

ADMINISTRATIVE PANEL DECISION

Vivara Participações S.A. v. Roberto Souza, Pedro Paulo, Geozao Nunes, IBIUNA, Samuel Mateus Bruno Pires, Denise Arruda da Silva, Rogerio Feves, Rubens Gomes, Luisa Gomes
Case No. D2024-1801

1. The Parties

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

The Respondents are Roberto Souza, Pedro Paulo, Geozao Nunes, IBIUNA, Samuel Mateus Bruno Pires, Denise Arruda da Silva, Rogerio Feves, Rubens Gomes, and Luisa Gomes, Brazil.

2. The Domain Names and Registrar

The disputed domain names <promoovivara.com>, <veraovivara.com>, <vivalifejoias.site>, <vivaraempromo.com>, <vivarajoia.shop>, <vivaraoficial.com>, <vivaraoficiall.com>, and <vivara.store> are 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 29, 2024. On April 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint, and also informing that the domain name <vivarabrasil.com>, originally a part of the Complaint had been repossessed and could be transferred to the Complainant via an approved settlement.

The Center sent an email communication to the Complainant on May 2, 2024, informing of the possibility of settlement regarding the domain name <vivarabrasil.com> and inquiring the Complainant on its interests in suspending the proceedings to implement a settlement agreement. On May 28, 2024, the Complainant sent a communication to the Center providing the settlement agreement and requesting the proceedings to be suspended and on May 29, 2024, the Center sent a Notification of Suspension to the Parties and the Notice of Settlement regarding the <vivarabrasil.com> domain name.

On June 29, 2024, the Complainant filed an amendment to the Complaint confirming the implementation of the settlement agreement regarding the <vivarabrasil.com> domain name, and requesting the addition of the <diadasmaesvivara.com>, <lojasvivara.shop>, <seguro-vivarapromo.com>, <vivalifejoias.site> and <vivaraoficiall.com> domain names to the dispute.

On July 3, 2024, the Center sent a communication to the Parties confirming the partial dismissal of the proceedings regarding the <vivarabrasil.com> domain name. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the added disputed domain names. On July 4, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint, and also informing that the domain names <diadasmaesvivara.com>, <lojasvivara.shop>, <seguro-vivarapromo.com> had been repossessed and could be transferred to the Complainant via an approved settlement.

The Center sent an email communication to the Complainant on July 8, 2024, informing of the possibility of settlement regarding the domain name names <diadasmaesvivara.com>, <lojasvivara.shop>, <seguro-vivarapromo.com> and inquiring the Complainant on its interests in suspending the proceedings to implement a settlement agreement. On July 10, 2024, the Complainant requested the proceedings to be suspended and on July 11, 2024, the Center sent a Notification of Suspension to the Parties.

On July 31, 2024, the Complainant sent a communication to the Center providing the settlement agreement and on August 6, 2024, the Center sent the Notice of Settlement to the Parties and the Registrar. On August 15, 2024, the Complainant confirmed the implementation of the settlement agreement regarding the <diadasmaesvivara.com>, <lojasvivara.shop>, <seguro-vivarapromo.com>, domain names and the Center sent a communication to the Parties confirming the partial dismissal of the proceedings regarding the <diadasmaesvivara.com>, <lojasvivara.shop>, <seguro-vivarapromo.com> domain names.

The Center sent an email communication to the Complainant on August 16, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, 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 August 21, 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 August 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 16, 2024.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on September 20, 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 Vivara Participações S.A., a Brazilian jewelry company dedicated to the production and sale of jewelry and accessories. The Complainant was first established in 1962 and is currently one of the largest chains of jewelry stores in Latin America.

In Brazil, the Complainant operates over 371 points of sale across all regions of the country. The Complainant is the owner of several trademark registrations for VIVARA, such as the following Brazilian registrations:

- 811205029 granted on September 4, 1984 for VIVARA and design in class 14;
- 826283047 granted on October 3, 2017 for VIVARA in class 3;
- 829897992 granted on April 3, 2018 for VIVARA in class 9;
- 909528373 granted on October 10, 2017 for VIVARA, in class 35.

Among several others (Annexes 7 and 8 to the Complaint).

The Complainant is the owner of the domain name <vivara.com.br>, registered on March 8, 1999, pointing to the Complainant's official website.

The disputed domain names were registered as follows:

- <promoovivara.com>, registered on March 5, 2024;
- <veraovivara.com>, registered on February 27, 2024;
- <vivalifejoias.site>, registered on April 20, 2024;
- <vivaraempromo.com>, registered on December 22, 2023;
- <vivaraoja.shop>, registered on April 2, 2024;
- <vivaraoficial.com>, registered on January 16, 2024;
- <vivaraoficiall.com>, registered on April 29, 2024;
- <vivara.store>, registered on May 9, 2023.

