

ADMINISTRATIVE PANEL DECISION

Centro de Promociones Los Cabos San Lucas, S.A. de C.V. v. ViaMari,
ViaMari

Case No. D2024-1950

1. The Parties

The Complainant is Centro de Promociones Los Cabos San Lucas, S.A. de C.V., Mexico, represented by CAYAD, S.C., Mexico.

The Respondent is ViaMari, ViaMari, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ranchosanlucasusa.com> is registered with Network Solutions, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 9, 2024. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 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 amendment to the Complaint on the same day.

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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 6, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on June 13, 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 Centro de Promociones Los Cabos San Lucas, S.A. de C.V., a corporation based in Cabo San Lucas, Mexico. The Complainant is a Mexican hotel group incorporated since 1973, currently operating five hotels and developing its sixth. The company also operates as a timeshare sales company and many restaurants in the Los Cabos area.

The Complainant is the owner of the following trademark registrations in Mexico:

- RSL RANCHO SAN LUCAS LOS CABOS GOLF CLUB (word and Design) covering services in class 43 (Registration Number: 1572473), registered on September 11, 2015, and
- RSL RANCHO SAN LUCAS LOS CABOS GOLF CLUB (word and Design), covering services in class 36 (Registration Number: 1572470, registered on September 11, 2015).

The Complainant is also the owner of the following domain names <ranchosanlucas.com> and <ranchosanlucascabo.com.mx>.

The disputed domain name was registered on January 25, 2024. The disputed domain name is currently resolving to a website purportedly offering same services with the Complainant.

However, according to the Complaint, the Respondent used the disputed domain name in a phishing attack which involved sending fake proposals to the Complainant's customers via email, from an email address associated with the disputed domain name and inserting an unauthorized reproduction of the Complainant's trademark.

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.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name 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 Panel finds the dominant feature of the marks is recognizable 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 "usa" may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

Panels have held that the use of a domain name for illegal activity such as phishing 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 Complainant has marketed and sold its services using the “RSL RANCHO SAN LUCAS” since the years 2009, well before the Respondent’s registration of the disputed domain name in 2024.
- the disputed domain name was used for a phishing attack.

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 like the case of phishing, 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 <ranchosanlucasusa.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: June 27, 2024