

## **ADMINISTRATIVE PANEL DECISION**

Lolo, LLC v. Domain Admin, Xedoc Holding SA  
Case No. D2022-3621

### **1. The Parties**

The Complainant is Lolo, LLC, United States of America (“United States”), represented by Kay Griffin, PLLC, United States.

The Respondent is Domain Admin, Xedoc Holding SA, Luxembourg, represented by Law.es, Spain.

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

The disputed domain name <lolo.com> is registered with Sea Wasp, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 1, 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 (Jewella Privacy - 5b19c, Jewella Privacy LLC Privacy ID# 1208310) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 3, 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 October 5, 2022. On October 7, 2022, the Respondent forwarded a communication directed to the Complainant to the Center. On October 21, 2022, the Complainant requested suspension of the proceeding in order to explore possible settlement of the present dispute. On October 25, the Respondent forwarded a further communication directed to the Complainant to the Center. On October 26, 2022, the Respondent submitted a request for reinstatement of the proceeding, and the proceeding was reinstated accordingly on October 27, 2022. On October 31, 2022, the Respondent submitted a further amended Complaint.

The Center verified that the Complaint together with the amended Complaints 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The due date for submission of a Response was extended to November 26, 2022, and then extended again until November 30, 2022.

The Respondent submitted its initial Response on November 26, 2022, and submitted an amended Response on November 30, 2022.

The Center appointed Jane Seager, John Swinson, and Georges Nahitchevansky as panelists in this matter on December 22, 2022. The Panel finds that it was properly constituted. Each member of 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**

##### **4.1. The Complainant and the Complainant's trademark rights**

The Complainant is a limited liability company based in North Carolina, United States, that provides relationship marketing services by allowing professionals to give gift cards to their clients via email. For use in connection with its gift card goods and services, the Complainant has registered the following trademarks:

- United States Trademark Registration No. 4474538, LOLO, registered on January 28, 2014; and
- United States Trademark Registration No. 5482327, LOLO GIFTS, registered on May 29, 2018.

##### **4.2. The Respondent**

The Respondent is a company incorporated in Luxembourg. The Respondent maintains a portfolio of domain names for purchase, including domain names comprising dictionary terms.

##### **4.3. The disputed domain name**

The disputed domain name lists a creation date of December 14, 1995. The Respondent purchased the disputed domain name together with another four-letter domain name from a third party ("Registrant B") in February 2019. It appears that Registrant B had acquired the disputed domain name from a prior registrant ("Registrant A") earlier in February 2019. The Whois record was updated to list the Respondent as the registrant of the disputed domain name from February 22, 2019.

Historic screen captures submitted by the Complainant indicate that between 2013 and early 2019, the disputed domain name resolved to a parking page provided by GoDaddy.com. At the time of submission of the Complaint, the disputed domain name redirects to "www.brandforce.com/domain/Lolo.com", which states: "Lolo.com This premium domain name is available for purchase!" The web page displays a contact form inviting Internet users to submit inquiries and to make an offer for purchase of the disputed domain name. Below the form, a number of "Premium Domains" are listed with links to "Make an offer".

##### **4.4. The Complainant's pre-Complaint attempts to purchase the disputed domain name**

On January 12, 2019, an officer of the Complainant contacted Registrant A, offering to purchase the disputed domain name for USD 1,000, which was rejected by Registrant A. On June 10, 2020, the Complainant sent a further communication to Registrant A (the disputed domain name having since been sold to Registrant B, and then later to the Respondent), offering to purchase the disputed domain name for USD 5,000. On June 11, 2020, Registrant A replied stating: "You just missed 4 zeros". The Complainant and Registrant A engaged in further communications between June and August 2020, which ultimately did not lead to any form of agreement.

## 5. Parties' Contentions

### A. Complainant

The Complainant asserts rights in the trademarks LOLO and LOLO GIFTS. The Complainant submits that the disputed domain name is identical to its LOLO trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant notes that the disputed domain name redirects to the web page "www.brandforce.com/domain/Lolo.com", where the disputed domain name is listed for sale alongside other domain names that are listed for sale via the BrandForce.com website. The Complainant asserts that the disputed domain name has simply been parked since 2013.

