

ADMINISTRATIVE PANEL DECISION

MasTec North America, Inc. v. Mastec Construct, masteconstruct Case No. D2024-2683

1. The Parties

The Complainant is MasTec North America, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is Mastec Construct, masteconstruct, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <masteconstruct.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 8, 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 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 6, 2024.

The Center appointed Ahmet Akgüloğlu as the sole panelist in this matter on August 12, 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 a multinational infrastructure construction company operating mainly throughout the United States. The company seems to provide engineering, building, installation, maintenance, and upgrade of energy, utility, and communications infrastructure.

The Complainant is the owner of the MASTEC trademark number 2544425 registered on March 5, 2002, and MASTEC trademark number 2130081 registered on January 20, 1998, in the United States.

The Complainant is also the owner of the domain name <mastec.com>, which was registered since April 25, 1996.

The disputed domain name was registered on May 7, 2024.

The disputed domain name consists of “mastec” and “construct”. As submitted by the Complainant, the disputed domain name resolved to a webpage similar to 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 a transfer of the disputed domain name.

(a) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant argues that the disputed domain name is confusingly similar to the Complainant’s trademark MASTEC since the disputed domain name contains the term “mastec”, which is identical to the Complainant’s registered trademark MASTEC. Moreover, the addition of the suffix “construct” will not have any impact on the overall impression since the dominant part of the disputed domain name, the MASTEC mark, is instantly recognizable as the Complainant’s trademark and the term “construct” defines the Complainant’s business directly which will increase the likelihood of confusion. The Complainant also asserts that the addition of the generic Top-Level Domain (“gTLD”) being “.com” does not have any impact on the overall impression of the dominant portion of the disputed domain names and is therefore irrelevant to determining the confusing similarity between the trademark and the disputed domain names at issue.

(b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant submits that the Respondent is not commonly known by the disputed domain name and did not use or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. In this regard, the Complainant underlined that the Respondent has no rights or interests concerning the disputed domain name.

(c) The disputed domain name was registered and is being used in bad faith

The Complainant submits that the Respondent acquired the confusingly similar disputed domain name to impersonate the Complainant by creating email addresses that appear to be from the Complainant to send fraudulent email messages to engage in fraudulent financial transactions with the Complainant’s vendors and customers. Moreover, the Complainant underlined that the Respondent created the disputed domain name to attract Internet traffic to its webpage by creating the page with the Complainant’s MASTEC trademark to provide similar or identical services, which can be seen within the screenshots of the disputed domain name provided by the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is 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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this 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 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. It is uncontested to the Panel that the Complainant has rights to MASTEC trademark as a result of its registrations in the United States.

The Panel finds that the mark 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.

The disputed domain name is composed of "mastec" and "construct". The disputed domain name includes the Complainant's MASTEC trademark in its entirety. When a domain name wholly incorporates a Complainant's registered trademark that is sufficient to establish confusing similarity for purposes of the Policy.

The Panel also ignored the gTLD since it is viewed as a standard registration requirement and typically disregarded under the first element similarity test where such gTLD does not form part of the relevant trademark for comparison. (See [WIPO Overview 3.0](#), section 1.11.1.)

Although the addition of the other term "construct" may bear on the assessment of the second and third elements, the Panel finds the addition of such a 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.

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.

It is accepted by the Panel that the Complainant has not licensed nor authorized the use of its trademark to the Respondent, and the Panel finds no indication that the Respondent is commonly known by the disputed domain name and the Respondent has not submitted any response to the Complaint in terms of any rights or legitimate interests in the disputed domain name or the registered MASTEC trademark. Moreover, given the evidence demonstrating the use of the disputed domain name for a fraudulent email scheme, the Panel agrees with prior UDRP decisions in that such illegal activity 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 primarily for the purpose of use with the intention to attract Internet users through misleading, impersonating emails for the Respondent’s likely commercial gain by creating a likelihood of confusion with the Complainant’s trademark, which is an indicator of bad faith according to the paragraph 4(b)(iv) of the Policy.

The Panel has held that the use of a domain name for illegal activity here claimed as applicable to this case impersonation/passing off, 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 notes that the Complainant has provided evidence of the reputation of the MASTEC trademark due to its longstanding use and the relevant amount of promotional investment made in the trademark. Finally, the Respondent did not object to the reputation of the MASTEC trademark and did not submit any counterarguments. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Additionally, the Respondent has used the disputed domain name in an attempt to defraud Internet users by sending fraudulent emails from the disputed domain name, which is a clear indication of bad faith resolving out of impersonation of another. (See *Arkema France v. Pepi Robert*, WIPO Case No. [D2014-1055](#)). Additionally, the fact that the disputed domain name was used to revert to a website similar to that of the Complainant indicates that the Respondent knew of the Complainant and registered the disputed domain name to take advantage of the Complainant’s trademark. (See *MIGROS-Genossenschafts-Bund v. 1&1 Internet Limited / Hubert Dadoun*, WIPO Case No. [D2017-1924](#)).

Therefore, the Panel notes that the Respondent also registered the disputed domain name for the purpose of attracting Internet users for commercial gain and fraud by creating a likelihood of confusion with the Complainant's trademark which is an indicator of bad faith according to the paragraph 4(b)(iv) of 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 <mastecconstruct.com> be transferred to the Complainant.

/Ahmet Akgülođlu/

Ahmet Akgülođlu

Sole Panelist

Date: August 26, 2024