

ADMINISTRATIVE PANEL DECISION

Allianz Seguros S/A, Allianz SE v. Locaweb Ltda. / Options Participações Ltda. / I4B TRADING S.A. / Marcos Constantino de Souza
Case No. D2022-0625

1. The Parties

The Complainants are Allianz Seguros S.A., Brazil (“First Complainant”) and Allianz SE, Germany (“Second Complainant”), represented by JM Silveira & Associados Propriedade Intelectual Ltda., Brazil.

The Respondent is Locaweb Ltda/ Options Participações Ltda. / I4B Trading S.A. / Marcos Constantino de Souza (“Mr. Souza”) Brazil.¹

2. The Domain Name and Registrar

The disputed domain name <allianztrade.com> is registered with eNom, Inc. dba Dynames.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 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 February 24, 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 amendment to the Complaint on February 24, 2022.

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

¹ The Panel notes that the Response was filed by Marcos Souza. The Response identifies the Respondent’s contact details listing Options Participações Ltda., I4B Trading S.A., and Marcos Souza. The Response identifies the Respondent’s representative as Marcos Souza.

Complaint, and the proceedings commenced on March 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2022. On March 8, 2022, the Center received an email communication signed by the Director of Locaweb Ltda, indicating that the Complaint was being sent to the disputed domain name owner, Options Participações Ltda. On March 9, 2022, the Center received an email communication from Mr. Souza stating that they requested a complete copy of the Complaint and annexes and requesting an extension of thirty days to submit a Response. On March 11, 2022, the Center requested the third party to identify himself and clarify his relationship to the named Respondent (Locaweb Ltda). Mr. Souza replied stating that he is the CEO of Options Participações Ltda. and of I4B Trading S.A. (previously named Allianz Trading S.A.) and that he had hired Locaweb Ltda. as the provider of the disputed domain name. On March 14, 2022, the Center forwarded the relevant documents to Mr. Souza and granted an extension of ten days to file a Response. The Complainant objected to Mr. Souza's claim requesting the Center to request Mr. Souza to provide appropriate evidences of such claim, having the Center informed that the Panel would make a final determination regarding the identification of the Respondent on March 16, 2022. On that same date, Mr. Souza rebutted the Complainant's objection attaching a string of e-mail messages exchanged by himself and the Complainants' representative in connection with the disputed domain name. The due date for Response was March 31, 2022. Mr. Souza submitted a Response on March 30, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on April 6, 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 Complainants are part of the multinational Allianz Group engaged in international financial services, offering products and solutions in insurance and asset management, amongst other services. The Second Complainant is the owner, amongst several others, of the following trademark registrations (Annexes VI and VII to the Complaint):

- Brazilian Trademark Registration No. 006653642 for ALLIANZ ULTRAMAR and device, registered on March 10, 1978 and successively renewed, in local class 36.30;
- Brazilian Trademark Registration No. 819803782 for ALLIANZ and device, registered on April 30, 2002 and successively renewed, in class NCL(8) 36;
- Brazilian Trademark Registration No. 820584401 for the word mark ALLIANZ, registered on August 9, 2005 and successively renewed, in class NCL(8) 35;
- Brazilian Trademark Registration No. 821246593 for ALLIANZ and device, registered on January 13, 2009 and successively renewed, in local class 36.10/30/70;
- Brazilian Trademark Registration No. 831053968 for the word mark ALLIANZ, registered on October 29, 2014, in class NCL(9) 37; and
- Brazilian Trademark Registration No. 831053828 for ALLIANZ and device, registered on October 29, 2014, in class NCL(9) 9.

The disputed domain name <allianztrade.com> was registered on November 18, 2005. Presently no active webpage resolves from the disputed domain name.

The Complainants' representative exchanged e-mail communications relating to negotiations for the acquisition of the disputed domain name with Mr. Souza, of Options Participações S/A., between August 25, 2021 and September 27, 2021, appearing the Parties to have adjusted the price of USD 11,000.00 for the

disputed domain name but not having entered into an agreement as to the payment conditions. (string of e-mail messages attached to Mr. Souza's communication with the Center on March 16, 2022).

5. Parties' Contentions

A. Complainants

The Complainants assert to be part of the Allianz Group which counts with over 85 million customers and over 147,000 employees spread in more than 70 countries, including Brazil, where the First Complainant, a subsidiary of the Second Complainant, is located.

In the Complainants' view, the disputed domain name incorporates their ALLIANZ trademark and trade name entirely, creating consumer confusion, being the addition of the term "trade" descriptive and lacking any distinctiveness thereto.

