

## **ADMINISTRATIVE PANEL DECISION**

Canva Pty Ltd v. Gabriela Carvalho, Packs do Canva  
Case No. D2022-0728

### **1. The Parties**

The Complainant is Canva Pty Ltd, Australia, represented by SafeNames Ltd., United Kingdom.

The Respondent is Gabriela Carvalho, Packs do Canva, Brazil.

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

The disputed domain name <packsdocanva.com> (hereafter referred to as the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 4, 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 March 10, 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 March 11, 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 March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on May 5, 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, Canva Pty Ltd, is an online graphic design platform founded in Australia in 2012. Users of the Complainant's services have thousands of images and templates to choose from when creating graphic designs. The Complainant uses its main site "www.canva.com" to offer its services, which includes marketing and graphic design tutorials. The Complainant has 977 employees spread across offices in Sydney, Manila and Beijing. As of 2019, the Complainant was valued at USD 3.2 billion and has 20 million users across 190 countries.

The Complainant holds several registered trademarks for the term "Canva", such as the following:

- CANVA, International word mark covering various countries and territories, registered under No. 1204604 on October 1, 2013, in class 9;
- CANVA, Brazilian word mark registered under No. 914660462 on April 30, 2019, in class 9.

The Complainant further uses the CANVA trademark as part of its brand logo:

2012-2021



2021 – Present



The Disputed Domain Name was registered on September 2, 2021, and appears to refer to a website in Portuguese offering products and services similar to the Complainant's products and services.

On October 15, 2021, the Complainant's representative sent a cease and desist letter to the Respondent. According to the Complainant, the Respondent did not respond.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, there is no evidence that the Respondent retains any trademark rights to the term "Canva", neither has the Respondent received any license from the Complainant to use domain names featuring the CANVA mark. To the best of the Complainant's knowledge, the Respondent is not commonly known by the distinctive term "Canva", nor is offering any legitimate goods or services by the term "Canva". Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that the Respondent was aware of the Complainant's CANVA brand and by using the Disputed Domain Name, intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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.

The Panel will therefore deal with each of these requirements.

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

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's CANVA trademarks have been registered and used in various countries in connection to the Complainant's graphic design business.

The Panel observes that the Disputed Domain Name incorporates the Complainant's CANVA trademark in its entirety, simply preceding it with the terms "packs" and "do".

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's CANVA trademark.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named “Gabriela Carvalho” from the organization “Packs do Canva”. The Panel finds that the fact that the organization name corresponds to the Disputed Domain Name is not sufficient to show that the Respondent is commonly known by this name (see section 2.3 of the [WIPO Overview 3.0](#)). There are no indications that a connection between the Complainant and the Respondent exists.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant’s CANVA trademark in its entirety and adds the descriptive terms “packs” and “do”, “do” in Portuguese meaning “of” in English. The Panel finds that the term “packs” can be linked to the Complainant’s business as it may refer to packs of graphic design templates as offered by the Complainant. More specifically, the Panel finds that the addition of the Portuguese term “do” in the Disputed Domain Name shows a targeting of the Portuguese speaking Internet users. In the Panel’s view, the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Complainant provides evidence showing that the Disputed Domain Name refers to a website purporting to sell packs of graphic design templates and online tutorials, similar to the Complainant’s products and services. The Panel observes that the website not only mentions the Complainant’s CANVA mark numerous times, but also includes the Complainant’s logo with the green circle as depicted above under section 4.

In the Panel’s view, the Respondent’s use of the Complainant’s mark and logo to purportedly offer products and services similar to the Complainant’s products and services creates a misleading impression of affiliation and does not amount to a fair use of the Disputed Domain Name (see *LEGO Juris A/S v. Domain Administrator*, See *PrivacyGuardian.org and Sun Chong*, WIPO Case No. [D2019-2263](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

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

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by

creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the CANVA mark when it registered the Disputed Domain Name. The Complainant's earliest CANVA trademark predates the registration of the Disputed Domain Name by 8 years, and the Complainant also shows registered trademark rights in Brazil where the Respondent is located. Moreover, the website linked to the Disputed Domain Name includes copies of the Complainant's mark and logo and purports to sell products and services similar to the Complainant's products and services. As a result, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Name. The Panel finds that the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith.

By redirecting Internet users to a website purportedly offering for sale products and services similar to the Complainant's products and services the Complainant's CANVA mark and logo, the Panel finds that the Respondent intentionally aimed to attract Internet users to visit this website 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 or location and of the products advertised on the website (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14(b) of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <packsdocanva.com> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: May 19, 2022