

ADMINISTRATIVE PANEL DECISION

Canva Pty Ltd v. JOSE VALDIR DE LIMA

Case No. D2023-1736

1. The Parties

The Complainant is Canva Pty Ltd, Australia, represented by SafeNames Ltd., United Kingdom.

The Respondent is JOSE VALDIR DE LIMA, Brazil.

2. The Domain Name and Registrar

The disputed domain name <canvacriative.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 19, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 2023, 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 April 26, 2023 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 April 27, 2023.

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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 6, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on June 14, 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 an Australian company which, since 2012, has been operating, under its CANVA trademark, an online graphic design platform. Currently, the Complainant's CANVA platform has more than 100 million active users per month, with customers across 190 countries.

The Complainant is the proprietor of a number of trademark registrations of its CANVA trademark, including Australian Registration No 1483138, registered on March 29, 2012, International Registration No 4316655, registered on April 9, 2013, and Brazilian Registration No 914660462, registered on April 30, 2019.

The disputed domain name was registered on March 8, 2022, and resolves to a website, brandishing the Complainant's trademark and logo, advertising the sale of a commercial training course.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its CANVA trademark, containing its CANVA trademark in its entirety, together with the term "criative". The Complainant states that the term "criative" is the Portuguese-language translation of the English-language word "creative", Portuguese being the national language of Brazil, where the Respondent is located.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular, to the best of the Complainant's knowledge, the Respondent is not generally known by the disputed domain name, and the Complainant has never granted permission to the Respondent to use its CANVA trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith, in connection with the website described above.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, before the filing of the Complaint and after the Respondent received a cease and desist letter from the Complainant, the Respondent apologized to the Complainant and indicated that due to Brazilian policies the disputed domain name will be deleted after a period of inactivity. The Respondent offered to solve the issue but did not communicate further.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

- (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. Confusing similarity

The Panel finds that the Complainant has rights to the CANVA trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the “.com” gTLD to be irrelevant in the circumstances of the present case, and finds that they may be disregarded here.

The Complainant’s CANVA trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademark. The additional element “criative”, which seems to be a typosquatted version of “criativo” or “criativa” (creative in English) in the disputed domain name do not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name.

B. Rights or Legitimate Interests

The Panel considers that the Complainant’s allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainant’s CANVA trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

In the Panel’s opinion, the commercial use of a website carrying an implied affiliation to the Complainant, as is clearly the case in the circumstances of the present case, constitutes use of a disputed domain name in bad faith, and, accordingly, so finds in the circumstances of the present case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 <canvacriative.com> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: June 28, 2023