

ADMINISTRATIVE PANEL DECISION

Milliman, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2022-3079

1. The Parties

The Complainant is Milliman, Inc., United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.¹

2. The Domain Name and Registrar

The disputed domain name <milimanbanefits.com> (the “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 August 19, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 22, 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 August 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 amended Complaint on August 25, 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”).

¹ The disputed domain name <milimanbanefits.com> was originally registered through a privacy service. The Registrar has disclosed the underlying registrant of the disputed domain name as “Carolina Rodrigues, Fundacion Comercio Electronico”.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and the proceedings commenced on August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent's default on September 22, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on September 27, 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 Domain Name <millimanbenefits.com> was registered on May 17, 2022. The Complainant learnt of the registration shortly thereafter. It is asserted that the Domain Name is apparently being used to distribute malware. The Complainant's counsel sent the Respondent (via the registrar's standard Domain Holder Contact Request Form) a notice that the "Domain name or content is infringing on a trademark or violating local laws or regulations". The Respondent did not respond.

The Complainant is the owner of the registered MILLIMAN trademark and is one of the world's largest independent actuarial and consulting firms. It has been active in this field since 1947 and advertises its goods and services through various websites, including <milliman.com> and <millimanbenefits.com> (its principal websites, the latter being a web portal through which the Complainant provides information and services to Milliman clients), as well as through print media and other advertising and promotional campaigns. The Complainant operates in various markets throughout the world and spends millions of dollars every year promoting the MILLIMAN mark. It owns valid and subsisting registrations for various word and composite marks incorporating MILLIMAN in numerous jurisdictions, from Argentina and Australia, to Panama and Puerto Rico, United States, to the United Kingdom and the United States, e.g., United States trademark registration (for MILLIMAN) registered on March 19, 2002 under Registration Number 2551240 and United States trademark registration (for MILLIMAN in composite form) registered on March 17, 2009 under Registration Number 3592193.

The Complainant is the owner of many other domain names incorporating the MILLIMAN mark or common misspellings thereof apart from its principal websites at "www.milliman.com" and "www.millimanbenefits.com" mentioned above.

5. Parties' Contentions

A. Complainant

The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Domain Name is identical or confusingly similar to the Complainant's MILLIMAN mark. It incorporates a typo-variant of the MILLIMAN mark, together with a typo-variant of the word "benefits". The dominant element of the Domain Name is the typo-variant of the MILLIMAN mark. The Domain Name differs from the Complainant's <millimanbenefits.com> domain name by only two letters.

Incorporation of a registered trademark in its entirety, or a close approximation thereof in a domain name is sufficient to establish that the domain name is identical or confusingly similar to that mark, particularly where the mark is the dominant element of the domain name.

The addition of a typo-variant of the generic word “benefits” does not prevent the Domain Name from being confusingly similar to the Complainant’s MILLIMAN mark. It is well established that the mere addition of a generic and/or descriptive word does not prevent a domain name from being confusingly similar to a trademark. Moreover, because the Complainant’s business involves services related to the provision of benefits, inclusion of a typo-variant of the word “benefits” actually serves to increase the confusing similarity of the Domain Name. The addition of “banefits” to “Miliman” is intended to lead Internet users — specifically clients of the Complainant — to believe that the Domain Name will lead to the Milliman client web portal at “www.millimanbenefits.com”.

The slight misspellings in the Domain Name are insufficient to distinguish the Domain Name from the Complainant’s MILLIMAN mark. In fact they seek to take advantage of the fact that a proportion of Internet users will, in attempting to locate the Complainant’s website at “www.millimanbenefits.com”, mistype the MILLIMAN mark and the word “benefits”. Such “typosquatting” has long been condemned by UDRP panels.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Respondent’s name is not “Miliman Banefits”, and to the Complainant’s knowledge, the Respondent is not, and has never been commonly known as “Miliman Banefits”. The Respondent is not, and has never been a licensee or franchisee of the Complainant and has never been authorized by the Complainant to register or use the Complainant’s MILLIMAN mark or to apply for or use any domain name incorporating the mark.

The Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. As of the date of the Amended Complaint, the Domain Name was apparently being used to distribute malware - when the Complainant’s counsel attempted to visit the website at the Domain Name on July 14, 2022, August 2, 2022, and August 11, 2022, the website displayed a message prompting visitors to install a Chrome extension or indicating that a “Trojan Spyware” threat was detected. This type of use does not establish rights or legitimate interests in the Domain Name.

Furthermore, without authorization from the Complainant, no actual or contemplated *bona fide* or legitimate use of the Domain Name could reasonably be claimed by the Respondent, as the MILLIMAN mark was well known at the time of registration given the Complainant’s extensive use of the mark.

The Domain Name was registered and is being used in bad faith.

The Respondent registered and is using the Domain Name in bad faith. Given the Complainant’s longstanding, continuous and extensive use and registration of the MILLIMAN mark across the world, the Complainant’s ownership of domain names incorporating the MILLIMAN mark, such as <milliman.com> and <millimanbenefits.com>, the Complainant’s international reputation and the fact that MILLIMAN is a well-known mark universally associated with the Complainant, it is not plausible that the Respondent could have been unaware of the Complainant at the time of registration.

The Respondent’s knowledge of the Complainant is evidenced by inclusion (in the Domain Name) of the misspelt word “banefits”, a word indicating an awareness of the Complainant’s services at the time of registration.

The Respondent’s choice of a slight variation of the Complainant’s <millimanbenefits.com> domain name for the Domain Name constitutes blatant typosquatting which is itself evidence of bad faith.

