

ADMINISTRATIVE PANEL DECISION

Mercado Libre, Inc., Mercado Libre, S.R.L., Mercado Libre Chile, Ltda,
Mercado Libre, S. de R. L. C.V., Mercado Libre Venezuela, S.R.L.,
Ebazar.com.br, Ltda., Tech Fund, S.R.L. v. Carlos Marques
Case No. D2022-4994

1. The Parties

The Complainants are Mercado Libre, Inc., Argentina, Mercado Libre, S.R.L., Argentina, Mercado Libre Chile, Ltda, Chile, Mercado Libre, S. de R. L. C.V., Mexico, Mercado Libre Venezuela, S.R.L., Venezuela (Bolivarian Republic of), Ebazar.com.br, Ltda., Brazil, and Tech Fund, S.R.L., Uruguay¹, represented by Marval O'Farrell & Mairal, Argentina.

The Respondent is Carlos Marques, Portugal.

2. The Domain Name and Registrar

The disputed domain name <mercadolivre.tv> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 27, 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 28, 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 December 28, 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 December 28, 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 This action has been consolidated to consider the claims of each of these Complainants based on, among other things, their common interest in the dispute. See Section 6.A. below.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent's default on January 25, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 30, 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.

On the same day (January 30, 2023) the Respondent sent an informal email to the Center asking - in the Portuguese language - to send messages in the Portuguese language and stating that "we do neither know to speak nor to write in English".

4. Factual Background

According to the Complainants' undisputed allegations, the Complainants operate the largest e-commerce ecosystem in Latin America, chosen by more than 320 million users to advertise, sell, buy, pay for and send their goods and services over the Internet. Said platform started its activities more than 20 years ago and is nowadays the most visited e-commerce site in Latin America.

The disputed domain name was registered on April 4, 2020. According to the Registrar Verification, the language of the registration agreement was English.

It further results from the Complainants' undisputed evidence that several Complainants own a large portfolio of registered figurative trademarks containing the verbal elements MERCADO LIBRE or MERCADO LIVRE, in particular:

- European Union Trademark Registration for MERCADO LIVRE, no. 008987547, registered on September 14, 2010, for services in classes 35 and 42
- European Union Trademark Registration for MERCADO LIBRE, no. 008987562, registered on September 14, 2010, for services in classes 35 and 42.

The Portuguese terms MERCADO LIVRE and the Spanish terms MERCADO LIBRE respectively can be translated as "free market" in English language. The Panel further notes that the Complainants (or their affiliates) operate the domain name <mercadolive.pt>, which redirects to <mercadolibre.com>, as well as <mercadolive.com>, which redirects to <mercadolive.com.br>.

It further results from the undisputed evidence provided by the Complainant that the disputed domain name resolves to an ecommerce platform similar to the Complainants' platform and displaying the term "MERCADOLIVRE" ("Compra e venda online") mark on the top left of the landing page.

5. Parties' Contentions

A. Complainant

(1) The Complainants have brought a single consolidated Complaint against the Respondent and have requested that consolidation be granted on the following grounds: (i) the companies have a common grievance against the Respondent because they share a common legal interest in the trademark rights on which this Complaint is based as a result of their affiliation to the same corporate group; (ii) it would be procedurally efficient to permit the consolidation since otherwise each of the companies would be required to file almost identical complaints.

(2) The Complainants further contend that the disputed domain name is confusingly similar to the Complainants' marks MERCADO LIBRE and MERCADO LIVRE since it reproduces said trademarks without any other distinctive elements.

(3) In addition, the Complainants submit that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainants have not licensed or otherwise permitted the Respondent to use the trademarks MERCADO LIBRE and/or MERCADO LIVRE, or to apply for use of any domain name incorporating, totally or partially, such trademark. Furthermore, the Complainants have no legal and/or business relationship with the Respondent which would give rise to any license, permission or authorization for the Respondent to use the disputed domain name. To the best of the Complainants' knowledge, there is neither evidence that the Respondent has been commonly known by the disputed domain name nor that the Respondent has made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

(4) Finally, the Complainants contend that the Respondent registered and uses the disputed domain name in bad faith. In their view, it is almost impossible that the Respondent was not aware of the Complainants and their MERCADO LIBRE / MERCADO LIVRE trademarks when it registered the disputed domain name. Such a registration should be considered a bad faith registration, even more considering that the respondent is from Portugal which evidences that he understands the Portuguese language and, therefore, the meaning of the trademark MERCADO LIVRE. Finally, the Respondent is using the domain name as an ecommerce platform similar to the one used by the Complainants for the conduction of their business. By doing this, the Respondent not only attracts Internet users to its Webpage by creating a confusion among consumer with the Complainants' mark, but also lead consumers to believe that the Respondent is somehow associated with the Complainants.

B. Respondent

The Respondent did not lodge a formal Response to the Complainant's contentions but limited himself to the above-mentioned informal email sent on January 30, 2023.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Furthermore, paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

Before addressing these three elements, the Panel will briefly focus on two procedural issues:

A. Procedural issues: Language and Consolidation

(1) Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise. In the case at hand, said language is English.

