

ADMINISTRATIVE PANEL DECISION

CLARO S.A. v. Austin Rhoades, auroraholding.net
Case No. D2024-1958

1. The Parties

The Complainant is CLARO S.A., Brazil, represented by Olivares & Cia, México.

The Respondent is Austin Rhoades, auroraholding.net, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <claro.chat> is registered with Tucows Inc. (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 10, 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 (Contact Privacy Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 13, 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 May 15, 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 May 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 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 18, 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 one the leading telecommunications provider in Latin America with operations in eighteen (18) countries in Latin America. The Complainant serves clients in Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Puerto Rico and Uruguay.

The Complainant is a subsidiary company of América Móvil, S.A.B. de C.V., who holds rights over the well-known leading trademark in the field of telecommunications services named CLARO and/or CLARO CHAT. The mark CLARO CHAT is used by the Complainant to provide online customer service.

The Complainant is part of a group of companies that includes América Móvil, Claro, Claro Brazil, Claro Enterprise Solutions, Telmex, Embratel, and Telekom Austria Group.

The Complainant is the owner of Mexican trademark registrations numbers 1461274 for CLARO CHAT (and Design), 963480 for CLARO, and 925395 for CLARO and Design, all in international class 38, covering services related to telecommunications. These registrations were granted on June 10, 2014; November 27, 2006, and March 24, 2006 respectively, and are in full force in accordance with the Mexican law.

The Complainant is the owner of the domain name <www.claro.com>, created on December 9, 1996. In addition, the Complainant, or companies of its group of companies, also operates the domain name <usclaro.com>, with information about operations in the United States with an address in the state of Florida.

The disputed domain name was registered on November 29, 2023.

The disputed domain name resolves to a website where there is no information except for a message a message stating the following:

“Seamless Communication, Claro.

A significant step towards removing language barriers.

Through expressive, fast and high-quality AI translation. iOS and Android Coming Soon.

AI research by Claro, Inc.”

At the footnote of the website it can be read: “hello@claro.chat [and a telephone number]

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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.

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.

Specifically, the Complainant states that “Previous UDRP panels have consistently found that registration of a domain name that is confusingly similar to a widely-known trademark, as is the case here, creates a presumption of bad faith [...] It is very unlikely that the Respondent did not have actual knowledge of the Complainant, given the popularity of the website exploited under the trademarks CLARO CHAT, before the registration of the disputed domain name. The trademarks of the Complainant have been recognized in numerous previous UDRP proceedings as internationally well known amongst the relevant public (...)”.

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 for purposes of paragraph 4(a)(i) of the Policy that the disputed domain name <claro.chat> is confusingly similar if not identical to the Complainant’s CLARO CHAT mark, in which the Complainant has established rights through registration and extensive use.

In this case, the disputed domain name differs from the Complainant’s CLARO CHAT mark only by the addition of a punctuation mark (“.”) between the term “CLARO” and “CHAT” in the mark.

While “.chat” is the generic Top-Level Domain (“gTLD”), and as such, would be typically disregarded under the analysis of the first element, consideration of gTLDs may, in appropriate circumstances, be considered when evaluating identity or confusing similarity under the first element of the Policy, and the Panel finds such consideration to be appropriate in the circumstances of this case. See, e.g., *Tesco Stores Limited v. M.F.*, WIPO Case No. [DCO2013-0017](#) (<tes.co>); *Bayerische Motoren Werke AG v. Masakazu/Living By Blue Co., Ltd.*, WIPO Case No. [DMW2015-0001](#) (<b.mw>); *Totaljobs Group Limited v. Faisal Khan, CreativeMode Ltd*, WIPO Case No. [D2017-0295](#) (<total.jobs>); *WeWork Companies, Inc. v. Michael Chiriac, Various Concepts Inc.*, WIPO Case No. [D2016-1817](#), <joinwe.work>; *Swarovski Aktiengesellschaft v. Aprensa UG haftungsbeschaenkt, Mike Koefer*, WIPO Case No. [D2016-2036](#), <swarov.ski>; *Compagnie Générale des Etablissements Michelin v. Pacharapatr W.*, WIPO Case No. [D2016-2465](#), <tyre.plus>, and *Banco Bradesco S/A v. Paulo Araujo*, WIPO Case No. [DCO2010-0049](#) (<brades.co>) and [WIPO Overview 3.0](#), section 1.11.3 (“Where the applicable TLD and the second-level portion of the domain name in combination contain the relevant trademark, panels may consider the domain name in its entirety for purposes of assessing confusing similarity (e.g., for a hypothetical TLD “.mark” and a mark “TRADEMARK”, the domain name <trade.mark> would be confusingly similar for UDRP standing purposes”).

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. In particular, the Panel notes the lack of evidence that would support a legitimate use of the website at the disputed domain name.

Furthermore, and although the Panel notes the content of the disputed domain name, which resolves to a website purportedly offering webchat services with Artificial Intelligence (“AI”) by Claro, Inc., the composition of the disputed domain name, comprising the Complainant’s trademark in its entirety and the addition of the gTLD “chat” (that forms another trademark of the Complainant), carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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 mark CLARO has been in use since the year 2006, and the mark CLARO CHAT has been in use since the year 2014, and is currently used online by the Complainant to provide online customer services;
- The disputed domain name was registered on November 29, 2023;
- The Panel considers that the Complainant’s CLARO trademark is well known;
- Also “claro” (meaning “clear” in Spanish) is not a dictionary term in English (*Modernatx, Inc. v. Whois Privacy, Private by Design, LLC / hggfdd bchgugugh*, WIPO Case No. [D2022-2111](#) and *Early Warning Services, LLC v. Privacy service provided by Withheld for Privacy ehf / Zeller Trappa, Cheap Toolie, Ken Zoe, and Jason Bourne*, WIPO Case No. [D2021-2846](#));
- The Respondent has used a privacy service to conceal its identity;
- The Respondent has failed to come forward with any explanation for the registration and use of the disputed domain name, having also failed to participate in the proceedings, despite being duly notified of such.
- It is not a coincidence that the Respondent registered a domain name containing the CLARO trademark with the extension “.chat”, that also forms another exact trademark (CLARO CHAT) of the Complainant. Thus on the balance of probabilities the Panel considers that the Respondent was targeting

the Complainant, considering the business of the Complainant, and the use of the “.chat” extension to the CLARO trademark.

- 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.

The Panel finds that the disputed domain name was registered and used in bad faith and 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 <claro.chat> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: July 2, 2024.