The Respondent’s apparent use of the Domain Name to distribute malware constitutes additional evidence of the Respondent’s bad faith.

The Respondent's bad faith is furthermore demonstrated by its offer to sell the Domain Name, through Sedo.com. It is listed for auction at the starting price of 899 USD which is a price that far exceeds the Respondent's out-of-pocket costs directly related to the Domain Name. The sale listing also demonstrates that the Respondent registered the Domain Name for the purpose of selling it to the Complainant, which constitutes bad faith.

The Respondent has demonstrated a pattern of conduct indicative of bad faith registration and use given its registration of domain names incorporating others' trademarks. A reverse Whois search reveals over 4,000 domain names registered to "Carolina Rodrigues" which demonstrates that it is the Respondent's common practice to select domain names that are nearly identical to those used for trademark owners' official websites. For example, the Respondent has registered <paypasl.com> (a variant of <paypal.com>), <americanspress.com> (a variant of <americanexpress.com>) and <fcsebook.com> (a variant of <facebook.com>).

"Carolina Rodrigues" has also been the named respondent in at least 303 other UDRP proceedings. Such activity is evidence of bad faith.

The Respondent clearly registered and is using the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove that a respondent has registered a domain name which is: (i) identical or confusingly similar to a trademark or service mark in which a complainant has rights; and (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant is the registered owner of the MILLIMAN mark and clearly has rights for the purposes of the Policy.

Ignoring the generic Top-Level Domain ("gTLD") ".com" (as the Panel may do for comparison purposes), the Domain Name incorporates a misspelt version of the MILLIMAN mark (the second letter "l" being omitted) followed by the word "banefits", a misspelt version of the word "benefits", a word that describes the services provided by the Complainant under its mark. The MILLIMAN mark and Domain Name are therefore not identical and thus the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP typically involves "a side-by-side 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" (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)")). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

Both elements of the Domain Name – trademark (MILLIMAN) and descriptive addition (benefits) - are misspelt. Section 1.9 of the [WIPO Overview 3.0](#) (dealing with what is commonly referred to as typosquatting), provides that: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [...] This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark”.

The MILLIMAN mark, despite the one letter deviation, is clearly recognizable within the Domain Name as is the (misspelt) word “benefits” describing the services offered by the Complainant. Such misspellings do not prevent a finding of confusing similarity.

Moreover, the Panel finds that this is a clear case of typosquatting.

The Panel finds that the Domain Name is confusingly similar to the MILLIMAN mark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complaint, however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights to or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or affiliated with a complainant. For instance, a respondent can show that it has been commonly known by the domain name or that it 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. A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services.

The Respondent is not commonly known by the Domain Name. The Domain Name was designed to be mistakenly seen as incorporating, as its first and dominant element, the MILLIMAN mark so as to mislead Internet users into believing that the Domain Name and any website (or email address) associated with it is that of, or genuinely associated in some way with the Complainant, no doubt for possible commercial gain and perhaps also for nefarious purposes, *e.g.*, the possible distribution of malware. The fact that the misspelt MILLIMAN mark is followed by a slightly misspelt word (“banefits”) which, despite the misspelling, calls to mind the services offered by the Complainant, only serves to underscore the true underlying purpose of the Domain Name - to deceive. In these circumstances, it cannot be said that there is legitimate noncommercial or fair use without intent for commercial gain to mislead or a *bona fide* offering of goods or services.

Whatever the true intentions of the Respondent, this is a clear case of typosquatting and, as section 1.9 of the [WIPO Overview 3.0](#) (dealing typosquatting and referred to earlier) makes clear, “Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant”. The Respondent has clearly set out to confuse Internet users and the Respondent can have no rights or legitimate interests in respect of the Domain Name.

Moreover, UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., distributing malware) can never confer rights or legitimate interests on a respondent. See section 2.13.1 of the [WIPO Overview 3.0](#).

The Respondent has not come forward with a Response and did not engage with the Complainant prior to commencement of these proceedings, despite the communication from the Complainant's counsel. It can only be assumed that there is nothing the Respondent could say that might support an assertion that it does in fact have rights or legitimate interests. The contentions of the Complainant have been made out but not answered and accordingly, the Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Domain Name is confusingly similar to the MILLIMAN mark and may well be mistaken as being identical to the MILLIMAN mark in relation to its first and dominant element ("miliman") and, so far as the second element is concerned, indicative of the services offered by the Complainant ("banefits", a misspelling of "benefits"), thus reinforcing the suggestion of association with the Complainant. This, of course, was very likely to have been the intention of the Respondent. Indeed, the Complainant offers its services through a website at the domain name <millimanbenefits.com>, the correctly spelt version of the Domain Name.

The Panel is satisfied that the Respondent has engaged in typosquatting – the deliberate but usually minor misspelling of another's trademark to mislead. This is exactly the sort of abusive conduct to which the Policy is directed and is in and of itself evidence of bad faith.

Moreover, when the Complainant's counsel visited the website associated with the Domain Name on various dates, a message was displayed prompting visitors to install a Chrome extension or indicating that a "Trojan Spyware" threat was detected. One way a complainant may demonstrate bad faith registration and use, as envisaged by the non-exhaustive list of circumstances described in paragraph 4(b) of the Policy, is to show that a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website. These appear to be the circumstances present here.

Given these findings, there is little purpose in considering other possible grounds for a finding of bad faith.

The Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith.

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 <milimanbanefits.com> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: October 10, 2022