

ADMINISTRATIVE PANEL DECISION

Bud Comércio de Eletrodomésticos Ltda. v. Gustavo Castro
Case No. D2023-4923

1. The Parties

The Complainant is Bud Comércio de Eletrodomésticos Ltda., Brazil, represented by Montauray Pimenta, Machado & Vieira de Mello, Brazil.

The Respondent is Gustavo Castro, Brazil.

2. The Domain Name and Registrar

The disputed domain name <comprascerta.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 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 (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also sent an email communication to the Complainant on November 29, 2023, requesting a clarification of mutual jurisdiction. The Complainant responded to the Center’s request on November 29, 2023. The Complainant filed an amended Complaint on December 6, 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 December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on January 12, 2024. 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 Brazilian company that is part of the Whirlpool Corporation business group, one of the largest manufacturers in the field of home appliances and owner of several trademarks such as CONSUL, BRASTEMP and WHIRLPOOL.

Since 2005, the Complainant group operates an online e-commerce platform focusing in the Brazilian market called COMPRA CERTA, available at <compracerta.com.br> (registered by the Complainant on May 28, 2003). The Complainant's parent company also registered the domain name <compracerta.com> on July 13, 2005, which redirects Internet users to <compracerta.com.br>.

The Complainant owns a large portfolio of COMPRA CERTA trademarks in Brazil, including the trademark Numbers 827.669.372, 909.482.764 and 909.858.349, respectively registered on October 13, 2010, November 7, 2017, and December 5, 2017.

The disputed domain name was registered by the Respondent on June 8, 2023.

The Panel accessed the disputed domain name on January 20, 2024, when it was not linked to any active website¹. From the evidence provided by the Complainant, the disputed domain name was, at the time of filing of the Complaint, linked to an e-commerce platform selling products in competition with the Complainant.

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:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The mere ownership of a trademark to which the disputed domain name is confusingly similar automatically satisfies the requirements under paragraph 4(a)(i) of the Policy. The disputed domain name reproduces the entirety of the COMPRA CERTA mark, to which the Complainant holds prior rights, with the mere addition of the letter "s", which is evidently insufficient to prevent a confusingly similarity and even enhances the possibility of confusion among Internet users. As a matter of fact, the said addition of a single letter constitutes "typosquatting", a practice by which a registrant deliberately introduces slight deviations into famous marks for commercial gain, serving as a trap for unwary Internet users who mistype the Complainant's mark to access the disputed domain name. The practice of typosquatting is itself considered as an indicative of bad faith in the registration and use of a domain name. The use of the generic Top-Level

¹ 1 Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8, "[n]oting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name...".

Domain (“gTLD”) “.com” is irrelevant in order to establish identity or similarity between the disputed domain name and Complainant’s trademark COMPRA CERTA.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is unable to invoke any of the circumstances set forth by paragraph 4(c) of the Rules. The Respondent cannot claim that it is commonly known by the disputed domain name or the Complainant’s COMPRA CERTA mark, nor that it has made or is making legitimate (non-commercial) or bona fide use of the disputed domain name without intent to profit. Rather, the Complainant is clearly misleading consumers by the practice of typosquatting. Considering that the disputed domain name is a reproduction of the Complainant’s famous trademarks and domain name, it follows that no legitimate use of the same by the Complainant can be determined.

- The disputed domain name was registered and is being used in bad faith. The disputed domain name was registered 20 years after the registration of the Complainant’s well-known domain name <compracerta.com.br>. The disputed domain name refers to an e-commerce for several products, such as footwear, health/beauty products, household, electronics and pet items, among others, all of which are also sold through Complainant’s COMPRA CERTA website. Such practice is expressly considered an act of bad faith. Actually, the mere registration of a third party’s trademark as a domain name (widely referred to as “domain name cybersquatting”) is already a violation of Intellectual Property rights. The website at the disputed domain name was being used to commit fraud, which can be seen from several complaints published by harmed consumers on the Brazilian platform “Reclame Aqui”. The use of a privacy service to hide the Respondent identity further underscores its bad-faith actions. The Respondent did not respond to the Complainant’s cease and desist letter sent in September 2023, where the Complainant tried to resolve the present matter amicably. Therefore, the Respondent’s unmistakable intent was to deliberately mislead consumers and redirect traffic for illegal gain. This not only poses a severe risk to the integrity of the Complainant’s marks but also presents a significant and immediate threat to the public.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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 3.0](#), section 1.7.

Annex 2 to the Complaint shows registrations of COMPRA CERTA trademarks obtained by the Complainant, including in Brazil, in 2010. The expression “compra certa” in Portuguese language may be translated to English as “right buying”.

The trademark COMPRA CERTA is wholly encompassed within the disputed domain name, with the addition of a letter “s” after the word “compra”, turning it into the plural form in Portuguese language. The disputed domain name also presents the gTLD suffix “.com”.

Although the addition of single letters (here, an “s”) may bear on assessment of the second and third elements, the Panel finds that it 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.

It is also well established that the addition of a gTLD, such as “.com”, is typically disregarded when determining whether a domain name is confusingly similar to a complainant’s trademark as such is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

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 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 finds no indication that the Respondent is commonly known by the disputed domain name.

As evidenced by the Complainant, the disputed domain name at the time of filing of the Complaint resolved to an e-commerce platform entitled “Compras Certa”, which not only is very similar to the Complainant’s COMPRA CERTA trademark, but is also grammatically incorrect in Portuguese (the correct plural form would be “Compras Certas”). These circumstances, together with the numerous complaints from Brazilian customers referring that the products acquired on the website at the disputed domain name were not delivered, suggest that it may have been used to commit fraud.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name includes the Complainant's trademark COMPRA CERTA.

The Panel considers that the addition of the letter "s" (the most common plural form sign in Portuguese) may not be even perceived by the Internet users, suggesting that the disputed domain name is the same as the one operated by the Complainant, or at least that it is sponsored or endorsed by the Complainant.

Furthermore, when the disputed domain name was registered (in 2023) the COMPRA CERTA trademark was already connected with the Complainant's e-commerce platform in Brazil.

Therefore, the Panel concludes that it is not feasible that the Respondent – a person from Brazil according to the disputed domain name Whois information – was not aware of the Complainant's trademark and that the registration of the disputed domain name was a mere coincidence, or at the very least should have been aware.

Actually, the use of the disputed domain name to resolve to an e-commerce webpage, similar to the Complainant's official platform, demonstrates that the Respondent most likely targeted the Complainant when registering the disputed domain name. The content at the website linked to the disputed domain name at the time of filing of the Complaint indicates that the Respondent intentionally attempted to attract, through the registration and use of the disputed domain name, the Complainant's customers, for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

Furthermore, the consumer complaints referred by the Complainant and the circumstance that the title of the disputed domain name is grammatically incorrect in Portuguese, at the very least raises serious suspicions of fraud, as stated by the Complainant. Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Currently there is no active website linked to the disputed domain name. However, UDRP panels have frequently found that the apparent lack of so-called active use of a domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

Therefore, having reviewed the record, the Panel finds the registration and use of the disputed domain name constitutes bad faith under 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 <comprascerta.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: January 26, 2024