

## **ADMINISTRATIVE PANEL DECISION**

Alvean Sugar Intermediação e Agenciamento Ltda., Alvean Sugar S.L.,  
Bilbao, Lancy (Geneva) Branch v. Moniker Privacy Services dba  
Whoisproxy.com / Jerome Fontana  
Case No. DCO2022-0034

### **1. The Parties**

The Complainants are Alvean Sugar Intermediação e Agenciamento Ltda., Brazil, and Alvean Sugar S.L., Bilbao, Lancy (Geneva) Branch, Switzerland, represented by Aoki, Ferreira, Mattioli & Yamashita, Brazil.

The Respondent is Moniker Privacy Services dba Whoisproxy.com, United States of America (“United States”) / Jerome Fontana, United States.

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

The disputed domain name <alvean.co> is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2022. On April 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 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 May 5, 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 May 10, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 7, 2022.

The Center appointed Fernando Triana as the sole panelist in this matter on June 13, 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**

Complainants are part of the same international group under Copersucar S.A., a recognized market leader in the trade of sugar and ethanol. Complainants are the owner of, or otherwise have rights in the trademark ALVEAN (Brazilian trademark registration No. 840834012, registered on January 30, 2018, in international classes 35 and 36), and the domain name <alvean.com>. Hereinafter, the Complainants will be referred to in the singular, "Complainant", noting their common rights and interests.

The disputed domain name was registered on February 21, 2022, and has been used for a fraudulent email scheme.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant is part of an international group of companies that are controlled by the parent company Copersucar, one of the global leaders in the trade of sugar and ethanol.

Complainant has offices in eight countries and operations in every continent.

The trademark ALVEAN was applied for registration in Brazil on June 26, 2014, in international classes 35 and 36 and registered on January 30, 2018.

The trademark ALVEAN was applied for registration in 45 countries and in the European Union and registered, among others, in Algeria, Argentina, Australia, Canada, Chile, China, Egypt, European Union, Georgia, Honduras, Hong Kong, China, India, Japan, Morocco, Nicaragua, Oman, Pakistan, Peru, Russian Federation, Saudi Arabia, Switzerland, Thailand, and Yemen.

The disputed domain name is identical to the trademark in which Complainant has rights.

Respondent is not affiliated or related to Complainant, nor has Respondent been licensed, permitted or otherwise authorized by Complainant to use the trademark ALVEAN.

Respondent clearly registered the disputed domain name and used it in bad faith. Respondent impersonated one of Complainant's employees for the purpose of soliciting payment of a fraudulent invoice from one of Complainant's clients. Thus, Respondent attempted to divert the funds owed to Complainant using an email address linked to the disputed domain name <alvean.co>. Respondent registered the disputed domain name with the purposeful intent to commit fraud.

##### **B. Respondent**

Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the 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".

Likewise, paragraph 10(d) of the Rules, provides that “the Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

The Panel placed special emphasis on the evidence filed to prove assertions, which has been thoroughly studied in order to determine its relevance and weight in reaching a decision. The statements that have been accompanied by evidence have been given more importance than the mere unsubstantiated assertions.

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

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

The findings, based on the evidentiary support submitted by Complainant, noting that Respondent did not reply to Complainant’s contentions, will be discussed as follows: first of all, the Panel will determine whether or not the disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights. Secondly, the Panel will verify if Respondent has any rights or legitimate interests in respect of the disputed domain name. Thirdly, the Panel will establish whether or not the disputed domain name has been registered and is being used in bad faith by Respondent.

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

Complainant contends to have rights in the registered trademark ALVEAN in several jurisdictions (see section 4 above).

##### a) Existence of a trademark or service mark in which Complainant has rights

Firstly, it is important to point out that paragraph 4(a) of the Policy requires the existence of a trademark or a service mark.

When a sign is registered as a trademark, it is surrounded by a presumption of sufficient distinctiveness, and the owner is granted with an exclusive right over the mark, which entitles him to prevent any third party from using the registered sign or any other sign confusingly similar to it.

In this case, Complainant has proved its rights in the trademark ALVEAN in Annexes 7, 8, 9, and 10 to the Complaint.

