joiasvivara.com>, <quiz-vivara.com> and <vivara-brasil.shop>, registered with Hostinger Operations UAB, and <joiavivaras.com>, <liquidavivaraa.com>, registered with Tucows Inc. On May 2, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the initial disputed domain names. On May 2 and 3, 2024, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Domain Admin Privacy Protect, LLC and Contact Privacy Inc. Customers 0169662821 and 0169661759) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 3, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the

Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on May 6, 2024, also requesting the addition of the domain names <quizvivara2024.online> and <resgatevivara.online>, registered with Hostinger Operations UAB, to the proceedings. On May 7, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the newly additional domain names. On May 8, 2024, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the additional domain names which differed from the named Respondents. On the same date, the Center sent an email communication to the Complainant with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control.

On May 14, 2024, the Complainant filed a new amendment to the Complaint and requested the withdrawal of the Complaint in regard to the domain names <joivivaras.com> and <liquidavivaraa.com>.

The Center verified that the Complaint together with the amendments 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 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 6, 2024.

On June 3, 2024, the Center received a new amendment to the Complaint filed by the Complainant, requesting the addition of the domains <avaliacaovivara.shop>; <avaliadorvivara.store>; <quizvivara.shop>; <vivaralifebr.store>, and <vivaralife.tech> to the proceedings.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on June 10, 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.

Upon request of the Panel, on June 26, 2024, the Center requested the concerned Registrar, Hostinger Operations UAB., to provide details regarding the registration of the domain names <avaliacaovivara.shop>, <avaliadorvivara.store>, <quizvivara.shop>, <vivaralifebr.store>, and <vivaralife.tech>.

On June 27, 2024, the Registrar, Hostinger Operations UAB, transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (estrutura vivara, Jhones Gomes Carvalho, Thiago Elias de Paula, Minha Loja, douglas ferreira da silva, and lucas silva) and contact information in the Complaint.

Thus, on July 2, 2024, the Panel issued the Procedural Order No. 1, requesting the Complainant to submit an amended Complaint including further consolidation arguments (if any) or to inform the Center to withdraw its request of adding the above-mentioned domain names to the current proceedings, in view of the disclosed registrant details.

On July 6, 2024, the Complainant submitted to the Center, via email, consolidation arguments regarding the additional domain names <avaliacaovivara.shop>, <avaliadorvivara.store>, <quizvivara.shop>, <vivaralifebr.store>, and <vivaralife.tech>.

On July 9, 2024, the Panel issued Procedural Order No. 2, inviting (i) the Respondents of the additional domain names to make any submissions regarding the consolidation of the domain names, and to indicate whether they would like to participate to the current proceedings, and to file a Response in respect of the additional domain names, and; (ii) the Respondents for the original domain names to make any submissions regarding the consolidation of the domain names. On that same date, and as per the Procedural Order No. 2, the Center sent the original Notification of Complaint emails dated May 14, 2024, and the Complainant's request for the additional domain name dated June 3, 2024, together with the present Procedural Order to the Respondents.

None of the Respondents submitted any communications to the Procedural Order.

#### 4. Factual Background

The Complainant is Vivara Participações S.A., a Brazilian jewelry brand which is established since 1962 and is currently the largest chain of jewelry stores in Latin America. In Brazil, the Complainant operates more than 371 points of sale spread across all regions of the country.

The Complainant is the owner of several trademark registrations for VIVARA, such as the following Brazilian registrations:

No.	Trademark	Class	Registration date
826283047	VIVARA	3	October 3, 2017
829897992	VIVARA	9	April 3, 2018
909528373	VIVARA	35	October 10, 2017
908577567	LIFE VIVARA	3	October 31, 2017

The Complainant is also the owner of the domain name <vivara.com.br>, registered on March 9, 1999.

The Respondents were identified as Estrutura Vivara, Jhones Gomes Carvalho, Douglas Ferreira Silva, Lucas Silva, Thiago Elias de Paula, Minha Loja, Juliano Joel Ruis Nogueira, Nayara Azevedo Azevedo, Paulo Macaubas and Adierlei dos Santos Fonseca, all from Brazil.

The disputed domain names <joiasvivara.com>, registered on February 7, 2024; <quiz-vivara.com>, registered on April 3, 2024; <quizvivara2024.online>, registered on April 18, 2024; <resgatevivara.online>, registered on April 12, 2024; <vivara-brasil.shop>, registered on March 2, 2024, <avaliacaovivara.shop>, registered on May 3, 2024; <avaliadorvivara.store>, registered on May 6, 2024; <quizvivara.shop>, registered on May 2, 2024; <vivaralifebr.store>, registered on May 6, 2024, and <vivaralife.tech> registered on March 4, 2024, currently resolve to inactive websites. However, the Complainant has provided evidence that the disputed domain names:

- <joiasvivara.com> resolved to an inactive Shopify page;
- <quiz-vivara.com>, <resgatevivara.online>, <quizvivara2024.online>, <avaliadorvivara.store>, <quizvivara.shop>, resolved to a website displaying a quiz on the Complainant's shops and products;
- <vivara-brasil.shop> resolved to an error page;
- <vivaralife.tech> resolved to a website impersonating 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 names.

The Complainant argues that the disputed domain names are identical or confusingly similar to the trademark VIVARA.

