

ADMINISTRATIVE PANEL DECISION

Lomar Shipping Limited, Lomar Corporation Limited v.
Eladio Escalante, Lomarshipping
Case No. D2022-4564

1. The Parties

The Complainants are Lomar Shipping Limited, United Kingdom, and Lomar Corporation Limited, Bermuda, represented by Wiggin LLP, United Kingdom.

The Respondent is Eladio Escalante, Lomarshipping, Colombia.

2. The Domain Name and Registrar

The disputed domain name <lomarshipping.net> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Contact Privacy Inc. Customer 7151571251). The Center sent an email communication to the Complainants on December 2, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on December 7, 2022.

The Center sent an email communication to the Parties, in English and Spanish, on December 2, 2022, stating that although the Complaint had been filed in English the Registrar confirmed the Language of the Registration Agreement to be Spanish. On December 5, 2022, the Complainants requested English to be the language of the proceeding. The Respondent did not comment on this matter.

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 December 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 4, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on January 16, 2023. 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 Lomar Group, a leading ship owner and operator doing business globally in the cargo sector in the last forty years. The Complainant "Lomar Corporation Limited" is the parent company of the Lomar Group where "Lomar Shipping Limited" is part of its portfolio.

The Complainant "Lomar Shipping Limited" owns a number of trademarks registrations in different jurisdictions. As such, International trademark for LOMAR with registration number 1582521 and registration date August 19, 2020.

Besides, the Complainants submit to have unregistered trademark rights in LOMAR and LOMAR SHIPPING trademarks for shipping related services. The Complainants are the owners of LOMAR common law unregistered rights already admitted in a previous UDRP decision, namely, *Lomar Shipping Limited, Lomar Corporation Limited v. Lomarsh Lomar, Lomar Ship*, WIPO Case No. [D2020-0150](#). Likewise, "lomar shipping" is a term that matches with the Complainants' corporate name, which is well recognized in the sector and largely associated with the Complainants' services for more than forty years. Accordingly, the Complainants have common law unregistered rights for the purposes of the Policy.

The official website of the Complainants is located at the domain name <lomarshipping.com>, registered on May 9, 1997.

The disputed domain name was registered on May 17, 2022 and does not direct to an active webpage but hosts email addresses used for purposes of sending fraudulent emails purportedly sent on the Complainants' behalf.

5. Parties' Contentions

A. Complainants

The Complainants submit to be the owner of LOMAR registered mark and LOMAR and LOMAR SHIPPING unregistered common law trademark rights, generated as result of the extensive trade over many years. The Complainants assert that the disputed domain name incorporates its trademarks in their entirety. Indeed, the Complainants point out that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a complainant's trademark.

The generic top-level domain ("gTLD"), in this case, ".net", is to be ignored when assessing the identity or similarity of a trademark and a domain name. Accordingly, the disputed domain name, <lomarshipping.net>, is identical or confusingly similar to the Complainants' trademarks.

Regarding the second requirement, the Complainants highlight the lack of relationship with the Respondent and the lack of consent or authorization to register the disputed domain name.

Further, the Complainants have carried out a search of the TMView database in reference to the Respondent and revealed no results. Thus, the Respondent does not appear to have any trademark rights for “lomar” or “lomar shipping”.

The disputed domain name does not direct to any active website and the email use clearly impersonates the Complainants and amount to fraudulent “phishing” scam emails as it is described below. Accordingly, the Complainants find that the Respondent is not using and has never used the disputed domain name in connection with a *bona fide* offering of goods/services. Therefore, the Complainants submit that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Regarding the third requirement, the Complainants allege that LOMAR is an arbitrary and highly distinctive word which has no meaning in the English language, nor does it have any specific meaning in the shipping industry. Accordingly, the incorporation of LOMAR and the word “shipping” in the absence of knowledge of the Complainants rights and business is highly improbable.

The Respondent has intentionally tried to create the impression that it is or is connected to the Complainants for purposes of undertaking fraudulent activities. The disputed domain name is not redirecting to an active website but there is a use for the purposes of sending fraudulent emails purportedly sent on the Complainants’ behalf.

In such practice, the Complainants show how the Respondent included reference to Complainants’ trademarks, logo, corporate address or the name, position and contact addresses of the Chief Operating Officer, the Chartering Director, the Technical Director or the General Counsel of the Complainants in an attempt to reinforce the impression that the emails were associated with or otherwise under the control of the Complainants, when they are not.

While the majority of emails seems to be sent from an employee and/or representative of the Complainants supposedly based in Venezuela, the Complainants highlight that there is no such person employed by the Complainants and the Complainants do not have an office in Venezuela.