This information appears to be incontestable and conclusive evidence of Complainant’s rights in the cited trademarks and the exclusive right to use them in connection with the stated services. The registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.

Thus, Complainant established its rights in the trademark ALVEAN.

Therefore, the Panel concludes that Complainant has demonstrated rights in the trademark ALVEAN for purposes of paragraph 4(a)(i) of the Policy.

##### b) Identity or confusing similarity between the disputed domain name and Complainant’s trademark

Complainant alleges that the disputed domain name incorporates the trademark ALVEAN to create confusion.

On the first place, before establishing whether or not the disputed domain name is confusingly similar to Complainant's trademarks, the Panel wants to point out that the addition of a country code Top-Level Domain ("ccTLD"), here ".co", is generally disregarded when determining if the disputed domain name is identical or confusingly similar to the trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.11. Hence, the inclusion of the ".co" ccTLD, in the disputed domain name is not a factor in analyzing whether a disputed domain name is identical or confusingly similar to the mark in which Complainant asserts rights.

Furthermore, the Panel considers that the reproduction of the trademarks ALVEAN in its entirety in the disputed domain name is sufficient to establish that the disputed domain name is identical to the trademark.

In consequence, as per this reasoning, the Panel finds that, the disputed domain name is confusingly similar to Complainant's trademarks and thus, the requirement set forth in paragraph 4(a)(i) of the Policy is duly complied with.

## **B. Rights or Legitimate Interests**

### *a) Prima facie case*

Regarding the second element of paragraph 4(a) of the Policy, UDRP panels have unanimously found that requiring the complainant to prove the lack of rights or legitimate interests of the respondent in the disputed domain name is often an impossible task. It is not only proving a negative but also demands access to information that is mostly within the knowledge of the respondent<sup>1</sup>.

In *Julian Barnes v. Old Barn Studios Ltd.*, WIPO Case No. [D2001-0121](#), the Panel stated that:

"Is the Respondent required to adduce any such evidence, if the onus is on the Complainant to prove the three elements of paragraph 4 of the Policy? While the overall burden of proof is on the Complainant, this element involves the Complainant proving matters, which are peculiarly within the knowledge of the Respondent. It involves the Complainant in the often impossible task of proving a negative. In the Panel's view the correct approach is as follows: the Complainant makes the allegation and puts forward what he can in support (e.g. he has rights to the name, the Respondent has no rights to the name of which he is aware, he has not given any permission to the Respondent). Unless the allegation is manifestly misconceived, the Respondent has a case to answer and that is where paragraph 4(c) of the Policy comes in. If the Respondent then fails to demonstrate his rights or legitimate interests in respect of the Domain Name, the complaint succeeds under this head".

Therefore, Complainant is required to make a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Once this *prima facie* case is made, the burden of production shifts to Respondent, who must come forward with concrete evidence of its rights or legitimate interests<sup>2</sup>. If Respondent fails to do so, Complainant is deemed to have met the second element of paragraph 4(a) of the Policy.

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name because of the following: i) Respondent is not affiliated or related to Complainant, nor has Respondent been licensed, permitted or otherwise authorized by Complainant to use the trademark ALVEAN; ii) Respondent registration and use of the disputed domain name is fraudulent and to commit illegal acts; iii) Respondent

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<sup>1</sup> See *Arla Foods a.m.b.a v. Bel Arbor / Domain Admin, PrivacyProtect.org*, WIPO Case No. [D2012-0875](#); see also *F. Hoffmann-La Roche AG v. Bargin Register, Inc. - Client Services*, WIPO Case No. [D2012-0474](#).

<sup>2</sup> See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

impersonated a Complainant's employee to defraud a Complainant's client and steal a payment; and iv) Respondent is not commonly known by the disputed domain name.

The Panel accepts these assertions as a *prima facie* case made by Complainant that shifts the burden of production to Respondent.

b) Respondent's rights or legitimate interests in the disputed domain name

Paragraph 4(c) of the Policy includes a non-limited listing of circumstances that serve to prove Respondent's rights or legitimate interests in the disputed domain name:

(i) before any notice of the dispute, Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

(ii) Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or

(iii) Respondent is making 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.