The Complainant, at the time of the Complaint, claims that:

- The disputed domain name <joiasvivara.com> resolved to an inactive webpage managed by Shopify, an e-commerce company;
- The disputed domain name <quiz-vivara.com> was used in connection with a webpage that displayed a “customer quiz” associated with a picture of an actual VIVARA shop (located in a shopping mall in Belo Horizonte, Brazil), reproducing the Complainant’s trademark, trade dress and copyrighted promotional images;
- The disputed domain name <quizvivara2024.online> was used in connection with a webpage that displayed the exact same “customer quiz” mentioned above;
- The disputed domain name <resgatevivara.online> was used in connection with a webpage that displayed the exact same “customer quiz” mentioned above;
- The disputed domain name <avaliadorvivara.store> was used in connection with a webpage that displayed the exact same “customer quiz” mentioned above;
- The disputed domain name <quizvivara.shop> was used in connection with a webpage that displayed the exact same “customer quiz” mentioned above;
- The disputed domain name <vivaralifebr.store> redirects to the disputed domain name <vivaralife.tech>;
- The disputed domain <vivaralife.tech> resolved to a webpage that replicated the Complainant’s webpage; and
- The disputed domain name <vivara-brasil.shop> resolves to an inactive webpage, displaying an “error” message.

The Respondent is not using the disputed domain names 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 names. That being the case, the Complainant finds that the disputed domain names are used to take unfair advantage of the Complainant’s rights for commercial gain, since Internet users and the Complainant’s clients would inevitably associate the content related to the disputed domain names with the Complainant’s prior trademarks.

Moreover, the Complainant stresses that the Respondent is not commonly known by the disputed domain names.

According to the Complainant, it has prior rights over the trademarks VIVARA and has not authorized the registration and use of the disputed domain names, 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 names.

The Complainant’s intellectual property rights for VIVARA trademarks predate the registration of the disputed domain names.

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

Finally, the Complainant requests the transfer of the disputed domain names.

## **B. Respondent**

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

## **6. Preliminary Issues: Addition of Domain Names and Consolidation Request**

The Complainant requests the consolidation of multiple Respondents in this single Complaint, stating that all the disputed domain names are registered by the same underlying beneficial owner, or are subject to common control.

Evidence submitted by the Complainant has shown that the disputed domain names were registered by the same beneficial owner, or are subject to common control, given that all of the disputed domain names were registered through the same Registrar (Hostinger Operations UAB, ); all of the disputed domain were registered using the same privacy protection service (Privacy Protect, LLC) and, were registered within a short period of time, from February, 2024 to May, 2024.

Moreover, the domain names <quiz-vivara.com>, <resgatevivara.online>, <avaliadorvivara.store>, <quizvivara2024.online>, and <quizvivara.shop> disclosed a similar content, that is, a quiz made available to mislead Internet users, according to the evidence presented in the Complaint. The Panel also notes that currently all the disputed domain names are being passively held.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2

As to common control, the Panel notes that evidence has shown that the disputed domain names were registered by registrants that are subject to common control.

As to fairness and equity, the Panel sees no reason why consolidation of the disputed domain names would be unfair or inequitable to any party.

The Panel also notes that the Complainant requested the addition of the disputed domain names <avaliacaovivara.shop>; <avaliadorvivara.store>; <quizvivara.shop>; <vivaralifebr.store>, and <vivaralife.tech> after the formal commencement of the proceedings. In this regard, and although the Panel notes that such type of request should be accepted in limited circumstances, such as evidence of respondent gaming/attempts to frustrate the proceedings, the Panel considers that this seems to be the case, as the disputed domain names <avaliacaovivara.shop>; <avaliadorvivara.store>; <quizvivara.shop>; <vivaralifebr.store>, were all registered after the filing of the Complaint, and some of the domain names displayed similar content to the disputed domain names originally object of these proceedings.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

## 7. 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 names are identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are 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 trademark VIVARA is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, such as "joias", "quiz", "2024.", "resgate", "brasil", "avaliacao", "avaliador", "lifebr", and "life", and the use of hyphens 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 names 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 names (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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel notes the composition of the disputed domain names, which all reproduce the Complainant's well known VIVARA trademark, and that some of the additional terms are directly associated with the

Complainant's activities (such as "joias" and "life", the latter being also a part of some of the Complainant's registered marks), Therefore, the disputed domain names carry a risk of implied affiliation with the Complainant, and thus, prevent a finding of rights or legitimate interests on behalf of the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

Moreover, Panels have held that the use of a domain name for illegal activity, here claimed as impersonation regarding the quiz made available to mislead the users or mimicking the Complainant's website in the case of the <vivaralife.tech> disputed domain name, 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 Respondent was clearly aware of the VIVARA trademarks as the Complainant's trademark registrations as well as its domain name predate the registration dates of the disputed domain names. The Panel notes that the Respondent tried to impersonate the Complainant's by setting up websites reproducing the Complainant's stores, as well as its trade dress, or a quiz in an attempt to potentially practice phishing or other forms of fraudulent activities. .

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.

Panels have held that the use of a domain name for illegal activity, here claimed as impersonation 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 names constitute bad faith under the Policy.

The Panel further notes that the past (in regard to the <joiasvivara.com> and <vivara-brasil.shop>) and current non-use of the disputed domain names does not prevent a finding of bad faith in the present case. [WIPO Overview 3.0](#), section 3.3. In this regard, the Panel notes (i) the notoriety and reputation of the Complainant's VIVARA trademark, (ii) the composition of the disputed domain names, (iii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iv) the Respondent's concealing its identity through a privacy service.

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 names <joiasvivara.com>, <quiz-vivara.com>, <quizvivara2024.online>, <resgatevivara.online>, <vivara-brasil.shop>, <avaliacaovivara.shop>; <avaliadorvivara.store>; <quizvivara.shop>; <vivaralifebr.store>, and <vivaralife.tech> be transferred to the Complainant

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: July 18, 2024