According to the Complainants, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent has no license or other agreement with any of the Complainants that would authorize it to use the ALLIANZ trademark or tradename;
- (ii) the Complainants were not able to identify any information implying that the Respondent is commonly known by the disputed domain name or may have any rights or legitimate interests whatsoever on or into the disputed domain name; and
- (iii) the disputed domain name leads to an inactive website, there being no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

The Complainants contend that this is a case of passive holding of a domain name as defined in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and in *Sanofi-aventis v. Gerard Scarretta*, WIPO Case No. [D2009-0229](#), given that:

- (i) the Complainants' ALLIANZ trademark is widely known and enjoys a strong reputation, having been ranked No. 39 in Interbrand's Best Global Brands 2020 (Annex IX to the Complaint);
- (ii) there is no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name by the Respondent;
- (iii) the Respondent has retained a Whois privacy service to conceal his true identity from the Complainants;
- (iv) taking into account the nature of the disputed domain name, one cannot conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainants' rights under trademark law.

B. Respondent

As seen above, on March 8, 2022, the Center received an email communication signed by the Director of Locaweb Ltda, indicating that the Complaint was being sent to the disputed domain name owner, Options Participações Ltda.

On March 11, 2022, Mr. Souza informed the Center that he is the CEO of Options Participações Ltda. as well as of I4B Trading S.A. (previously named Allianz Trading S.A.) and that he had hired Locaweb Ltda. as the provider of the disputed domain name.

Mr. Souza filed a Response on March 30, 2022 on behalf of Options Participações Ltda. stating that the disputed domain name was acquired on November 18, 2005 by himself, as co-founder of Allianz Trading S/A, a company based in Brazil which started its activities on February 14, 2006.

According to him, he initially retained Nomer Registro de Domínio Hosp. de Sites Ltda; as provider of both registration and e-mail management services, having this provider ended its activities and he subsequently retained Locaweb Serviços de Internet S/A to provide such services. One of the attachments to his e-mail communication to the Center of March 16, 2022 is an email message from Nomer to him, relating to the renewal of the disputed domain name.

Mr. Souza further claims that Allianz Trading S/A changed its name to I4B Trading S/A in January of 2018, having the disputed domain name been transferred to Options Participações Ltda. also in 2018.

According to Mr. Souza, the disputed domain name was chosen given that the term “allianz” in German refers to the context of alliance, being therefore related to services that the company being incorporated would explore, namely the international trade of Brazilian goods, wholesale of goods and the representation of national and international merchandise brands in Brazil, activities not provided by the Complainants.

Mr. Souza further asserts that if he had truly been targeting the Complainants he would have registered the domain name <allianz.com.br> which was only acquired by the Complainants on January 16, 2006.

As to the rights or legitimate interests in the disputed domain name, Mr. Souza indicates that the disputed domain name has been used since 2006 and until today as the basis of all of his e-mail services, being the following e-mail addresses valid and in operation, including marketplaces in Brazil and abroad:

<m[...]@allianztrade.com>; <c[...]@allianztrade.com>; <n[...]@allianztrade.com>;
<s[...]@allianztrade.com>; <s[...]@allianztrade.com>; <c[...]@allianztrade.com>; <m[...]@allianztrade.com>.

According to Mr. Souza, the importance of a domain name is not only to be used in connection with a website on the Internet, but also as tool to give credibility, indicating a corporate email and online presence.

As to the use of a privacy service, Mr. Souza indicates that the Complainants have also used a similar tool when approaching him to negotiate the disputed domain, having retained Solid Names and Euler Hermes Services through the Complainants' appointed representative, being the Complainants' suggestion that the use of a privacy service would indicate that something illegitimate is being hidden therefore ironic.

Lastly, Mr. Souza indicates that there are other domain names registered by third parties which incorporate the term “allianz” and which are not related to the Complainants such as <allianzlog.com>; <allianzworld.com>; <allianzhost.com>; <allianzholding.com> and <allianzworldwide.com>.

Mr. Souza concludes the Response reiterating that none of the Respondent's activities are in conflict with the Complainants' activities and this procedure is being brought because the Complainants, which have hidden themselves in the negotiations for the acquisition of the disputed domain name, were unsuccessful in their attempt.

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainants:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

The Complainants must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

Before turning to the merits of the case, the Panel needs to address the issue of the Respondent's identity.

A. Respondent's identity

The following evidence submitted by the Parties enable the Panel to conclude that Options Participações Ltda. is the beneficial holder of the disputed domain name:

- Locaweb Ltda.'s director e-mail message to the Center dated March 8, 2022;
- e-mail communication from Nomer to Mr. Souza attached to Mr. Souza's e-mail message to the Center of March 16, 2022;
- Annexes 2 and 3 to the Response filed by Mr. Souza (e-mail confirmation from Locaweb taking responsibility over the disputed domain name on behalf of Optios Participações Ltda. and print screen of Locaweb's domain name management system).

The Panel therefore accepts the Response filed by Mr. Souza on March 30, 2022 on behalf of Options Participações Ltda., I4B Trading S.A., and himself. The Panel considers Options Participações Ltda. as the beneficial holder of the disputed domain name, and that such entity will be referred to from now on as the Respondent.

B. Identical or Confusingly Similar

The Complainants have established rights in the ALLIANZ trademark, duly registered.

