

ADMINISTRATIVE PANEL DECISION

Grupo Negocios PO, S.L.U. v. Chacon Patryk Sperczynski
Case No. D2023-3355

1. The Parties

The Complainant is Grupo Negocios PO, S.L.U., Spain, represented by Pierre-Yves Ortais Ballester, Spain.

The Respondent is Chacon Patryk Sperczynski, Poland.

2. The Domain Name and Registrar

The disputed domain name <topciment.shop> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 7, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. Aside from an informal communication received on August 14, 2023, to which the Complainant replied on August 28, 2023, the Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 5, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on September 11, 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.

On October 3, 2023, the Panel issued Procedural Order 1, which was notified to the Parties on October 4, 2023. Through this order, the Complainant was required to provide detailed and substantiated information, as well as evidence, on the alleged relationship between the Parties, if any, and what are the circumstances that led to the supposed offer for EUR 2,000. The Complainant was requested to submit the above-requested evidence and comments by October 11, 2023. On October 10, 2023 the Complainant submitted a reply to the Procedural Order. The Respondent was given until October 18, 2023 to comment on the reply of the Complainant, but no communication was received.

4. Factual Background

The Complainant is a Spanish company headquartered in Manises, Spain. The Complainant manufactures and markets construction materials and other related products. According to its official website, the Complainant develops high performance decorative coatings.

The Complainant is the owner of several trademark registrations, including but not limited to, the European trademark registration for TT TOPCIMENT (combined word / device mark), with registration number 018134618, and a registration date of February 5, 2020, for goods in classes 2 and 19. Moreover, the Complainant is the owner of the international trademark registration for TT TOPCIMENT (combined word / device mark), with registration number 1504260, and a registration date of October 24, 2019, for goods in classes 2 and 19, designating, *inter alia*, China, the Russian Federation and the United States of America. Both registrations are hereafter in singular referred to as “the Trademark”.

The Domain Name was registered on July 6, 2023. At the of the Decision, the Domain Name resolves to a parked page displaying a message in Polish stating that the website s under maintenance (the “Website”).

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 Domain Name.

Notably, the Complainant contends that the Domain Name is identical or at least confusingly similar to its “registered trademark TOPCIMENT” in which it has rights. The Trademark is the dominant element of the Domain Name.

Moreover, the Respondent has no rights or legitimate interests in the Domain Name, whereas the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, and has also not shown proof of any preparations thereof. Instead the Domain Name is being used to operate an online store without the prior authorization of the Complainant. In addition to this, the Respondent is not commonly known by the Domain Name.

Furthermore, the Domain Name was registered and is being used in bad faith. This is because the Respondent is asking financial compensation for the transfer of the Domain Name. In doing so, the Respondent is impersonating the Complainant.

B. Respondent

The Respondent did not submit a formal response to the Complainant’s contentions. However, the Respondent did send the Center an email informing them that in its prior contact with the Complainant, the Respondent had already pointed out that it registered the Domain Name on a first-come, first-serve basis, and that it is not willing to transfer the Domain Name for free. In addition the Respondent mentions that all social media related to the “Topciment brand”, owned by the Complainant, would have been deactivated

following an email from the Complainant. The Respondent mentions that it could sell the Domain Name for EUR 2,000. The Respondent added that according to the contract that connected the Respondent with the Complainant, the Respondent had the right to use the Complainant's name and logos, "but according to the law you can buy domain names and then sell them" and that the Domain Name that the domain name "is inactive and does not have a negative impact on the Topciment brand". To this the Complainant responded by email, stating that the Respondent was not authorized to register or use the Domain Name and that the associated online store was created without our prior knowledge or consultation. Complainant, rather than purchasing the Domain Name, repeats the infringement of its trademark rights.

C. Panel Order 1 and Complainant's reply

Further to Panel Order 1, in which the Complainant was required to provide detailed and substantiated information, as well as evidence, on the alleged relationship between the Parties, if any, and what the circumstances were that led to the supposed offer for EUR 2,000, the Complainant replied – to the extent relevant - as follows:

The Domain Name was registered by the Respondent without prior consultation or authorization from the Complainant. While it is true that there was a business relationship between the Parties in which the Respondent was a distributor of the Complainant's products in Poland until June 2023, the registration of the Domain Name was carried out unilaterally by the Respondent without the Complainant's knowledge or consent following the termination of the business relationship.