They were all registered within a one year period, by the same underlying beneficial owner, or are subject to common control. While some of the disputed domain names resolved to inactive webpages, others resolved to webpages that impersonate the Complainant, incorporating its logo as well as the trade dress of the Complainant's webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's registered mark.

The Complainant alleges that the Respondents do not have rights or legitimate interests in the disputed domain names.

The disputed domain names registered by the Respondents show all a clear intention of misleading Internet users, as some are linked to a website that featured images of the Complainant's products and incorporated the Complainant's VIVARA logo and official photos. The Complainant underlines that all of the disputed domain names give the impression that they are associated with the Complainant.

The Complainant also indicates that the Respondents registered and are using the disputed domain names in bad faith, as the Internet users accessing the Respondents' websites will believe that such belong to the Complainant. Hence the Complainant concludes that the disputed domain names were all registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- 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 to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

Consolidation: Multiple Respondents

The Complaint and amendment to the Complaint were filed in relation to nominally different domain name registrants. The Complainant alleges that the disputed domain names were registered by the same underlying beneficial owner or are subject to common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

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.

As regards common control, the Panel notes that all the disputed domain names are registered by the same underlying beneficial owner or are subject to common control (see [WIPO Overview 3.0](#), section 4.11.2). The disputed domain names share a similar naming pattern and were registered with the same Registrar. Moreover, while some of the disputed domain names resolved to webpages impersonating the Complainant, the others resolved to the same unconfigured Shopify page. As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

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.

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 disputed domain names are confusingly similar to the VIVARA trademark, as such mark is entirely incorporated in almost all of the disputed domain names, and recognizable in the disputed domain name <vivalifejoias.site>.

The Complainant has presented evidence of ownership of the trademark VIVARA.

In each of the disputed domain names, the mark is easily recognizable, despite the addition of other terms, such as "promo", "verao", "life", "joias", "oficial", and "oficiall".

In any event, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.8.

It is also well established that the generic Top-Level Domain, such as “.com”, “.site”, “.shop”, and “.store”, may be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s mark. [WIPO Overview 3.0](#), section 1.11.1.

Given the above, the Panel concludes that the disputed domain names are confusingly similar to the registered trademark of the Complainant.

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.

The Panel understands that the mark VIVARA is naturally associated with the Complainant, since it is not only registered as a mark in its name, but also has been used to identify the products and services by the Complainant for over 60 years.

Hence, the Panel considers that the Respondent, in all likelihood, could not be unaware of the mark VIVARA, and its direct relation to the Complainant – particularly considering that the Complainant and the Respondents are based in Brazil.

The Respondent has not submitted a response to the Complaint. Also, there is no evidence that the Respondent has any authorization to use the Complainant’s trademark or to register domain names containing the Complainant’s trademark VIVARA, nor evidence that the Respondent is commonly known by the disputed domain names.

Besides, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names. In fact, the Complainant presented evidence that some of the disputed domain names resolved to websites impersonating the Complainant and offering for sale goods under the mark VIVARA, using the trade dress of the Complainant’s official website.

The Complainant has not authorized the Respondent to use its mark VIVARA or register domain names incorporating the mark. Additionally, there is no evidence that the Respondent is commonly known by the disputed domain names or has made a bona fide or noncommercial fair use of any of the disputed domain names. This is supported by the use of the disputed domain name in connection with a website that falsely appears to be a website for, or otherwise associated with the Complainant (as evidenced in Annexes 11 and 18, and 27 of the Complaint). Panels have held that the use of a domain name for illegal activity here, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel further notes that the other disputed domain names did not resolve to active websites.

The Panel is satisfied that the Complainant has made a prima facie case of the Respondent’s lack of rights or legitimate interests in the disputed domain names. This has not been rebutted by the Respondent.

Thus, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names. For this reason, the Panel believes that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

It is clear to the Panel that the Respondent has registered the disputed domain names with the purpose of taking unfair advantage of the Complainant's mark.

The Panel finds that the disputed domain names were likely registered to mislead consumers, which can surely be a fact from which the Respondent may well profit by giving Internet users the impression that the disputed domain name belongs to the Complainant.

The fact that some of the disputed domain names were linked to a website that featured images and descriptions of the Complainant's products and incorporated the Complainant's VIVARA logo supports a finding of bad faith in these circumstances. In addition, some of the disputed domain names resolved to inactive webpages. The non-use of some of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

The Respondent intended to give an overall impression that the disputed domain names are associated with the Complainant.

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain names and that the Respondent registered and is using the disputed domain names in bad faith.

The Panel finds that the Complainant has also 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 <promoovivara.com>, <veraovivara.com>, <vivalifejoias.site>, <vivaraempromo.com>, <vivarajoia.shop>, <vivaraoficial.com>, <vivaraoficiall.com>, and <vivara.store> be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: October 4, 2024