

ADMINISTRATIVE PANEL DECISION

Vivara Participações S.A. Edieli Martins
Case No. D2024-1831

1. The Parties

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

Respondent is Edieli Martins, Brazil.

2. The Domain Name and Registrar

The disputed domain name <vivarabrasil.store> 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 30, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 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 named Respondent (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended to the Complaint on May 6, 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 Respondent of the Complaint, and the proceedings commenced on May 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 29, 2024.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on June 3, 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

Complainant is an established Brazilian company, dedicated to the production and sale of jewelry and accessories.

Complainant is the owner of trademark registrations for the VIVARA trademark, and operates the domain name <vivara.com.br>, registered in March 8, 1999, in which offers its services.

Some examples of Complainant's trademark registrations for VIVARA can be found below:

Registration No.	Trademark	Jurisdiction	International Class	Registration Date
826283047	VIVARA	Brazil	3	October 3, 2017
829897992	VIVARA	Brazil	9	April 3, 2018
909528373	VIVARA	Brazil	35	October 10, 2017

The disputed domain name was registered on February 3, 2024, and resolves to a Registrar parked page indicating that the disputed domain name has been suspended.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that the disputed domain name is confusingly similar to the registered trademark VIVARA, as well as with Complainant's prior tradename and domain names, since it fully incorporates Complainant's trademark VIVARA, with the addition of the term "Brasil", which means "Brazil" in Portuguese, where Complainant is located, having Respondent selected the generic Top-Level Domain ("gTLD") ".store" which is evocative of Complainant's business.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant's trademark VIVARA, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and (b)(ix)(1) of the Rules.

Moreover, Complainant states that Respondent has no rights and that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy has been fulfilled.

Finally, Complainant asserts that Respondent must have been aware of the Complainant and its VIVARA trademarks and, by registering and using the disputed domain name, the Respondent is intentionally seeking to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with Complainant's trademarks.

Thus, according to Complainant, the requirements for a finding of bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(a)(iii) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

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 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.

Based on the available record, the Panel finds 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 name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The disputed domain name consists also of the gTLD ".store", which will be further analyzed below under the third element, but can be disregarded for purposes of the confusing similarity analysis under the first element. [WIPO Overview 3.0](#), sections 1.11.1 and 1.11.2.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on 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 respondent. As such, where a complainant makes out a prima facie case that respondent lacks rights or legitimate interests, the burden of production on this element shifts to 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 respondent fails to come forward with such relevant evidence,

complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 notes that Complainant argues that Respondent has registered and is using the disputed domain name to create confusion among Internet users and create the impression that Respondent's website is affiliated with or endorsed by Complainant. The Respondent has failed to refute said claim. Moreover, the composition of the disputed domain name carries a risk of implied affiliation to Complainant, and as such, cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, Respondent is not entitled to any trademark, trade name, or any other right associated with the disputed domain name. Additionally, Respondent has not been authorized by Complainant to use the VIVARA trademark, and there is no commercial relationship between the Parties. Respondent is not recognized by the disputed domain name, and the Panel notes that such resolves to a Registrar parked page indicating that the disputed domain name has been suspended. In light of these circumstances, the panel finds that no rights or legitimate interests can be found on behalf of Respondent.

Based on the available record, 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 Respondent has registered the disputed domain name that is confusingly similar to Complainant's trademark VIVARA, as explained above in 6.A. Also, based on the available record, Respondent has no affiliation with the VIVARA element, nor has it sought authorization or a license to utilize the VIVARA trademark. Respondent does not own any trademarks containing the term VIVARA, nor does it have any other applications or registrations in Brazil or elsewhere as proven on Annex 17 to the Complaint.

Furthermore, considering that both Parties are located in the Brazilian territory and the well-known status of Complainant's trademark in Brazil, the Panel finds that Respondent evidently knew or should have known of the existence of the Complainant's prior trademark rights and domain name, which were matters of public record. Thus, Respondent must have had knowledge of the Complainant's preexisting rights in "VIVARA" as a trademark.

Therefore, it may be inferred that the registration of the disputed domain name was intentionally done with the aim of later offering it to Complainant or profiting from the reputation of the VIVARA trademark and trade name. This action creates a likelihood of confusion among internet users, suggesting an association with Complainant and implying that the disputed domain name is associated or belongs to Complainant.

A further element to be considered and which corroborates the Respondent's bad faith is its choice to retain a privacy protection service so as to conceal the true identity of Respondent. Furthermore, the address provided by Respondent belongs to a post office in Brazil, as per the attached Google Maps search, indicating that Respondent failed to provide her true address, as corroborated by Annex 19 to the Complaint.

The disputed domain name resolves to a Registrar parked page indicating that the disputed domain name has been suspended. Having reviewed the available record, the Panel finds that the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the composition of the disputed domain name incorporates Complainant's trademark VIVARA, and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel also notes that the disputed domain name is currently parked by the Registrar and has been suspended in light of the absence of confirmation of Respondent's contact information. Such situation, in the circumstances of this case, is a further indicative of registration and use in bad faith.

The Panel finds that the circumstances of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that (i) Respondent would likely obtain commercial gain by using a confusingly similar name to Complainant's trademark; and (ii) Complainant's trademark is well known in Brazil, where Respondent is located at, and operating an almost identical domain name, such that Respondent most likely knew (or should have known) of its existence, taking advantage of the confusion caused on the public by its use in the disputed domain name.

Lastly the Panel finds it is relevant that Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute.

Based on the available record, the Panel finds that 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 <vivarabrasil.store> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: June 17, 2024