The Respondent proceeded to create an online store connected to the Domain Name without consulting or obtaining authorization from The Respondent. The Respondent has made an offer to sell the Domain Name for EUR 2,000, which the Complainant considers an act of blackmail, as the Domain Name has a clear association with the Trademark. The Complainant does not wish to pursue legal actions at this time and is willing to resolve this matter amicably if the Respondent agrees to transfer the Domain Name in good faith. The Respondent did not reply to the Complainant's reply, as requested in the Panel Order 1.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to the trademark or service mark in which Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard [WIPO Overview 3.0](#), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant, although it submitted the details of its two registrations which clearly show a combined word / device mark consisting of the elements “TT” and “TOPCIMENT”, alleged in the complaint that it owns the “registered trademark TOPCIMENT”, which it did not further substantiate. The Panel assumes that the Complainant wants to rely on its Trademark, *i.e.*, the two registrations for TT TOPCIMENT.

The Complainant has shown that it has rights in the Trademark.

As set out in [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the TT TOPCIMENT Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the TT TOPCIMENT Trademark, whereas the Domain Name consists of the TT TOPCIMENT Trademark in its entirety, solely removing two letters “t” in front of the Trademark.

Accordingly, the Panel finds that the Complainant has satisfied the first element.

B. Rights or Legitimate Interests

For the Complaint to be successful, the Complainant needs to satisfy the second requirement and, thus, prove that the Respondent has no rights or legitimate interests regarding the Domain Name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has no rights or legitimate interests in the Domain Name:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The onus of proving this requirement falls on the Complainant. The Complainant can refer to the aforementioned circumstances, however, this list of circumstances is by no means exhaustive. Instead, the Complainant must raise a *prima facie* case against the Respondent in order to shift the burden of production of evidence to the Respondent who in turn will need to rebut the *prima facie* case.

The Complainant has asserted that the Respondent cannot be commonly known by the Domain Name. In addition to this the Complainant argues that the Respondent has not made legitimate noncommercial or fair use of the Domain Name and has also not shown any preparations thereof. Instead the Respondent is seeking financial compensation for the transfer of the Domain Name.

The Domain Name at the time of the Decision resolves to a parked page indicating that the Website is under maintenance. Consequently, the Panel considers that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes.

The Panel also considers the fact that the Respondent has not put forward any evidence that would support a claim that the Respondent has used or made preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

Accordingly, the Panel finds that the Respondent, in the balance of probabilities, has no rights or legitimate interests in relation to the Domain Name.

Accordingly, the Panel finds that the Complainant has satisfied the second element.

C. Registered and Used in Bad Faith

The Complainant argues that the Respondent has registered and is using the Domain Name in bad faith.

The Complainant alleges that the Respondent is impersonating the Complainant and has asked financial compensation for the transfer of the Domain Name. The Complainant has also communicated that it is willing to sell the Domain Name for USD 2,000.

The Respondent that there was a connection between the Respondent and the Complainant. In addition the Respondent mentions that all social media related to the “Topciment brand”, owned by the Complainant, would have been deactivated following an email from the Complainant. The Respondent added that in the contract that connected the Respondent with the Complainant, the Respondent had the right to use the Complainant’s name and logos, “but according to the law you can buy domain names and then sell them”, and that the domain name “is inactive and does not have a negative impact on the “Topciment Brand””.

The Complainant has not extensively substantiated the alleged registration and bad faith. As a result the facts of the matter is not as clear as the Panel would have preferred. Following the Panel Order, the Respondent refrained from providing a reply, although it was given the opportunity to do so.

Based on all presented facts and arguments, it is more likely than not that the Respondent has targeted the Complainant when registering the Domain Name, given the apparently existing relationship between them. As such Panel is satisfied that the Domain Name was registered in bad faith.

The Domain Name is inactive. Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. See [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel concludes that the third element of the Policy has been met.

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, <topciment.shop> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: October 25, 2023