

ADMINISTRATIVE PANEL DECISION

MasTec North America, Inc. v. Jose Gallon
Case No. D2024-0515

1. The Parties

Complainant is MasTec North America, Inc., United States of America (“U.S.”), represented by Greenberg Traurig, LLP, U.S.

Respondent is Jose Gallon, U.S.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2024. On February 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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, PrivacyGuardian.org llc) and contact information in the Complaint.

The Center sent an email communication to Complainant on February 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 7, 2024.

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 Respondent of the Complaint, and the proceedings commenced on February 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 4, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 5, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on March 11, 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

Complainant is a substantial infrastructure construction company based and primarily operating in the U.S. Complainant's activities include building, installation, maintenance and upgrade of energy, communication and utility infrastructure. Complainant has been in operation for more than 80 years. It employs nearly 22,000 individuals. It is a publicly-traded company with its securities listed on the New York Stock Exchange since 1998 (ticker symbol: MTZ). Complainant operates a commercial website at the domain name <mastec.com>.

Complainant is the owner of registration for the word service mark MASTEC on the Principal Register of the United States Patent and Trademark Office ("USPTO"), registration number 2,130,081, registration dated January 20, 1998, in international classes ("ICs") 37 and 42, covering, inter alia, public service utility industry construction, and engineering design and technical consulting in the public service utility industries. Complainant also owns registration at the USPTO of the design and word service mark MASTEC, registration number 2,544,425, registration dated March 5, 2002, in ICs 37 and 42.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to the WhoIs report, the creation date for the disputed domain name is November 21, 2023. There is no indication in the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its initial registration.

Respondent has used the disputed domain name as the sender domain in transmitting an email, with username "human resources", purporting to originate with Complainant's human resources department and offering an employment contract to an individual. A multi-page contract attached to said email and provided as evidence by Complainant includes substantial detail regarding the alleged terms and conditions of employment offered to the recipient. Respondent's fraudulent email requests personal information and identification documents from the prospective employee. Complainant's internal email indicates that there has been more than one target of similar fraudulent emails transmitted by Respondent.

Respondent also has used the disputed domain name to direct Internet users to a Registrar parking page exhibiting links to subject matter such as "Free Resume Builder and Download" and "Career Options".

There is no indication on the record of this proceeding of any business or other relationship between Respondent and Complainant.

5. Parties' Contentions

A. Complainant

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

Complainant contends that the disputed domain name is confusingly similar to a trademark in which Complainant holds rights.

Complainant alleges that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent registered the disputed domain name long after Complainant established rights in its trademark; (2), Respondent has not used or prepared to use the disputed domain name in connection

with a bona fide offer of goods or service; (3) Respondent has not been authorized or otherwise permitted by Complainant to register and/or use the disputed domain name, and; (4) use by Respondent of the disputed domain name in connection with fraudulent activity and/or a presumably revenue-generating parking page does not establish rights or legitimate interests.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent's use of the disputed domain name in connection with fraudulent activity constitutes an attempt to disrupt the business of a competitor; (2) Respondent is falsely impersonating Complainant; (3) Respondent's use of the disputed domain name in connection with a pay-per-click parking page diverts Internet users to Respondent's website which constitutes intentionally attracting Internet users for commercial gain by false association with Complainant's trademark, and; (4) Respondent provided false contact information in its record of registration for the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent could not be completed because of an inaccurate physical address in Respondent's record of registration. There is no indication of difficulty in transmission of email notification to Respondent (although delivery to one email address that originated the fraudulent email employment scheme could not be completed). The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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 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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “career”, may bear on assessment of the second and third elements, the Panel finds the addition of such 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.

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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Panels have held that the use of a domain name for illegal activity, here the fraudulent impersonation of Complainant in connection with a scheme involving false offers of employment and solicitation of personal data from prospective employees, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Complainant’s MASTEC trademark was registered and used long before Respondent registered the disputed domain name. Complainant’s trademark and commercial website are readily identified through a simple Internet search. Respondent could not plausibly have been unaware of Complainant’s rights when it registered the disputed domain name. Moreover, Respondent’s use of the disputed domain name as the sender domain in an email address transmitting documents falsely purporting to originate from Complainant indicates that Respondent was deliberately seeking to convey an association with Complainant and its business.

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.

Panels have held that the use of a domain name for illegal activity, here the fraudulent impersonation of Complainant in connection with a scheme involving false offers of employment and solicitation of personal data from prospective employees, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. This constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy in that Respondent has intentionally used the disputed domain name to attract for commercial gain Internet users to its online location by creating a likelihood of confusion regarding Complainant's association with Respondent's online (email) location. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In light of the foregoing, the Panel need not address the further use by Respondent of the disputed domain name in connection with a Registrar parking page including apparently commercial links.

The Panel finds that Complainant has established the third element 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 <masteccareer.com> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: March 25, 2024