

ADMINISTRATIVE PANEL DECISION

Carrefour SA, Atacadão S.A. v. Bento Ferreira, Amelio Herl
Case No. D2024-3706

1. The Parties

The Complainants are Carrefour S.A., Atacadão S.A., France, represented by IP Twins, France.

The Respondent is Bento Ferreira, Amelio Herl, Brazil.

2. The Domain Names and Registrars

The disputed domain names <pagamentoatacado.online>, <pagamentoatacado.site>, and <pagamentoatacado.store> are registered with Hostinger Operations, UAB and the disputed domain name <paymentsatacado.digital> is registered with GoDaddy.com, LLC (collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 12, 2024. On September 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 16, 2024, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy Protect, LLC (PrivacyProtect.org) and Registration Private, Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainants on September 17, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainants to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainants filed an amended Complaint on September 19, 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 Respondents of the Complaint, and the proceedings commenced on September 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondents' default on October 11, 2024.

The Center appointed Martin Schwimmer as the sole panelist in this matter on October 17, 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 first Complainant is a company incorporated under French law. The second Complainant is a company incorporated under Brazilian law. The first Complainant is one of the worldwide leaders in retail and pioneer of the concept of hypermarkets back in 1968. The first Complainant operates more than 12,000 stores in more than 30 countries worldwide. With more than 384,000 employees worldwide, and 1.3 million daily unique visitors in its stores, the first Complainant is well-known worldwide leader in retail.

The second Complainant is Atacadão, a Brazilian chain of wholesale and retail stores established in 1960 and acquired by the first Complainant in 2007. The second Complainant has more than 300 stores and distribution centers in all the Brazilian states, and more than 70,000 employees. In 2010, the second Complainant began an internationalization program, expanding its activities in other countries beyond Brazil.

The Complainants are the owners of several ATACADAO and ATACADÃO trademarks registered in:

- European Union trademark ATACADAO No. 012020194, registered on May 24, 2015, and designating services in international class 35;
- Brazil trademark ATACADÃO No. 006785360, registered on October 10, 1978, duly renewed and designating goods in international class 29;
- Brazil trademark ATACADÃO No. 006785344, registered on October 10, 1978, duly renewed and designating goods in class 31;
- Brazil trademark ATACADAO No. 006937497, registered on May 25, 1979, duly renewed and designating services in class 35;

The disputed domain name <paymentsatacado.digital> was registered on June 22, 2024, and resolves to an error page. The disputed domain names <pagamentoatacado.online>, <pagamentoatacado.site>, and <pagamentoatacado.store> were registered on August 26, 2024. The disputed domain name <pagamentoatacado.online>, also resolves to an error page, while <pagamentoatacado.site>, and <pagamentoatacado.store> resolve to parking pages.

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names, namely: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and (iii) the disputed domain names have been registered and are being used in bad faith

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainants allege that the domain name registrants are the same person or entity, or under common control. The Complainants requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Complainants argue that:

- 1) the disputed domain names were registered in a short time frame: <paymentsatacado.digital> on June 22, 2024, and <pagamentoatacado.online>, <pagamentoatacado.site>, and <pagamentoatacado.store> on August 26, 2024;
- 2) the disputed domain names share the same naming pattern and are conceptually identical: the Complainants' ATACADA0 trademark is entirely reproduced in the disputed domain names, and the ATACADA0 trademark is preceded by the terms "pagamento" or "payments", which are the Portuguese and English words with the same meaning;
- 3) the disputed domain names are all registered under new generic Top-Level Domains ("gTLDs");
- 4) no active website is associated with the disputed domain names. They all resolve to similar error pages or holding pages;
- 5) according to the information provided by the concerned Registrars, the registrants are both individuals, residents in Brazil.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the un rebutted arguments by the Complainants suggest common control. None of the purportedly different registrants responded.

Against that background, as regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single 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 Complainants have 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. The addition of the words “payments” (in English or Portuguese) does not prevent a finding of confusing similarity of the Complainants’ mark and the disputed domain names.. [WIPO Overview 3.0](#), section 1.8. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainants’ 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.

The Panel finds that the composition of the disputed domain names carries a risk of implied affiliation with the Complainants’ trademarks. [WIPO Overview 3.0](#), section 2.5.1.

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, 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 Respondents have registered the disputed domain names that incorporate in the Complainant’s trademark in its entirety, which trademark has been held to be well-known in Brazil, in multiple UDRP decisions. See *Carrefour SA and Atacadão S.A. v. atacado varejo*, WIPO Case No. [D2023-3011](#), *Atacadão - Distribuição, Comércio E Indústria LTDA. v. seongchea park*, WIPO Case No. [D2022-4615](#), *Carrefour S.A., Atacadão S.A. v. Gabriel Silva*, WIPO Case No. [D2023-4424](#), *Carrefour SA, and Atacadão - Distribuição, Comércio E Indústria LTDA. v. Lohan Medina*, WIPO Case No. [D2023-1900](#), *Carrefour SA and Atacadão S.A. v. Jaay Shop, privada*, WIPO Case No. [D2023-5152](#).

Accordingly, the Panel holds that the Respondent, located in Brazil, knew or should have known of the reputation of the Complainant’s trademark.

Panels have found that the non-use of a domain name (including a blank or error page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainants' trademark, and the composition of the disputed domain names, 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.

The Panel finds the third element of the Policy has been established.

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 <pagamentoatacadoa.online>, <pagamentoatacadoa.site>, <pagamentoatacadoa.store>, and <paymentsatacadoa.digital> be transferred to the Complainant.

/Martin Schwimmer/

Martin Schwimmer

Sole Panelist

Date: October 31, 2024