

ADMINISTRATIVE PANEL DECISION

ULMA C y E, S. Coop v. Gwenna Brush

Case No. D2024-2529

1. The Parties

The Complainant is ULMA C y E, S. Coop, Spain, represented by Ubilibet, Spain.

The Respondent is Gwenna Brush, United States of America (the “United States”).

2. The Domain Names and Registrar

The disputed domain names <ulmaconstruction.com> and <ulrmaconstruction.com> are registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 25, 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 (Privacy Protect) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 26, 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 amended Complaint on June 28, 2024.

The Center verified that the Complaint together with the amended 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 July 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2024. The Respondent sent email communications to the Center on July 8, 2024 and July 12, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on August 2, 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, ULMA C y E, S. Coop, formerly ULMA Construction Encofardos y Andamios was established in 1961 in Spain, is part of the industrial group Grupo ULMA, and is a provider of construction solutions in Europe. It has presence in over 50 countries and annual revenues exceeding EUR700 million.

The Complainant, directly or through its group of companies¹, owns worldwide trademark registrations for or including ULMA, such as the following:

- the International trademark registration number 613853 for ULMA (figurative), registered on February 5, 1994, covering goods and services in International classes 6, 7, 19, and 37 and designating numerous jurisdictions worldwide; and
- the United States trademark registration number 75069600 for U ULMA (figurative), filed on March 8, 1996, registered on June 24, 1997, covering goods in International classes 6 and 7.

The Complainant holds and operates domain names comprising ULMA such as <ulmaconstruction.com> and <ulmaconstruction.es> as its primary websites since 2012.

The disputed domain names were registered on May 1, 2024, and, at the time of filing of the Complaint, none of them resolved to an active website.

According to Annex 7 to the Complaint, email servers have been configured at the disputed domain names.

On May 8, 2024, the Complainant contacted the Registrar and Internet service provider in order to request the locking of services and provide identity of the disputed domain names registrants. The Registrar confirmed it forwarded the letter to the Respondent, and the Internet service provider locked the service for the disputed domain name <ulmaconstruction.com>.

The Respondent send two email communications to the Center. The first communication, of July 8, 2024, was a purported “response”, which, however was referring to another domain name than the disputed domain names. The Center indicated such error in a communication sent on July 11, 2024. As a reply and second communication, on July 12, 2024, the Respondent stated it has no knowledge of the disputed domain names.

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.

Notably, the Complainant contends that it has built its business and digital identity around the name “ulma construction”, integrating the group’s trademark with the activity descriptive term “construction”, a standard practice among multi-industry companies; the disputed domain names are confusingly similar to ULMA trademarks since they closely resemble to its trademark and domain names, differing only by a single typo: an “m” replaced by an “n” in the disputed domain name <ulmaconstruction.com> and the inclusion of an “r”

¹ Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8. In this regard, the Panel conducted its independent search through the search engine and noted that the listed owner of the provided trademark registrations for ULMA, as cited in this Decision, Grupo ULMA, S. COOP., is part of the same group as the Complainant.

in the disputed domain name <ulrmaconstruction.com>; the Respondent has no rights or legitimate interests in the disputed domain names; the Respondent registered and is using the disputed domain names in bad faith; the passive holding does not preclude a finding of bad faith; Mail exchange (“MX”) servers are configured which suggests that the disputed domain names may be actively used for email purposes; the Respondent did not react to the Complainant’s letter before commencing the present proceedings; the simultaneous registration of the disputed domain names, along with the identified typos, indicates a deliberate targeting of “ULMA CONSTRUCTION”, which precisely corresponds with the name by which the Complainant is known and encompasses both its protected trademark and its sector of activity; the configuration of the disputed domain names, observed together with the disputed domain names striking similarity to the Complainant’s usual business name to the point of being completely confusable, and the absence of any legitimate associated activity to them, strongly suggests that the disputed domain names are intended for impersonating the Complainant for sending emails and engaging in phishing activities.

B. Respondent

The Respondent has not substantially replied to the Complainant’s contentions and has not come forward with relevant evidence to rebut the Complainant’s prima facie case.

In its first communication of July 8, 2024 the Respondent send a purported response but it was in relation to another domain name; in its second communication of July 12, 2024, the Respondent states it has no knowledge of the disputed domain names.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are 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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 mark is recognizable 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 term, here “construction” (the misspelling of “construction”) in the disputed domain name <ulrmaconstruction.com>, respectively “construction” preceded by the obvious misspelling of the Complainant’s trademark, *i.e.*, the addition of the letter, “r”, in the disputed domain name <ulrmaconstruction.com>, may bear on assessment of the second and third elements, the Panel finds the addition of such term and misspellings do 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](#), sections 1.8 and 1.9.

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 non-exhaustive 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 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.

In its second communication, the Respondent claims it has no knowledge of the disputed domain names. Such allegation cannot be accepted by this Panel because the Respondent had the opportunity to comment on the Complainant’s allegations, and it failed, sending only a purported response related to another domain name. Once the Center indicated that these proceedings refer to different disputed domain names than that mentioned in such communication, the Respondent merely responded indicating that it has no knowledge of the disputed domain names, without making any further claims of providing any further explanations. Accordingly, this Panel’s view is that the Respondent only tried to fabricate an appearance of ignorance to prevent a finding of bad faith, however it failed.

Further, the Panel notes that the composition of the disputed domain names itself carries a risk of implied affiliation given that the Complainant’s distinctive trademark, per se or with a minor alteration, has been combined with the descriptive term closely related to the Complainant’s industry “construction” (or altered as “construction”), being very similar to the Complainant’s domain names. Also active MX records are associated with the disputed domain names. In the event emails were to be sent using the disputed domain names, it is recalled that panels have held that the use of a domain names for illegal activity (such as potential phishing, 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 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 registered the disputed domain names in bad faith since they were registered both on the same day and about a half of century after the registration of the Complainant’s ULMA trademark, are very similar to the Complainant’s domain names and incorporate the Complainant’s mark with the descriptive term “construction”, and obvious misspellings.

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.

At the time of filing the Complaint, the disputed domain names direct towards inactive pages.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the international reputation and distinctive character of the Complainant’s trademark; the composition of the disputed domain names which includes the Complainant’s trademark, per se or slightly altered, together with the descriptive term “construction” closely related to the Complainant’s activity, and being very similar to the Complainant’s domain names; the Respondent’s failure to substantially respond to the present proceedings, and finds that, in the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

Further, panels have held that using a domain name for illegal activity (here, claimed potential phishing activities via the configuration of MX records), constitute bad faith. [WIPO Overview 3.0](#), section 3.4.

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, <ulmaconstruction.com> and <ulrmaconstruction.com>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: August 16, 2024