

ADMINISTRATIVE PANEL DECISION

Reclame Aqui Marcas E Serviços LTDA. and Obvio Brasil Software e
Servicos S.A. v. Ernildo Junior de Farias Santos
Case No. D2023-4792

1. The Parties

The Complainants are Reclame Aqui Marcas E Serviços LTDA. and Obvio Brasil Software E Servicos S.A., Brazil, represented by Baptista Luz Advogados, Brazil.

The Respondent is Ernildo Junior de Farias Santos, Brazil.

2. The Domain Name and Registrar

The disputed domain name <reclameaqui.com> is registered with GoDaddy Online Services Cayman Islands Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 17, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 20, 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 (Registration Private Domain By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on November 24, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on November 29, 2023.

The Center verified that the Complaint together with the amendment to 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 December 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 27, 2023. 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 15, 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 Complainants (hereinafter referred together as the Complainant¹) are part of a business conglomerate that owns “Reclame Aqui”, an online platform for resolving conflicts between consumers and companies in Brazil.

The Complainant owns several RECLAME AQUÍ trademark registrations in Brazil, including Trademark Numbers 901641243, 913409685 and 913409812, respectively registered on October 16, 2012, January 2, 2019, and January 2, 2019.

The Complainant’s platform is operated at the URL <reclameaqui.com.br>, registered by the Complainant on February 10, 2000.

The disputed domain name was registered by the Respondent on April 26, 2004. At the time the Complaint was filed, the disputed domain name redirected to a website offering sports bet deals.

The Panel accessed the disputed domain name on January 20, 2024, when it redirected to a sport betting website, in Portuguese, called “betvip”, at <betvip.com>.

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 Complainant has rights over the domain name <reclameaqui.com.br> since 2000, has been using the RECLAME AQUÍ mark at least since 2002, and made the first application for such trademark in 2009. Since then, the Complainant has also developed new branches of its services, registering new trademarks incorporating the expression “Reclame Aqui”. The Complainant’s corporate name in Brazil also incorporates the trademark RECLAME AQUÍ. RECLAME AQUÍ is currently the biggest platform for solving conflicts between consumers and companies in Latin America, with over 30 (thirty) million consumers registered, 360 (three hundred and sixty) companies registered, and over a million complaints per month. RECLAME AQUÍ website is the 5th most accessed website in Brazil. It’s safe to say that before buying something, the average Brazilian person checks the seller’s note and evaluation at <reclamaaqui.com.br>. The disputed domain name is identical to the RECLAME AQUÍ trademark and to the domain name <reclameaqui.com.br>, both registered by the Complainant, without any additions. On top of that, the disputed domain name currently redirects to the domain name <betvip.com>, which offers sports betting services in Brazilian Portuguese, causing evident confusion and being harmful to the consumer.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name and has no rights over the name. In fact, the Respondent uses the prestige of the Complainant’s trademark to induce its million consumers into believing that the sports betting services, offered in Brazilian Portuguese, are somehow related to the services provided by the Complainant. The Respondent uses the high recognition of the Complainant’s

website to promote the Respondent's services, what is unacceptable, since the Respondent has no rights over the expression "Reclame Aqui". Therefore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Complainant has never licensed, permitted, or authorized the use of the RECLAME AQUI trademark by the Respondent. Also, there is a severe risk of consumers sharing their personal data with the Respondent, believing that they are dealing with the Complainant or even with a website endorsed by the Complainant.