The Panel finds that the disputed domain name reproduces the Complainants' mark in its entirety, and the addition of the term "trade" does not prevent a finding of confusing similarity under the Policy which, as recognized by past UDRP panels involves a "comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", sections 1.7 and 1.8).

The first element of the Policy has therefore been established.

C. Rights or Legitimate Interests and Registered and Used in Bad Faith

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In view of the particulars of this case and also considering that the requirements of paragraph 4(a) of the Policy are conjunctive, the Panel will address the second and third elements jointly given that this is clearly not a case best suited for the UDRP since it involves matters that would be better dealt with at a Court of competent jurisdiction to address the facts under discussion. In the Panel's opinion, the dispute between the Parties appears to be a much broader intellectual property dispute than the one for which the UDRP was created.

The Panel notes that there are elements in this case that may indicate the potential existence of rights or legitimate interests under the Policy on the side of the Respondent, namely:

i. the disputed domain name has been registered for more than 16 years, only having been approached by negotiators retained by the Complainants as of May 7, 2021 (e-mail messages exchanged between Solidnames and Mr. Souza, Annex 5 to the Response) and August 25, 2021 (e-mail messages exchanged by the Complainants' representative, Annex 6 to the Response);

ii. the e-mail addresses used by the Respondent based on the disputed domain name are indicated in both Governmental databases (as confirmed by an independent search conducted by the Panel at "http://servicos.receita.fazenda.gov.br/Servicos/cnpjreva/Cnpjreva_Comprovante.asp", the Brazilian Tax Payer Identification platform using the Tax Payer Id Numbers No. 27 [...] relating to the Respondent and No. 07. [...] relating to I4B TRADING S.A., (previously named Allianz Trading S/A.), and in private databases such as Mercado Livre marketplace (Annex 4 to the Response); and

iii. the Respondent does not appear to have a pattern of cybersquatting, the Panel not having been able to locate any past UDRP case against it or even domain name registrations at the ".br" level under the Respondent's tax payer Id number.

At this point, it seems to the Panel that the central question here would be whether the Respondent genuinely registered the disputed domain name in connection with its later business (although the disputed domain name does not match the "ALLIANZ TRADING" business name), and independently of the Complainant's rights, or if it was created to take unfair advantage of the Complainant's reputation and goodwill in the ALLIANZ trademark.

In view of the above, the Panel will proceed to analyze whether the Respondent's conduct characterizes bad faith registration and use of the disputed domain name. In this regard, paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online 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."

Even though the Complainants stress that the Complainants' ALLIANZ trademark is widely known and enjoys a strong reputation and that taking into account the nature of the disputed domain name, one cannot conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate or characterize unfair competition, the Complainants have not proven under the Policy that the Respondent was specifically targeting the Complainants.

In order to succeed, the Complainants would be required to show that the Respondent targeted the Complainants or the ALLIANZ trademark at the time of registration of the disputed domain name. In other words, the Complainants would need to demonstrate under the balance of probabilities (i) that the Respondent had been aware of the Complainants or their trademarks prior to registering the disputed domain name; and (ii) that the particulars of the case at hand indicate that the Respondent also had an intent through the registration of the disputed domain name to take unfair advantage of the Complainants or the Complainants' specific trademark rights. However, the Panel notes the Respondent's contention about the wording in the disputed domain name, which seems to claim that the selection of the wording of the disputed domain name was due to its value as composed by dictionary terms. The Panel notes the Parties' contrary positions on the reasons behind the registration of the disputed domain name. The Panel accepts that the Complainant's ALLIANZ trademark is widely known, and the Panel finds that the explanation of the Respondent casts some doubts about the selection of the disputed domain name considering that "allianz" would be a dictionary term in German, and the Respondent chose it to combine it with the English term "trade". The Panel notes that the Respondent has not really provided an explanation on why a term in German would have been relevant for their activity, and the Respondent's explanation on this point focuses on the fact that the term "allianz" "refers to the context of alliance, was related to the operation of the company in constitution, whose activity was the international trade of Brazilian goods, wholesale trade of goods within Brazil and the representation of national and international merchandise brands in Brazil". The Panel does not find such explanation as fully satisfactory noting that it does not seem a natural combination of terms, and raises some doubts, for example, on why the Respondent did not choose the Portuguese word for "allianz". However, the Panel cannot obviate on his analysis the fact that the disputed domain name was registered in 2005, and according to the evidence provided by the Respondent seemed to have been used in connection with the business of I4B Trading S.A., (previously named Allianz Trading S.A.).

On the face of the present limited record, in this Panel's view, the Complainants have not satisfied their burden.

In any event, as previously noted, this is clearly not a case best suited for the UDRP since it involves matters that would be better dealt with at a Court with competent jurisdiction to address the broader facts under discussion.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Wilson Pinheiro Jabur/
Wilson Pinheiro Jabur
Sole Panelist
Date: April 19, 2022