

ADMINISTRATIVE PANEL DECISION

**Emergo Global Consulting LLC v. EMERGO BRAZIL IMPORT
IMPORTACAO E DISTRIBUICAO DE PRODUTOS MEDICOS
HOSPITALARES LTDA
Case No. D2023-3183**

1. The Parties

The Complainant is Emergo Global Consulting LLC, United States of America, represented by Greenberg Traurig, LLP, United States of America.

The Respondent is EMERGO BRAZIL IMPORT IMPORTACAO E DISTRIBUICAO DE PRODUTOS MEDICOS HOSPITALARES LTDA, Brazil.

2. The Domain Name and Registrar

The disputed domain name <emergobr.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing that the Complaint was submitted in a different language than the language of the registration agreement, as well as disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 28, 2023, providing the registrant and contact information disclosed by the Registrar, as well as related to the language of the registration agreement, and inviting the Complainant to submit an amendment to the Complaint.

The Complainant filed an amended Complaint in English on August 3, 2023, requesting for English to be the language of the proceedings or for the proceedings to be conducted in English and Portuguese.

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 in Portuguese and English of the Complaint, and the proceedings commenced on August 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 25.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on September 1, 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 regulatory consulting service company which specializes in global medical device and in vitro diagnostic (IVD) product compliance, including software for companies to manage their medical device distribution authorizations globally. Founded in 1997 and acquired by UL Solutions in 2017, the Complainant is a global solutions provider specializing in end-to-end regulatory affairs/quality assurance life cycle management and its services include local project managers and local sales teams partnering with global RA/QA experts for product lifecycle management as well as offering its customers support for medical device registration, QMS compliance and now, nonclinical testing and certification in order to get products to market faster.

The Complainant has offices in the United States and across the globe, including Brazil.

The Complainant owns several trademark registrations worldwide, namely:

- Canadian trademark registration number TMA1103401 for the EMERGO mark in class 45, registered on July 7, 2021; and
- Brazilian trademark registration number 830779213 for the EMERGO mark in class 45, registered on April 8, 2014.

The Complainant owns and operates its primary website at “www.emergobyul.com”.

The disputed domain name is <emergobr.com> registered on July 13, 2023. At the time of this decision, the disputed domain name does not resolve to any active website.

5. Parties’ Contentions

A. Complainant

The Complainant claims that:

a) the disputed domain name incorporates the trademark EMERGO in full, changing the mark only by adding the letters “br”, likely an abbreviation for “Brazil”, which directly describes the Complainant location and offering of services in Brazil.

b) the Respondent has no rights or legitimate interests in respect of the disputed domain name since:

the Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name.

the Complainant puts forth that without the Complainant's authorization or consent, the Respondent registered the disputed domain name which misappropriates and is confusingly similar to the Complainant's EMERGO marks.

c) the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons:

the disputed domain name has been used to host a website passing itself off as the Complainant's website which at best, engages in fraudulent purchase transactions with consumers, and at worst is used to steal consumers' personal or company information.

the Respondent has never operated any *bona fide* or legitimate business under the disputed domain name, and is not making protected noncommercial or fair use of the disputed domain name.

the Respondent is using the disputed domain name to divert Internet traffic to an imposter website that prominently displays the Complainant's trademarks, and purports to be the Complainant's official website and allegedly offers for sale highly related goods to the services offered on the Complainant's website.

the Respondent's website displays the official Emergo Brazil address, as well as the official Emergo Brazil company number.

Finally, the Complainant puts forth that it was not the first time that the Respondent targeted the Complainant's customers with the imposter website once the Respondent or its cohorts first registered the <emergobrazil.com.br> domain name on May 9, 2023 and posted the imposter website on that domain name.

Moreover, the Complainant states that it has submitted a complaint to the ".br" Registry and the <emergobrazil.com.br> domain name was suspended and then transferred to Complainant, after which time Respondent registered the disputed domain name and reposted the imposter website on it.

B. Respondent

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

6. Discussion and Findings

Language

The language of the registration agreement for the disputed domain name was in the Portuguese language and the Complainant requests to conduct the proceedings in English or for the proceedings to be conducted in English and Portuguese. The Panel has authority to determine the language of proceedings. As it is reminded in section 4.5.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the credibility of any submissions by the parties and in particular those of the respondent (or lack of reaction after having been given a fair chance to comment) are particularly relevant. Where it appears the parties reasonably understand the nature of the proceedings, panels have also determined the language of the proceeding/decision taking account of the panel's ability to understand the language of both the complaint and the response such that each party may submit pleadings in a language with which it is familiar. Facing the arguments of the Complainant and the circumstances of this case including the absence of a reply from the Respondent both to the Complainant's language request and to the

Complaint, after the Respondent had been duly notified in both Portuguese and English of the language of the proceeding and the Complaint, the Panel determines that English is the language of proceedings.

Substantive Matters

Paragraph 15(a) of the Rules instructs the Panel to decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each 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;
- (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

The disputed domain name incorporates the EMERGO trademark in its entirety, with the addition of the letters “br”. As the trademark is clearly recognizable within the disputed domain name, the addition of these letters does not prevent a finding of confusing similarity.

As is abundantly stated in numerous panel decisions the mere additions of other terms to a complainant’s mark fails to prevent a finding of confusing similarity.

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

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. As highlighted in several previous UDRP decisions, and clearly stated in [WIPO Overview 3.0](#), section 2.1, 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.

The Respondent did not submit a response and has failed to invoke any circumstance which could have demonstrated rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

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

C. Registered and Used in Bad Faith

The Panel, based on the evidence presented, accepts and agrees with the Complainant’s contentions that the disputed domain name was registered and used in bad faith.

The disputed domain name reproduces in its entirety the Complainant’s trademark and has been used to host a website offering goods related to the Complainant’s services, displaying the Complainant’s logo and Brazilian subsidiary address, ultimately passing itself off as the Complainant’s website. Therefore, it is clear that the Respondent was aware of and targeted the Complainant in bad faith.

The Panel also notes that the Respondent has tried to host the same website through the domain name <emergobrazil.com.br> which following a complaint submitted by the Complainant to the “.br” Registry was suspended and then transferred to the Complainant, and after which time Respondent registered the

disputed domain name and reposted the same website on it. The fact that the disputed domain name does not currently resolve to any active website does not prevent a finding of bad faith.

Therefore, the Complainant has satisfied 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, <emergobr.com> be transferred to the Complainant.

/Gonçalo M. C. Da Cunha Ferreira/

Gonçalo M. C. Da Cunha Ferreira

Sole Panelist

Date: September 15, 2023