- The disputed domain name was registered and is being used in bad faith. The Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by redirecting the disputed domain name to sport betting platforms, which are in Portuguese and focus in Brazil. The Respondent creates a likelihood of confusion with the Complainant's trademark as to the sponsorship, affiliation, or endorsement of the Respondent's website and activities at the disputed domain name. To the best of the Complainant's knowledge, the Respondent acquired the disputed domain name after the consolidation of the RECLAME AQUI trademark in the Brazilian market. However, the Complainant cannot know when the disputed domain name was sold, especially due to the use of privacy services. Past UDRP panels have already found that the employment of a privacy service by a respondent to hide its identity is further evidence of bad faith use. The Complainant has also tried to solve the matter outside this administrative proceeding by sending a cease-and-desist letter to the company that is managed by the disclosed Respondent but didn't receive any response. The failure to respond to a cease-and-desist letter has also to be considered as a factor in confirming the Respondent's bad faith in using the disputed domain name. Since the Respondent is a Brazilian resident, he is aware of the trademark infringement in using the trademark RECLAME AQUI in the disputed domain name.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

Annex 5 to the Complaint shows registrations of RECLAME AQUI trademarks obtained by the Complainant in Brazil. The circumstance that the trademark registrations were obtained by the Complainant after the registration of the disputed domain name will be addressed on paragraph C below.

The entirety of the mark RECLAME AQUI is reproduced within the disputed domain name, together with the generic Top-Level Domain ("gTLD") suffix ".com".

It is 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.

RECLAME AQUI is a famous online platform in Brazil and any party that uses this expression to promote services in Portuguese language, to Brazilian citizens, will carry a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Respondent uses the disputed domain name to redirect Internet users to sport betting websites.

The Panel finds no indication that the Respondent is commonly known by the disputed domain name. The Complainant has asserted that the Respondent is not an authorized representative, nor has obtained any permission for incorporating the trademark RECLAME AQUI in the disputed domain name.

The expression “reclame aqui” can be translated to English as “complain here”, which has no relation with sport betting.

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 reproduces the entirety of the Complainant's trademark RECLAME AQUI, not adding any other character, besides the gTLD extension ".com".

The Complaint's platform is very famous in Brazil, providing ways for Brazilian consumers to assess confidence in companies and its respective products and services.

The Complainant's first RECLAME AQUI trademark application was filed in 2009, but the trademark is in use since 2002. The disputed domain name was (originally) registered in 2004.

According to the [WIPO Overview 3.0](#), to establish unregistered trademark rights for purposes of the UDRP, a complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

In this case, the relevance of the RECLAME AQUI services in Brazil and the automatic link with the Complainant as its supplier, exemplified by the fact of its dozens of millions of registered users, making RECLAME AQUI the 5th most accessed website in the country, are enough evidence of the clear source-identifying capacity of such mark. It is also worth mentioning that the Brazilian legislation (Statute 9279/96) repudiates as unfair competition the use of fraudulent means to divert the clientele of others, even when there is no registered trademark.

Furthermore, according to the [WIPO Overview 3.0](#), "As an exception to the general proposition described above in 3.8.1, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith."

The Panel notes from Web Archive the continuous active use of the Complainant's domain name <reclameaqui.com.br> since 2002 in connection with an online platform for resolving conflicts between consumers and companies in Brazil (including conflicts involving some of the biggest telecommunications companies operating in Brazil).

The Complainant started using RECLAME AQUI in Brazil before the registration of the disputed domain name, and the Respondent – with an address in Brazil, that points the disputed domain name to sport betting services – does not hold any trademark registrations for RECLAME AQUI in the country. On the website to which the disputed domain name redirects there is no disclaimer concerning the use of the Complainant's trademark RECLAME AQUI, and the respective expression in Portuguese has no relation with sport betting services.

Therefore, the Panel concludes that it is not feasible that the Respondent was not aware of the Complainant at the time of the registration of the disputed domain name. The Panel finds that the Respondent's selection of the disputed domain name was not a mere coincidence but a likely attempt to take unfair advantage of the Complainant.

The notoriety of RECLAME AQUI trademark in Brazil suggests that the Respondent is intentionally attempting 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.

The non-collaborative posture of the Respondent, not answering to the Complainant's cease-and-desist letter, nor to the present Complaint, do not allow any other interpretation from this Panel.

Therefore, having reviewed the record, the Panel finds the registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the 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 <reclameaqui.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: January 29, 2024