

ADMINISTRATIVE PANEL DECISION

Bel v. Milen Radumilo
Case No. D2023-3691

1. The Parties

The Complainant is Bel, France, represented by DBK Law Firm, France.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <passatempoavacaqueri.com> is registered with Straight 8 Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 5, 2023. On September 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 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 September 11, 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 September 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent's default on October 3, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on October 5, 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 a French company, established in 1865, operating in the field of cheese production. Its “laughing cow” trademarks are known as A VACA QUE RI in Portuguese, and accordingly the Complainant has registered the following trademarks:

- International Trademark No. 716596 for A VACA QUE RI (device mark), registered on July 16 1999 for goods in class 29;
- Portuguese Trademark No. 298621 for A VACA QUE RI (word mark), registered on March 8, 1994 for goods in class 29.

The Complainant has registered and is using the domain name <avacaqueri.com> to redirect Portuguese-speaking customers to its business website. This domain name was registered in 1999.

The record contains copies of cease-and-desist letters sent by the Complainant to the Respondent on June 7, 2023 and June 16, 2023. The record does not reflect responses thereto.

The disputed domain name was registered on April 24, 2023. It redirects users alternately to a site containing pornographic content or a site featuring pay-per-click (“PPC”) links.

There is no information available in the record about the Respondent.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that its LA VACA QUE RI mark is wholly reflected in the disputed domain name and that the use of the disputed domain name to resolve to a site with pornographic content does not constitute *bona fide* use of the disputed domain name and is indicative of bad faith. The Complainant’s LA VACA QUE RI mark is well-known and the Respondent in all likelihood was aware of this mark. The Respondent sought to conceal his identity. Finally, the Respondent has been named in hundreds of other domain name disputes, thereby demonstrating a pattern of bad faith conduct in relation to domain names that are identical to well-known marks.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three 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 Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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”.

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.

Based on the available record, the Panel finds the Complainant has 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 name. 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.

While the addition of other terms (here, “passatempo”), may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

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 such as those enumerated in the Policy or otherwise.

The Panel notes that there is no evidence that the Respondent is commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish the Respondent’s rights or legitimate interests therein. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services. Rather, the disputed domain name, which incorporates the Complainant’s trademark, resolved to a website featuring pornographic content or to a site featuring PPC links. Such use does not establish rights or legitimate interests in these circumstances.

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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

UDRP panels have consistently held that the use of a disputed domain name to redirect to a pornography website, such as the one used by the Respondent, may be evidence of bad faith. This content indicates that the Respondent is using the disputed domain name for commercial gain. The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. See [WIPO Overview 3.0](#), section 3.1.

The Panel additionally finds that the evidence in the record establishes that the Respondent used the disputed domain name to resolve to a website featuring PPC links. Absent any evidence of mitigating factors such as efforts by the Respondent to avoid links that target the Complainant's mark, such use is clearly evidence of bad faith use of the disputed domain name. See [WIPO Overview 3.0](#), section, 3.5.

Finally, the Panel finds that the Respondent has engaged in a pattern of registering domain names that incorporate third-party trademarks, including those of the Complainant. See [WIPO Overview 3.0](#), section 3.1.2.

Based on the available record, 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 name <passatempoavacaqueri.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: October 19, 2023