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The Complainant argues that the Policy requires a good-faith effort to avoid registering and using domain names that correspond to trademarks, particularly in cases where the Respondent is a professional domain name reseller. The Complainant observes that the Respondent acquired the disputed domain name after it had started using and acquired trademark registrations for its LOLO mark. The Complainant further notes that the disputed domain name was purchased by the Respondent from Registrant B in mid-February 2019, prior to which the disputed domain name had in turn been purchased from Registrant A earlier in February 2019.<sup>1</sup> The Complainant refers to its prior correspondence with Registrant A, dating from January 2019, and infers from those communications with Registrant A that the Respondent knew or should have known of the Complainant's interest in purchasing the disputed domain name, as well as the Complainant's rights in the LOLO trademark, at the time that the Respondent acquired the disputed domain name. The Complainant argues that the Respondent has used the disputed domain name to display advertising links for the sale of domain names through the BrandForce.com website, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The Complainant refers to prior UDRP decisions involving the Respondent, and asserts that the Respondent has engaged in a pattern of bad faith domain name registration. The Complainant submits that the Respondent acquired the disputed domain name primarily for purposes of selling the disputed domain name for an amount in excess of its documented out-of-pocket costs, in bad faith as per paragraph 4(b)(i) of the Policy.

The Complainant requests transfer of the disputed domain name.

### B. Respondent

The Respondent does not dispute the validity of the Complainant's LOLO trademarks registered before the United States Patent and Trademark Office.

The Respondent submits that it has rights and legitimate interests in respect of the disputed domain name. The Respondent notes the composition of the disputed domain name, consisting of consonant-vowel-consonant-vowel, under the generic Top-Level Domain ("gTLD") ".com", or alternatively "CVCV.com", and asserts that it registered the disputed domain name as part of a long-term investment strategy. The Respondent notes in this regard that there are only 120 possible "CVCV.com" domain names, a number of which are already held by the Respondent, and that they are inherently valuable as rare, four-letter domain names. The Respondent further argues that it did not know of the Complainant when registering the disputed domain name, and as the Respondent had no direct contact with Registrant A there is no reason therefore to suspect that the Respondent registered the disputed domain name for purposes of reselling it to the Complainant or otherwise interfering with the Complainant's business. The Respondent also notes that per the evidence submitted by the Complainant, it does not appear that the Complainant ever explicitly disclosed its identity or trademark rights in communications with Registrant A.

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<sup>1</sup> Subsequent to the filing of the first amended Complaint, the Respondent's authorized representative disclosed correspondence and documentation evidencing the prior ownership of the disputed domain name.

The Respondent denies having registered the disputed domain name in bad faith. The Respondent submits that any duty on the part of the Respondent to investigate is relevant only if an investigation would have clearly shown the Complainant's trademark, and that the Complainant's trademark and reputation therein are not of a nature such that registration of a domain name corresponding to the Complainant's trademark would be infringing *per se*. The Respondent notes that the term "Lolo" is a dictionary term with meanings in Spanish and Tagalog. The Respondent asserts that the Complainant has failed to establish that the Respondent acted with any knowledge of the Complainant or the Complainant's rights in the LOLO trademark, and that there is no factual basis to impute any knowledge that Registrant A may have had regarding the Complainant's identity (if any) to the Respondent, and that Registrant A's request for USD 50 million for the domain name was an attempt at humor. The Respondent further argues that there is no evidence that it registered the disputed domain name in order to prevent the Complainant from reflecting its trademark in a corresponding domain name, as contemplated by paragraph 4(b)(ii) of the Policy.

The Respondent also denies having used the disputed domain name in bad faith. Insofar as advertising for the sale of domain names via the BrandForce.com website is concerned, the Respondent notes that the BrandForce.com website is affiliated with the Respondent, and that the listing of other domain names subject to the Respondent's control does not conflict with the Complainant's trademark rights. The Respondent states that the primary purpose of the landing page to which the disputed domain name redirects is clear, namely, it identifies BrandForce and states that the disputed domain name is for sale.

