

ADMINISTRATIVE PANEL DECISION

COLAS v. Domain Administrator, Fundacion Privacy Services LTD Case No. D2022-3825

1. The Parties

Complainant is COLAS, France, internally represented.

Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <mycolas.com> (hereinafter the “Disputed Domain Name”) is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 19, 2022, the Registrar transmitted by email to the Center its verification response, confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on October 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 14, 2022.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on November 23, 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

Complainant is the head of The Colas Group, which is an international group offering (i) road construction and maintenance services, (ii) rail and maritime transport infrastructure services, and (iii) urban development project and recreational facility construction services. Complainant first offered its services in 1929 and since that time, Complainant has grown to include a workforce of 57,000 people, an undertaking of 60,000 projects per year in around 50 countries worldwide. In 2021, Complainant's consolidated revenue totaled 13.2 billion euros. Complainant owns multiple international trademark registrations for the mark COLAS. Of relevance to this proceeding is a European Union trademark registration for COLAS (Reg. No. 010799559) (Registered January 11, 2013), an International trademark registration for COLAS (Reg. No. 1380590) (Registered on July 26, 2017), and a Chilean trademark registration for COLAS (Reg. No. 1234869) (Registered on March 7, 2017) (the "Mark"). Complainant also owns the domain name <colas.com>, a domain name that it registered in 1997, as well as "mycolas.colas.com", which is an internal site used by Complainant's employees.

Respondent registered the Disputed Domain Name on August 18, 2022, long after Complainant registered its COLAS mark. The webpage associated with the Disputed Domain Name resolves to a parking page with sponsored links to third party websites offering car insurance, life insurance, and credit card services.

5. Parties' Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is confusingly similar to its COLAS mark, as the Disputed Domain Name incorporates the entirety of the Mark, preceded by the possessive pronoun "my." The COLAS mark is a combination of the terms COLD and ASPHALT, and as such, Complainant claims that its COLAS mark is a fanciful mark, and therefore highly distinctive. Complainant further asserts that its COLAS mark has become well-known through its long-term decades of worldwide use of the mark in connection with Complainant's services.

Next, Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name, as Respondent is not commonly known by the Disputed Domain Name. Complainant also states that it has not authorized Respondent to use the Disputed Domain Name and that Respondent is not otherwise authorized or affiliated with Complainant. Complainant further claims that Respondent's use of the Disputed Domain Name in connection with a parked webpage is not a *bona fide* offering of goods and/or services or a legitimate noncommercial or fair use.

Finally, Complainant alleges that the fame of its COLAS mark makes it a prime target of fraudulent activity, and therefore, it is unlikely that Respondent was unaware of Complainant's COLAS mark. Complainant further contends that Respondent's use of the Disputed Domain Name for a parking site, which Complainant presumes is a pay-per-click ("PPC") website, is evidence of bad faith use and registration of the Disputed Domain Name. Complainant also states that the parking page associated with the Disputed Domain Name interferes with the business of Complainant and causes harm to Complainant's brand image.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that Complainant's trademark registrations establish that it has rights in the COLAS mark. The Panel further finds that, because the Disputed Domain Name incorporates Complainant's mark entirely, it is confusingly similar to Complainant's registered Mark. Respondent's addition of the possessive pronoun "my" in the Disputed Domain Name does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also *Sony Kabushiki Kaisha also trading as Sony Corporation v. Sin, Eonmok*, WIPO Case No. [D2000-1007](#).

B. Rights or Legitimate Interests

Complainant has presented a *prima facie* case for Respondent's lack of rights or legitimate interests in the Disputed Domain Name, which Respondent has not rebutted. Complainant has not authorized Respondent to use its COLAS mark. Respondent also has not answered this Complaint and there is no evidence or reason to suggest Respondent is, in fact, commonly known by the Disputed Domain Name or that Respondent is using the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

Moreover, the Panel finds that it is likely that Respondent receives PPC fees from the linked websites that are listed at the Disputed Domain Name's webpage and that Respondent continues to use the Disputed Domain Name for its own commercial gain. Although the PPC links are not associated with Complainant's service offerings, neither are they related to the dictionary definition of "colas." According to Merriam-Webster's Dictionary, "cola" is defined as "a carbonated soft drink colored usually with caramel and flavored usually with extracts from kola nuts." The links appearing on the webpage associated with the Disputed Domain Name are "car insurance," "life insurance," and "credit card services." Therefore, there is no evidence that the PPC links are genuinely related to the meaning of the term "colas" which is used as part of the Disputed Domain Name at issue. See section 2.9; see also *Canva Pty Ltd. v. Perfect Privacy LLC / Milen Radumilo*, WIPO Case No. [D2022-0351](#).

The Panel finds that Respondent does not have rights or a legitimate interests in the Disputed Domain Name and that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent registered the Disputed Domain Name in bad faith. The use of the Disputed Domain Name for commercial purposes, namely to obtain click-through revenue associated with PPC links establishes that Respondent registered and continues to use the Disputed Domain Name in bad faith. See *Wal-Mart Stores Inc. v. Frank Warmath*, WIPO Case No. [DTV2008-0013](#) ("When a domain name incorporating a famous mark is used to attract Internet traffic to fuel click-through revenues which trade on the reputation of that mark, a conclusion of bad faith registration and use under paragraph 4(a)(iii) of the Policy is unavoidable.").

UDRP panels have previously held that a respondent's registration and use of a domain name to display advertisements for third-party goods and services that are unrelated to those of the complainant is evidence of registration and use of the domain name in bad faith. See *Toyota Motor Sales, U.S.A. Inc. v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2019-2612](#) (the panel finding bad faith where the disputed domain name resolved to a PPC website featuring links to services unrelated to the complainant's). Here, Complainant has submitted evidence that Respondent has used the Disputed Domain Name in order to direct Internet users to third party websites for products and services unrelated to Complainant. This is misleading and bad faith use of the Disputed Domain Name.

In addition, the Panel notes that Complainant operates an internal website at "mycolas.colas.com", which resembles the Disputed Domain Name, and in the absence of any reasonable explanation by the

Respondent, further supports a finding of bad faith.

Complainant has satisfied paragraph 4(a)(iii) 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 <mycolas.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: December 20, 2022