

## **ADMINISTRATIVE PANEL DECISION**

Município de Arouca v. Domain Admin, Privacy Protect, LLC  
(PrivacyProtect.org) / Ryakina Vv, Ryakina Vv  
Case No. D2022-0394

### **1. The Parties**

The Complainant is Município de Arouca, Portugal, represented by Inventa International, SA, Portugal.

The Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), United States of America / Ryakina Vv, Ryakina Vv, Russian Federation.

### **2. The Domain Name and Registrar**

The disputed domain name <ponte516arouca.com> is registered with BigRock Solutions Pvt Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 11, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 2022 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 February 25, 2022.

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 March 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2022. The Respondent did not submit a response by this date. Accordingly, the Center notified the Respondent’s default on April 7, 2022. On April 11, 2022, the Respondent sent an informal email to the Center.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 22, 2022. 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 the local government authority for the county of Arouca, which is about an hour's travel from Porto in Portugal.

The territory of Arouca is named Arouca Geopark and it is a member of the European Geoparks Network and the Global Geoparks Network as a result of a number of geological features of the area. One of those features is the Paiva River. There are a series of wooden pedestrian walkways running for approximately nine kilometers on the Paiva River known as the "Passadiços de Paiva". At one point, the Paiva River flows through the Paiva gorge.

The Complainant has built a pedestrian bridge across the gorge connecting to the "Passadiços de Paiva" which is known as the "516 Arouca". The 516 Arouca is a suspension bridge which is 516 metres in length (hence the name) and which hangs some 175 meters above the river. One of the notable features of the bridge is that, at 516 meters, it is the longest suspension pedestrian bridge in the world. Another of its features is the "see through" floor or walkway which provides users with a view of the river and cliffs directly below. Given the potential safety issues, the Complainant controls the use of the bridge carefully; requiring users to book in advance and charging a fee.

According to press reports included in the Complaint, it appears that construction of the bridge commenced in 2018 and the first paying members of the public began crossing the bridge around October 17, 2020. The opening of the bridge to paying customers attracted significant media coverage in both Portugal and internationally.

Amongst other things, the Complainant is the owner of registered trademarks in Portugal for:

- (a) Registered Trademark No. 625027, 516 AROUCA PONTE SUSPENSA presented in a figurative style so that the words "ponte suspensa" are depicted in very much smaller letters under the word AROUCA which is itself depicted in larger type than "516". This trademark was filed on May 31, 2019 and registered on October 18, 2019; and
- (b) Registered Trademark No. 625253, PASSADIÇOS DO PAIVA AROUCA PORTUGAL, which is also a figurative mark featuring a device element and in which the words AROUCA PORTUGAL are depicted in very much smaller letters than, and underneath, the words PASSADIÇOS DO PAIVA. This trademark was filed on June 5, 2019 and registered on October 18, 2019.

According to the Complaint, both trademarks are registered in respect of sports and recreational activities in International Class 41.

The disputed domain name was first registered in September 2020. Since around then, it has resolved to a website which provides some information about the Complainant's 516 Arouca bridge. Initially, from captures made by the Wayback Machine, it appears the website was in Portuguese only. Currently, it is available in Portuguese, Spanish, and English.

In the English language version, the landing page features the words:

"WORLD'S LONGEST BRIDGE"

“Welcome to the unofficial website of the longest pedestrian suspension bridge in the world!”

“BOOK NOW”

against a background image looking to the other end of the bridge over the shoulder of a person crossing the bridge. The words “PONTE SUSPENSA” and a tab menu bar are at the top of the page and beneath the fold “516 AROUCA” and buttons for Tickets, Where to Eat, Where to Sleep and Transfers.

The ticket purchasing functionality appears to offer two options: a link through to the official ticket office operated by the Complainant or a “fully personalised service with one of our operators”.

The website also includes information about, and booking functionality for, the the Passadiços de Paiva walk.

The footer of each page includes the following text:

“This page is intended exclusively for the dissemination of Ponte 516 Arouca and the services included in it. Not being the official page of 516 Arouca, navigation on it, whenever applicable, does not dispense the consultation of the official websites of the entities that provide the services.”

The footer also states that “516 Arouca” and “Passadiços do Paiva” are registered trademarks of the Complainant.

On October 12, 2020 (which appears to have been shortly before the Complainant began allowing paying customers to use the bridge), a Paulo Mesquita emailed the Complainant offering to enter into negotiations with the Complainant so that the website to which the disputed domain name resolved became “official”. Mr. Mesquita described himself as “responsible for FPM Websites – a group of communication and marketing specialists passionate about promoting what is best done in mainland Portugal and islands.”

The Complainant replied seeking to arrange a meeting. Mr. Mesquita, however, claimed to be out of the country and unable to meet conveniently at that time.

The negotiations do not appear to have gone anywhere. The last email in this exchange included in the Complaint is dated October 21, 2020.

Instead, on May 3, 2021, the Complainant’s legal representatives sent an email to Mr. Mesquita with the subject line “Unauthorized Use Of The “516 Arouca” And “Passadiços Do Paiva” Brands”. In other words, a cease and desist demand.

On May 4, 2021, Mr. Mesquita replied. Mr. Mesquita’s email denied that he was the owner of the disputed domain name and claimed that he only managed the website. He also disputed the Complainant’s allegations of trademark infringement and the like.

