

ADMINISTRATIVE PANEL DECISION

Forbes LLC v. Rodrigo Aguilar, Inventive 360
Case No. D2023-0187

1. The Parties

The Complainant is Forbes LLC, United States of America (“U.S.”), represented by Riker Danzig LLP, U.S.

The Respondent is Rodrigo Aguilar, Inventive 360, Mexico.

2. The Domain Name and Registrar

The disputed domain name <forbes.lat> is registered with Neubox Internet S.A. de C.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center sent an email communication in English and Spanish to the parties on January 17, 2023 regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Spanish. The Complainant submitted a request for English to be the language of the proceeding on January 20, 2023. The Respondent did not comment on the language of the proceeding.

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 the Respondent of the Complaint, and the proceedings commenced on January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on February 21, 2023. 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 Forbes LLC, a multinational media company headquartered in the U.S., publishing the renowned business magazine "Forbes".

Forbes magazine is published six times a year. It has an international edition in Mexico as well as editions produced in 76 countries and regions worldwide in 27 languages. The magazine is well known for its lists and rankings, including "Richest Americans", "American's Wealthiest Celebrities", "World's Top Companies", "Forbes List of the World's Most Powerful People", and the "World's Billionaires". The Complainant's website "www.forbes.com" reaches more than 27 million unique visitors each month. In 2006, "www.forbes.com" claimed to be the world's most widely visited business website.

The Complainant has marketed and sold its goods and services using the FORBES trademark since 1917.

The Complainant owns several mark registrations for FORBES, including:

- U.S. Trademark Registration No. 1,141,299, registered on November 11, 1980;
- Mexican Trademark Registration No. 87825, registered on December 27, 1991;
- European Union Trademark Registration No. 001226646, registered on September 18, 2000;
- Spanish Trademark Registration No. 2.389.286, registered on February 16, 2002.

In addition to the Complainant's website "www.forbes.com", the Complainant also uses "www.forbes.com.mx" in Mexico, the Respondent's location.

According to the Whois records, the disputed domain name was registered on July 15, 2022, and it is currently not in use. According to the evidence provided by the Complainant, the disputed domain name resolved to a website which contains both Spanish and English words, and which included the Complainant's stylized FORBES mark.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the FORBES trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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.

6.1 Language of Proceeding

According to paragraph 11(a) of the Rules, the Panel decides that the language of the proceeding will be English. The language of the Registration Agreement of the disputed domain name is Spanish.

The Complainant has requested English to be the language of the proceeding arguing *inter alia* the following:

- the disputed domain name contains the dominant and famous mark FORBES which is an English language word, famous worldwide in the publishing, news and financial markets.
- the FORBES trademark is registered in Mexico and more than 50 other countries.
- to date, the Respondent has not indicated a preference to have the Complaint and this proceeding conducted in Spanish or any language other than English.
- the disputed domain name resolves to a website which contains both Spanish and English words.
- the usage of the disputed domain name indicates the Respondent's familiarity with the English language.
- Mexico has become the second-largest export market and third-largest source of imports for the U.S. In 2017, two-way trade in goods and services exceeded USD 623 billion. This suggests that businesses in Mexico have some familiarity with the English language in order to participate in the expanding and thriving markets between the U.S. and Mexico.

In view of the fact that the Respondent was notified in both English and Spanish by the Center, and of the nature and deadlines pertaining to the proceeding, the Panel does not consider it prejudicial to the Respondent if English were adopted as the language of the proceeding. The proceeding would be unduly delayed if the Complaint had to be translated into Spanish. In keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, the Panel accordingly determines that it would be appropriate for English to be the language of the proceeding.

6.2 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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.

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 holds several valid FORBES trademark registrations. The disputed domain name is identical to the Complainant's mark since it reproduces the FORBES mark in its entirety. Accordingly, the disputed domain name is identical or 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 therefore been met.

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.

While 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 often impossible 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. 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 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.

There is no evidence of the existence of any of those rights or legitimate interests in this case. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the FORBES marks, which precede the Respondent's registration of the disputed domain name. There is no evidence of a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Moreover, the nature of the disputed domain name (identical to the Complainant's FORBES mark and the Complainant's <forbes.com> and <forbes.com.mx> domain names), creates a risk of Internet user confusion. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

- The Complainant has marketed and sold its goods and services using the FORBES mark since 1917, which is more than one hundred (100) years before the registration of the disputed domain name in July of 2022.
- The FORBES mark is of worldwide renown as recognized by previous panels. See *Forbes LLC v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf/ Lillian A Chaput*, WIPO Case No. [D2021-3352](#).
- The Complainant products are widely available in the Respondent's location.
- The Respondent has defaulted.

Due to the worldwide renown of the FORBES Mark, it is inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant.

According to the evidence provided by the Complainant, the disputed domain name resolved to a website which included the Complainant's stylized FORBES mark.

The facts establish a deliberate effort by the Respondent to cause confusion with the Complainant, possibly for commercial gain. Under these circumstances, the Panel finds no plausible good faith reason for the Respondent's conduct and concludes that the disputed domain name was registered and used in bad faith.

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 <forbes.lat> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: March 7, 2023