The Respondent submits that the present Complaint was brought subsequent to repeated failed attempts to purchase the disputed domain name. The Respondent states that it repeatedly put the Complainant on notice that its allegations were incorrect and legally insufficient, that the Complainant has ignored the evidence put forward by the Respondent and has failed to investigate, and submits that the Complainant should have realized that its claim could not succeed.

The Respondent requests that the Complaint be denied with a finding of Reverse Domain Name Hijacking ("RDNH").

## **6. Discussion and Findings**

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

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

The Panel finds that the Complainant has established rights in the LOLO trademark, the registration details of which are provided in the factual background section above.

The disputed domain name comprises the Complainant's LOLO trademark in its entirety, without addition or alteration, under the gTLD ".com".

The Panel finds that the disputed domain name is identical to the Complainant's LOLO trademark and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Noting the Panel's findings under the third element, as set out below, the Panel does not consider it necessary to enter a finding under paragraph 4(a)(ii) of the Policy.

## C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances, which 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 the respondent has registered or the respondent has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 your website or location.

Prior UDRP panels have acknowledged that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not *per se* illegitimate under the UDRP; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. Circumstances indicating that a domain name was registered for the bad-faith purpose of selling it to a trademark owner can be highly fact-specific; the nature of the domain name (e.g., whether a typo of a famous mark, a domain name wholly incorporating the relevant mark plus a geographic term or one related to the complainant's area of commercial activity, or a pure dictionary term) and the distinctiveness of trademark at issue, among other factors, are relevant to this inquiry; see [WIPO Overview 3.0](#), section 3.1.1.

The Respondent has come forward with evidence that its business activities include engaging in the sale and purchase of domain names. Included in the Respondent's portfolio are domain names comprising dictionary terms, as well as three- and four-letter domain names, a number of which follow the same "CVCV.com" format as the disputed domain name. The record before the Panel further indicates that the Respondent purchased the disputed domain name, together with another four-letter domain name, in a single transaction in mid-February 2019. This is consistent with a review of the historic Whois records for the disputed domain name, as submitted in evidence by the Complainant, which show that in February 2019, the disputed domain name was registered to a registrant based in Panama, and on February 22, 2019, the Whois record was updated to list "Xedoc Holding, SA" as the registrant of the disputed domain name. Shortly after that date, the pointing of the disputed domain name appears to have been updated from a GoDaddy.com parking page to redirection of the disputed domain name to the BrandForce.com website where the disputed domain name was listed for sale.

The Complainant argues that the Respondent knew or should have known of the Complainant's rights in the LOLO trademark when registering the disputed domain name, and that as an entity that engages in the sale and purchase of domain names, the Respondent was under a duty to search for corresponding trademarks when registering the disputed domain name. The Panel notes in this regard that while the Complainant

asserts that its mark is well known, the Complainant has provided almost no evidence of the degree of actual public recognition of its mark. Moreover, trademark searches for “lolo” via the USPTO website or WIPO’s Global Brand Database would have returned a substantial number of results for trademark registrations comprising the verbal elements “lolo”, registered by independent entities from a wide range of jurisdictions. The Panel finds that there is insufficient evidence to conclude that Registrant A, to whom the Complainant’s purchase inquiries were directed in 2019, and later in 2020, was at any time acting as an agent for the Respondent (as the Complainant suggests), or that the Respondent had knowledge of the Complainant’s attempts to purchase the disputed domain name from Registrant A. Indeed, the Complainant’s offers were submitted to Registrant A via a personal “Gmail.com” email address, and did not make clear any connection between the sender as an individual and the Complainant. The Panel further finds that the Respondent’s use of the disputed domain name to redirect to the BrandForce.com website, where the disputed domain name has been listed for sale, does not give rise to any inference that the Respondent has sought to target the Complainant through the disputed domain name. In the circumstances, the Panel considers there to be insufficient evidence to conclude that the Respondent registered the disputed domain name with direct knowledge of the Complainant or intent to target the Complainant’s LOLO trademark. Rather, the Panel finds the Respondent’s explanation that it acquired the disputed domain name as a *bona fide* purchaser of a four-letter, “CVCV.com”-format domain name as an investment for its inherent resale value to be credible.

