

ADMINISTRATIVE PANEL DECISION

CMPC Brasil v. Ha Nguyen

Case No. D2022-4984

1. The Parties

The Complainant is CMPC Brasil, Brazil, represented by Silveiro Advogados, Brazil.

The Respondent is Ha Nguyen, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <cmpcbrasil.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2022. On December 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 15, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to information in the Complaint, the Complainant was founded in 1920 and is a large manufacturer of pulp and paper in Chile. The Complainant's group has 44 industrial plants in 8 countries in the Latin America and more than 17,000 employees operating the business areas of pulp, biopackaging and tissue. In 2009, the Complainant started its operations in Brazil, when it acquired the industrial unit in Guaíba.

The Complainant has registered numerous trademarks consisting of CMPC including the Brazilian Trade mark CMPC (figurative) No. 908675909, in class 16, registered on September 5, 2017. The Complainant is the owner of many domain names including the CMPC trademark, for instance <cmpcbrasil.com.br>.

The disputed domain name was registered on June 23, 2021, and it resolved to a website with explicit adult content. At the date of this Decision, the disputed domain name resolves to parking page with pay-per-click links. The Complainant has provided evidence that the disputed domain name was offered for sale on a third-party platform for BRL 3,120.12.

5. Parties' Contentions

A. Complainant

The Complainant argues that it holds several trademark and domain name registrations incorporating the trademark CMPC all around the world, having the exclusive right to use the trademark on or in connection with multiple goods and services, in multiple jurisdictions. The disputed domain name incorporates the Complainant's trademark CMPC together with the geographical term "brasil". Since the term "cmpcbrasil" is directly related to the Complainant's activities and clients, the disputed domain name is likely to mislead Internet users.

As regards the second element, the Complainant argues that it has not licensed or otherwise permitted the Respondent to use any of its trademarks. There is no connection between the disputed domain name and the name or business of the Respondent, nor does the Respondent have any relationship with the Complainant. The disputed domain name resolved to a website with explicit nude content, in a clear attempt to damage the Complainant's reputation and image.

With respect to the third element, the Complainant argues that the disposal of explicit pornography, which is linked to a pornographic website at the disputed domain name, disrupts the Complainant's business, and tarnishes its trademark. The Respondent acquired the disputed domain name merely to take unfair advantage of the Complainant's trademark, and in order to sell it for a price in excess of out-of-pocket expenses related to the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant email and postal addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondents' failure to file any Response. While the Respondent's failure to file a

Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the CMPC trademarks. The trademark CMPC is reproduced in its entirety in the disputed domain name. The addition of the geographical term "brasil", does not prevent a finding of confusing similarity with the Complainant's trademarks. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top-level-Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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* case demonstrating 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](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademarks CMPC and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain name was used to redirect to a website with explicit pornographic content. It therefore appears from the evidence in the case file as more likely than not that the Respondent has registered and used the disputed domain name in an attempt to attract Internet users to it and to offer them pornographic content. In the Panel's view, such conduct does not appear as legitimate and does not support a finding that the Respondent has rights or legitimate interests in the disputed domain name.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Further, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name was registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain names' registration and use in bad faith.

The disputed domain name was registered after the Complainant had obtained registration of its CMPC trademarks and used them in commerce. The disputed domain name is confusingly similar to the CMPC trademark of the Complainant. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademarks and that it targeted those trademarks.

As regards the use of the disputed domain name, from the evidence put forward by the Complainant and not rebutted by the Respondent, it results that the disputed domain name was used to redirect to a website with explicit adult content. It therefore appears as more likely than not that the Respondent has registered and used the disputed domain name in an attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the CMPC trademark as to the affiliation or endorsement of the disputed domain name, and then to offer them pornographic content.

The Panel further notes that according to the unrebutted evidence put forward by the Complainant, the disputed domain name was put for sale at a minimum price of BRL 3,120.12. This is an additional element that sustains in the Panel's view bad faith registration and use of the disputed domain name, primarily for the purpose of selling it to the Complainant under paragraph 4(b)(i) of the Policy.

Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. Also, the Respondent seems to have provided false physical address details in the Whois. This is an indicator of bad faith (section 3.2.1. of the [WIPO Overview 3.0](#)).

It appears that the disputed domain name resolves to a parking page with PPC links which is under the circumstances of this case is further evidence of bad faith registration and use.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and is being used 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, <cmpcbrasil.com>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: March 1, 2023