

## **ADMINISTRATIVE PANEL DECISION**

### **Crocs, Inc. v. Client Care, Web Commerce Communications Limited Case No. D2022-0029**

#### **1. The Parties**

The Complainant is Crocs, Inc., United States of America (“United States”), represented by Kestenberg Siegal Lipkus LLP, Canada.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

#### **2. The Domain Name and Registrar**

The disputed domain name <crocsenargentina.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 6, 2022.

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 January 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 28, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on February 2, 2022. 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 United States of America based company doing business in the manufacture and distribution of footwear and related merchandise since 2002 in more than 90 countries worldwide.

The Complainant owns a portfolio of trademark registrations in different jurisdictions for CROCS. Such as:

United States Patent and Trademark Office: registration number 3836415, registered on August 24, 2010.  
United States Patent and Trademark Office: registration number 4230390, registered on October 23, 2012.  
Instituto Nacional de la Propiedad Industrial (Argentina): registration number 2624240, registered on January 27, 2014.

The Complainant's trademark CROCS is to be considered well-known for the purposes of the UDRP proceedings. See *Crocs Inc. v. Privacy Protection Service Inc. d/b/a PrivacyProtect.org / Nifa Syahira*, WIPO Case No. [D2014-1900](#).

The disputed domain name was registered on October 8, 2021. The Complainant amended the Complaint following the Registrar verification identifying the registrant "Client Care, Web Commerce Communications Limited" as the Respondent. The disputed domain name resolves to a website where the Complainant's trademark and logo are reproduced and e-commerce with purportedly CROCS products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends to have established trademark rights in CROCS pursuant to UDRP. The disputed domain name incorporates the trademark in its entirety. The mere addition of a geographical term to the disputed domain name does not serve to avoid a finding of confusing similarity. Besides, the extension "com" should not be taken into consideration when examining the first requirement.

With regard to the second requirement, the Complainant submits that the Respondent's registration of the disputed domain name wholly incorporating a famous mark is not supported by legitimate interests. Further, the Respondent was aware of the Complainant's domain name <crocs.com> and website associated before it registered the disputed domain name because the Complainant's sites were operational, and thus easily accessible to the Respondent, at the time the Respondent registered the disputed domain name.

The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The Complainant highlights the likelihood that Internet users would associate the disputed domain name with the well-known CROCS mark. Further, the Complainant alleges that the Respondent is likely not commonly known by <crocsenargentina.com> and the Whois information bears no nominal similarity.

The Complainant has not authorized or licensed the Respondent's organization to use or register a domain name which incorporates CROCS mark.

Finally, the Respondent is diverting the Complainant's customers or potential customers seeking information about the Complainant to the website to which the Respondent's domain name resolves where the Respondent obtains commercial benefits through the sale of products bearing reproductions of the Complainant's trademark.

The Respondent is using the website to which the disputed domain name resolves to misdirect and attract for commercial gain Internet users by creating a likelihood of confusion with the Complainant's mark to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

### **A. Identical or Confusingly Similar**

As noted, the Complainant has established proper CROCS trademark rights for the purposes of the UDRP. Where the relevant trademark is recognizable within the disputed domain name the first element is generally met. It is apparent the reproduction of the trademark in the disputed domain name. The Panel also finds that the addition of a geographical term "argentina" or a preposition such as "en", does not prevent a confusing similarity finding under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 or see *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#).

It is well admitted that generic Top-Level Domains ("gTLDs") are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name. See *Red Bull GmbH v. Christos Bozikis*, WIPO Case No. [D2021-3457](#).

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable 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; or
- (ii) the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a 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.

Further, the Panel notes that “where a complaint 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” ([WIPO Overview 3.0](#), section 2.1).

The Complainant has shown evidence of its CROCS trademark rights, the wide knowledge of the trademark and indeed the Respondent’s knowledge of the trademark by using the logo and trademark in the corresponding website. Neither is the Respondent commonly known by the disputed domain name, nor has the Respondent been authorized or licensed to use or register a domain name incorporating the Complainant’s trademark.

Additionally, the Panel notes that while the disputed domain name incorporates the CROCS trademark in its entirety plus the term “argentina”. The Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant ([WIPO Overview 3.0](#), section 2.5.1). The website to which the disputed domain name resolves uses the Complainant’s marks and logos, the Respondent is misrepresenting the Complainant and that is not legitimate according to the UDRP. Further, the website is not accurately disclosing the registrant’s relationship with the owner of the mark and the relevant conditions as established in *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) are not met.

Accordingly, a *prima facie* case is before the Panel, but no answer has been received from the Respondent. Such a silence prevents the Panel to assess any possible interests or rights for the Respondent since it has not been produced. Besides, nothing in the file allows the Panel to recognize rights or legitimate interests for the Respondent.

Therefore, the Panel is convinced that the second element under paragraph 4(a)(ii) of the Policy has been met by the Complainant.

### **C. Registered and Used in Bad Faith**

Noting section 3.1.4 of [WIPO Overview 3.0](#) where: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”, the Panel finds that the scenario depicted matches that of the file.

The Respondent chose the disputed domain name which reproduces CROCS, a well-known trademark, in its entirety. By adding a geographical term to the trademark to compound the disputed domain name, the Respondent gives rise to the thinking that the corresponding website is somehow official or affiliated to the Complainant at very least in Argentina. However, the Respondent has no authorization to use the disputed domain name incorporating CROCS trademark, neither is affiliated somehow with the Complainant in Argentina or anywhere. To sum up, the indicia shows how the Respondent was most likely aware of the Complainant’s CROCS trademark at the time of the registration of the disputed domain name. Therefore, the Panel finds that the registration was in bad faith.

Besides, the use of the disputed domain lacks trustworthy information about the owner of the website and the incumbent relation with the Complainant and its trademarks. Indeed, the Respondent impersonates the Complainant in doing business through the website with the disputed domain name. The Respondent is selling CROCS products in a website which is equivalent in some way to the design of the Complainant’s website as the Panel has checked and no disclaimer was planned to avoid consumers confusion within the Parties. Such impersonation is a good example of bad faith for the purposes of the UDRP as described in 4(b)(iv) of the Policy: “By using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the

complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location". Accordingly the use of the disputed domain name is in bad faith.

Therefore, the third requirement set in paragraph 4(a)(iii) of the Policy is met by the Complainant.

## **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, <crocsenargentina.com>, be transferred to the Complainant.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: February 15, 2022