Respondent did not file any Response, thus, failed to rebut Complainant's *prima facie* case, and to show his rights or legitimate interests in the disputed domain name. Hence, as per paragraph 14 of the Rules, the Panel shall draw such inferences therefrom as it considers appropriate:

- Respondent's use of the disputed domain name is not in connection with a *bona fide* offering of goods or services, as Respondent had a clear illegal intention, such as, defrauding a third party.
- There is no evidence within the file proving that Respondent is commonly known by the disputed domain name.
- There is no evidence within the file proving that Complainant licensed or otherwise permitted any use by Respondent of its trademark.
- There is no evidence within the file justifying the choice of the trademark ALVEAN to create the disputed domain name for a *bona fide* purpose. There is enough evidence within the file to prove the intention of using the trademark ALVEAN in bad faith.
- There is no evidence within the file proving Respondent's rights over the trademark ALVEAN anywhere in the world.
- There is no evidence within the file proving that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without the intention of commercial gain by misleadingly divert consumers.

The Panel thus concludes that Respondent lacks rights or legitimate interests in the disputed domain name.

Therefore, the second requirement of paragraph 4(a) of the Policy is met.

### **C. Registered and Used in Bad Faith**

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

(i) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his/her website or location or of a product or service on his/her website or location.

For the Panel, it is evident that Respondent knew of the existence of Complainant's trademarks when registering the disputed domain name, in particular, Respondent impersonated Complainant in an email scheme attempting to divert payment meant for Complainant to Respondent. Further, it is not a coincidence that the disputed domain name is identical to Complainant's widely-known trademark. Thus, the Panel finds that Respondent deliberately took Complainant's trademarks to register the disputed domain name, which constitutes bad faith.

Respondent registered the disputed domain name with clear and evident knowledge of the existence of the trademark and the ownership that Complainant has of it. Evidence of that is that Respondent impersonated Complainant in an email sent to Complainant's client the day after registering the disputed domain name (Annex 12 to the Complaint).

This is also clearly seen in the use of the trademarks in the false email, as well as in the forged invoice (Annex 13 to the Complaint). Thus, in addition to violating the rules of the Policy, Respondent engages in criminal activities.

Panels have consistently found that the mere registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. That conclusion applies in the present case. The selection of the trademark and the email sent to Complainant's client clearly denotes that the decision was not random. In fact, it is absolutely clear that Respondent not only had prior knowledge, but also intended to register the disputed domain name to take advantage of Complainant's trademark deceiving the Complainant's clients.

Complainant had the clear intention of attracting Complainant's clients to obtain a fraudulent commercial gain, requesting a payment that was not legally owed to him, making use, for this, of the commercial image of Complainant, which shows the confusion with Complainant's trademark. Making internet users believe that Complainant and Respondent are the same person, when this is not true.

Different panels have considered that impersonating a third party is *per se* an illegal activity and clear evidence of bad faith, since the illegal activity carried out by Respondent disrupts Complainant's commercial activity and affects its reputation<sup>3</sup>.

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<sup>3</sup> *Colombian Family Subsidy Fund - Colsubsidio c. Privacy Protect, LLC / Alvaro Martínez*, WIPO Case No. [D2019-1484](#): "Attempting to confuse third parties, posing as an employee of the Claimant, is indicative of bad faith, since his intention to disrupt the Claimant's business activity and affect his reputation is clear".

Thus, it is clear that Respondent registered and uses the domain name in dispute in bad faith, as impersonating Complainant to deceive its clients and obtain a financial gain can even constitute a crime.

Consequently, in the present case, there is no doubt that Respondent registered and uses the disputed domain name in bad faith and, thus, the requirement of Paragraph 4 (a) (iii) of the Policy is fully complied with.

Therefore, the third element of the Policy, paragraph 4(a) is satisfied in the present case in respect to Respondent's bad faith registration and use of the disputed domain name.

## **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, <alvean.co> be transferred to Complainant.

*/Fernando Triana/*

**Fernando Triana**

Sole Panelist

Date: June 24, 2022