As a result, the Complainants affirms that the Respondent registered and has used the disputed domain name for the purposes of attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainants’ mark which constitutes bad faith.

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 Complainants must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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(f) 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. Consolidation of the Complainants – Language of the proceeding

As set out in [WIPO Overview 3.0](#), section 4.11.1: In assessing whether a complaint file by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Complainants are part of the Lomar Group where “Lomar Corporation Limited” acts as the parent Company of the Complainant “Lomar Shipping Limited” and a bunch of different corporations. Additionally, the Complainants have established common registered and unregistered trademark rights. Further, the Complainants allege that the Respondent’s conduct implied a phishing scheme. Accordingly, upon the above requirements, the Panel finds that consolidation of the Complainants is procedurally appropriate and equitable.

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances.

The Complainants submitted its Complaint and amended Complaint in English. According to the information received from the Registrar, the language of the registration agreement for the disputed domain name is Spanish. The Complainants requested that the language of the proceeding should be English.

The Complainants contend that the Complainant Lomar Shipping Limited is a company registered in England and Wales and the Respondent is familiar with the English language because fraudulent emails associated with the disputed domain name were sent in English.

The Panel accepts the Complainants submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Spanish and English of the language of the proceeding as well as notified the Respondent in Spanish and English of the Complaint and amended Complaint. The Respondent chose not to comment on the language of the proceeding nor did the Respondent choose to file a Response. Moreover, fraudulent emails impersonating the Complainants were sent in English.

Therefore, having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainants to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights.

The Complainants have demonstrated to be the owner of several registered trademarks rights for LOMAR and unregistered common law trademark rights for LOMAR and LOMAR SHIPPING for the purposes of the UDRP. Accordingly, the Complainants’ ownership of its trademarks satisfies the threshold requirement of having trademark rights for purposes of the first element under paragraph 4(a) of the Policy.

The test in this first requirement consists of a comparison between the disputed domain name and the marks. Further, in the comparison test the gTLD is generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

The Panel finds obvious the reproduction of the Complainants’ marks in the disputed domain name and therefore the disputed domain name is confusingly similar to the Complainants’ marks.

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

C. Rights or Legitimate Interests

The Panel looks at [WIPO Overview 3.0](#), section 2.1: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant 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 in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed 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) that 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.

Upon an examination of the records, the Panel finds that the reproduction of the Complainants’ trademark in the disputed domain name suggests an implied affiliation between the Respondent and the Complainants while it does not exist. The email sent from the disputed domain name states that the Respondent represents the Complainants in Venezuela. Nonetheless, the Complainants emphatically deny to have given the Respondent authorization to use the Complainants’ trademark in a corresponding domain name and neither the Parties have had any previous relationship.

There is no evidence in the records of any trademark registration in favor to the Respondent in relation to “lomar” or “lomar shipping”.

Seemingly, the disputed domain name was involved in a phishing scam emails by a non-authorized representative for Venezuela of the Complainants. Indeed, in such attempts, the name and position of the Complainants’ staff and logos were displayed to reinforce such impersonation.

Under these circumstances and the silence of the Respondent the Panel finds that the Respondent has targeted the Complainants with no right or legitimate interests in doing so.

Accordingly, the second requirement under paragraph 4(a)(ii) of the Policy is met to the satisfaction of the Panel.

D. Registered and Used in Bad Faith

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark, the Panel now looks at the third requirement of the test.

Based on the evidence, the Respondent knew or should have known about the Complainants, its business, and trademarks. While the reproduction of the Complainants’ trademarks is apparent, the subsequent use of the disputed domain name in an attempt to impersonate the Complainants reinforces the Panel’s conclusion that the Respondent had knowledge of the Complainants and its trademarks when registering the disputed domain name. That is to say, the Respondent targeted the Complainants and its trademarks. Therefore, the

Respondent knew or should have known about the Complainants at the moment of the registration of the disputed domain name because the Panel cannot find any other reasonable explanation to the registration of the disputed domain name.

The Panel also notes that there is no active website, and the use of the disputed domain name is focused on a fraudulent email scheme. Such use is within the Policy. See *KPMG International Cooperative v. Veena Suma*, WIPO Case No. [D2022-3651](#). Arguably the emails were sent by the Respondent to impersonate the Complainants for commercial gain by creating a likelihood of confusion with the Complainants. Such practice matches with paragraph 4(b)(iv) of the Policy where: “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.”

The Panel also looks at [WIPO Overview 3.0](#), section 3.1.4 “...given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith.”

Therefore, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(iii) 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 <lomarshipping.net> be transferred to the Complainant Lomar Shipping Limited.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: January 30, 2023