Also on May 4, 2021 (as revealed by the Registrar’s verification response), the disputed domain name became registered, in the Respondent’s name, with the Registrar for the first time.

## **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Although it was filed late, the Panel exercises the power conferred by paragraph 10 of the Rules to include the email received from the Respondent on April 11, 2022, in the record. The email was received before the appointment of the Panel. In these circumstances, the Panel considers there is no real prejudice to the Complainant from the inclusion of the email in the record while, on the other hand, there could be real prejudice to the Respondent by denying admission.

### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the two registered trademarks, including the registered trademark 516 AROUCA PONTE SUSPENSA (fancy), identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See *e.g.*, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Further, the representation of the trademark associated with the registration is:



It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10.

Disregarding the ".com" gTLD and the design elements, the disputed domain name consists of three of the four words in the Complainant's registered trademark 516 AROUCA PONTE SUSPENSA, in a different

order. However, the words “ponte suspensa” in the Complainant’s trademark are purely descriptive and depicted in very much smaller type so as to be a very minor or subsidiary feature. The combination “516 AROUCA” is clearly the prominent and essential feature of the Complainant’s trademark and the distinctive element. The “516 AROUCA” element is arranged in the disputed domain name in exactly the same order as the Complainant’s trademark and is clearly recognizable both visually and audibly.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 2.1.

It is not in dispute between the parties that:

- (a) The Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it;
- (b) The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived;
- (c) The Respondent does not hold any trademarks for the disputed domain name; or
- (d) The Respondent registered the disputed domain name after the Complainant had registered its trademarks.

The information available to the Complainant or provided by the Registrar does not enable identification of the registrant before the Registrar became the registrar.

The Complainant, however, points to the email exchanges with Mr. Mesquita in October 2020 and May 2021. The Complainant contends that these show the disputed domain name was registered with knowledge of the Complainant's bridge project and speculatively to take advantage of the Complainant's trademarks for the bridge and the nearby walk tourist attractions. The Complainant contends that the speculative nature is reinforced by the change in Registrar (at least) the day immediately following the dispatch of the Complainant's cease and desist email on May 3, 2021.

The email from the Respondent does not identify when the Respondent became the registrant of the disputed domain name.

Instead, the Respondent contends that the purpose of the website is to promote, free of charge and internationally, the tourist attraction and associated services. The Respondent says further that the website makes clear it is not operated by the Complainant and at no time has attempted disinformation or extortion of money from users.

While he denied being the holder, Mr. Mesquita did communicate with the Complainant in Portuguese and English – which suggests a natural connection with the disputed domain name and its subject matter. In contrast, it might be thought strange that someone located in the Russian Federation might wish to create and operate a website providing information about a tourist attraction in Portugal.

While it occurred some nine months before the Complaint was filed, the change of Registrar (at the least) the day after receipt of the Complainant's cease and desist letter raises at least a suspicion of an attempt to make protection of the Complainant's rights more difficult.

In addition, the 516 Arouca bridge appears to be a commercially operated enterprise rather than a general public location. That is, it appears to be more like, say, Disneyland or some private destination rather than a public place like Brisbane (see e.g., *Brisbane City Council v. Joyce Russ Advertising Pty Limited* WIPO Case No. [D2001-0069](#)).

In some circumstances, these matters might be sufficient to question whether a respondent is making an offer of goods or services in good faith or some legitimate noncommercial or other fair use. Given the nature of the Respondent's claims, however, it is appropriate to consider the content of the website to which the disputed domain name resolves.

The first point here is that the content of the website (at least as captured by the Wayback Machine) does not appear to have changed significantly other than, possibly, the addition of the Spanish and English language versions.

Secondly, the disputed domain name is close to the Complainant's trademark but is not identical. So there is some risk of implied affiliation. However, that risk is attenuated to an extent as the disputed domain name is not identical to the Complainant's trademark. Nor is it just for the core or essential "516 arouca" element of the Complainant's trademark alone. Bearing that in mind and, if someone does wish to provide some sort of information service or commentary about the Complainant's bridge, it would be necessary to use its name in some fashion, it is appropriate to have regard to a broader continuum of factors. See e.g. [WIPO Overview 3.0](#), sections 2.5 and 2.8.

In that context, the website does state very clearly it is not the official website of the attraction. Someone landing on the homepage cannot reasonably be under any illusion that the Complainant is operating the website.

Moreover, there is no evidence that anyone using the Book Now functionality on the website does not get a genuine booking at the Complainant's attraction.

On the other hand, the website does provide information about the Passadiços de Paiva walks and, at least, information about places to eat, stay, and travel to the site. As with the 516 Arouca bridge, there is no evidence suggesting that someone using those links does not obtain a genuine booking at the Complainant's attraction. Given the close relationship of the two attractions, some information and links between the two is only natural. Similarly, information and functionality about places to eat and stay and how to get there appear to be ancillary to operation of the attraction.

In these circumstances, the Panel does not find that the operation of the website, at least on the record in this proceeding, is some kind of "bait and switch" exercise. See e.g., [WIPO Overview 3.0](#), section 2.5 and, in the context of "resellers", section 2.8.

Accordingly, the Panel finds that the Complainant has not established that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complaint must fail.

### **C. Registered and Used in Bad Faith**

As the Complaint must fail, no good purpose would be served by addressing this requirement.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: May 6, 2022