In light of the above, the Panel finds that the Complainant has failed to establish that the Respondent acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain name, in bad faith pursuant to paragraph 4(a)(i) of the Policy.

Notwithstanding that the Respondent has been named as a respondent in prior UDRP decisions where domain names have been ordered to be transferred to the respective complainants, in the present case in view of the lack of evidence that the Respondent sought to target the Complainant’s LOLO trademark, the Panel is unable to draw the conclusion that the Respondent acquired the disputed domain name in order to prevent the Complainant from reflecting its LOLO trademark in a corresponding domain name, in bad faith pursuant to paragraph 4(b)(ii) of the Policy.

Nor is there evidence to suggest that the Respondent has sought to use the disputed domain name in a manner designed to disrupt the Complainant’s business, as contemplated by paragraph 4(b)(iii) of the Policy.

The Complainant also points to the presence of sponsored links on the web page to which the disputed domain name previously resolved, and the listing of other domain names on the BrandForce.com web page to which the disputed domain name currently redirects, as amounting to use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. As a preliminary point, any sponsored advertising appearing on web pages associated with the disputed domain name dating from before February 2019 does not appear to have been subject to the Respondent’s control, and therefore cannot form a basis for a finding of bad faith use of the disputed domain name. Moreover, in light of the general lack of evidence of targeting of the Complainant’s trademark, as set out in detail above, the Panel finds that the Respondent’s current use of the disputed domain name to redirect to the BrandForce.com website listing the disputed domain name for sale does not amount to an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s trademark mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website, in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant has not produced any further evidence of circumstances that would support a finding that the disputed domain name was registered or is being used in bad faith.

For reasons set out above, the Panel finds that the Complainant has failed to demonstrate, on the balance of probabilities, that the disputed domain name was registered and is being used in bad faith. The Complainant has not fulfilled the requirements of paragraph 4(a)(iii) of the Policy.

#### **D. Reverse Domain Name Hijacking**

Paragraph 1 of the Rules defines RDNH as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

As noted above, the Respondent asserts that the present Complaint was brought subsequent to repeated failed attempts to purchase the disputed domain name, that during the course of these proceedings the Respondent repeatedly put the Complainant on notice that its allegations were incorrect and legally insufficient, that the Complainant has ignored the evidence put forward by the Respondent and has failed to investigate, and that the Complainant should have realized that its claim could not succeed.

The Panel notes that the Complainant engaged with Registrant A in early 2019 in an attempt to purchase the disputed domain name. Over 18 months later, the Complainant continued communications with Registrant A, in an ongoing attempt to purchase the disputed domain name. While the Complainant may have had reasonable basis to infer that Registrant A continued to be the registrant of the disputed domain name in mid-2020, prior to submission of the Complaint the Complainant obtained a compiled Whois report setting out the historic ownership of the disputed domain name, in which a change in registrant and registrar was documented that coincided with a change in use of the disputed domain name from which the Complainant could reasonably infer a break in the chain of registration. Having unsuccessfully attempted to purchase the disputed domain name from Registrant A, the Complainant proceeded in late 2022 to bring a UDRP Complaint against the Respondent based on the notion that Registrant A and the Respondent were connected, and that the Respondent therefore had knowledge of the Complainant and its prior attempts to purchase the disputed domain name, without a reasonable factual or evidentiary basis for doing so. While weakness in a complainant’s case does not alone provide a basis for a finding of RDNH, the Panel finds that the Complainant’s case was brought in a manner that either knowingly or at least negligently misrepresented the factual matrix surrounding the ownership of the disputed domain name in the Complainant’s attempt to prove bad faith, which in this Panel’s view amounts to an abuse of the administrative process.

In light of the above, the Panel finds that the Complaint was brought in bad faith, and that the Complainant has engaged in RDNH.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Jane Seager/*

**Jane Seager**  
Presiding Panelist

*/John Swinson/*

**John Swinson**  
Panelist

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**  
Panelist

Date: January 23, 2023