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. The Panel notes that the Respondent informally asked the Center to correspond in Portuguese language, since he allegedly does not speak or write English. However, in the absence of any further explanations by the Respondent, the Panel does not find these allegations, sent after the Panel has been appointed, credible, in particular, taking into account that the Respondent was able to duly conclude the registration agreement in English language. Against this background, and in the interest of fairness and to preserve continuity in the case (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)" at sections 4.5.1 and 4.5.2), the Panel does not find it reasonable to choose another language than that of the registration agreement.

(2) Secondly, a consolidated complaint brought by multiple complainants may be accepted where the criteria described below are *prima facie* met. Furthermore, it is up to the Panel to issue a final determination on consolidation, which may apply its discretion (see [WIPO Overview 3.0](#), section 4.11).

Furthermore, where a complaint is brought by multiple complainants 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 ([WIPO Overview 3.0](#), section 4.11.2).

In the case at hand, the Panel joins the Complainants' view – which has been undisputed – following which the Complainants have a common grievance against the Respondent because they share a common legal interest in the trademark rights on which this Complaint is based as a result of their affiliation with the same corporate group. All Complainants own registrations for the trademark MERCADO LIBRE and/or MERCADO LIVRE. Against this background, the Panel does not see reasons why a consolidated complaint brought by multiple complainants against a single respondent would not be fair and equitable. Moreover, the Respondent in the case at hand failed to come forward with any allegations or evidence to object the consolidation.

For reasons of procedural efficiency, fairness and equity the Panel therefore orders (i) the language of the proceedings to be English and (ii) the consolidated complaint to be accepted and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

B. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainants must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to said mark.

Undisputedly, several Complainants own a large portfolio of registered figurative trademarks containing the verbal elements MERCADO LIBRE or MERCADO LIVRE covering also Portugal, in particular, European Union Trademark Registrations MERCADO LIVRE (no. 008987547, registered on September 14, 2010) and MERCADO LIBRE (no. 008987562, registered on September 14, 2010).

The disputed domain name consists of the verbal elements MERCADO LIVRE of the latter trademark in its entirety. It is noted in the [WIPO Overview 3.0](#), section 1.10, that Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. Such design elements may be taken into account in limited circumstances e.g., when the domain name comprises a spelled-out form of the relevant design element. On this basis, the Panel holds that the above trademark registration for MERCADO LIVRE with a design element satisfies the requirement that the complainant show "rights in a mark" for further assessment as to confusing similarity.

Furthermore, it is acknowledged by UDRP panels, that the applicable Top-Level Domain (“TLD”) may be disregarded in determining identity or confusing similarity, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is identical or confusingly similar to the trademark MERCADO LIVRE pursuant to the Policy, paragraph 4(a)(i).

C Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainants must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain name.

In the Panel’s view, based on the undisputed allegations stated above, the Complainants have made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name:

According to the Complaint, which has remained unchallenged, the Complainants have not authorized the Respondent’s use of the trademark MERCADO LIVRE, *e.g.*, by registering the disputed domain name comprising said mark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, it results from the Complainant’s undisputed and documented allegations that the disputed domain name resolves to a website that resolves to an ecommerce platform, similar to the Complainants’ platform and displaying the Complainants’ MERCADO LIVRE mark and the words “Compra e venda online” on the top left of the landing page. The Panel assesses this use as being commercial, so that it cannot be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy. Furthermore, such use as described above cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that a registrant has no legitimate interest in a domain name that is highly similar to a third party’s mark, where the composition of the domain name is associated to the business of the trademark holder, and that is being used to address consumers in the same business as the trademark holder operates (see [WIPO Overview 3.0](#), section 2.5).

Finally, previous UDRP panels have found that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainants have therefore satisfied paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainants must thirdly establish that the disputed domain name has been 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 name’s registration and use in bad faith.

One of these circumstances is that the respondent by using the disputed domain name, 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. It results from the Complainant's documented and undisputed allegations that the disputed domain name is connected to a website that resolves to an ecommerce platform similar to the Complainants' platform and displaying the Complainants' MERCADO LIVRE-mark with the words "Compra e venda online" on the top left of the landing page. For the Panel, it is therefore likely that the Respondent positively knew the Complainants' MERCADO LIVRE/MERCADO LIBRE marks. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainants' trademarks when it registered the disputed domain name, having registered it due to its similarity with the Complainants' MERCADO LIVRE/MERCADO LIBRE marks and domain names. Registration of the disputed domain name which contains a third party's mark, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are:

- (i) the verbal element of trademark MERCADO LIVRE is fully and identically incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, said mark existed for roughly 20 years in South America and 10 years in the European Union, including Portugal, where the Respondent is resident according to the Registrar Verification response;
- (ii) the Respondent not providing any formal response to the Complainants' contentions with conceivable explanation of his behaviour so that no legitimate use of the disputed domain name by the Respondent is actually conceivable for the Panel;
- (iii) his failure to provide any evidence of actual or contemplated good-faith use and;
- (iv) the fact that the details disclosed for the Respondent by the Registrar are incomplete, noting the courier's inability to deliver the Center's Written Notice.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 <mercadolive.tv> be transferred to the Complainants.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: February 13, 2023