

ADMINISTRATIVE PANEL DECISION

Westgate Las Vegas Resort, LLC. v. Clemente Barrera
Case No. D2023-0613

1. The Parties

The Complainant is Westgate Las Vegas Resort, LLC., United States of America (“U.S.”), represented by Greenspoon Marder, LLP, U.S.

The Respondent is Clemente Barrera, Mexico.

2. The Domain Name and Registrar

The disputed domain name <wg-resorts.com> is registered with Dattatec.com SRL (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 9, 2023. On February 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 sent an email communication in English and Spanish to the parties on February 20, 2023 regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Spanish. The Complainant submitted a request for English to be the language of the proceeding on February 22, 2023. The Respondent did not comment on the language of the proceeding.

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 February 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 20, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on March 22, 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 Complainant operates various resorts, and offers real estate time-sharing services, including online consumer services related to its 22 resort and vacation time-share properties, under the trademarks WESTGATE, WESTGATE RESORTS, WG RESORTS, and WGRESORTS.COM. The Complainant has used these trademarks in commerce in connection with its services since 1982, and including in its corporate website at “www.westgateresorts.com” since 1997.

The Complainant owns the domain name <westgateresorts.com> (registered on January 2, 1997), which resolves to its corporate website that provides its customers an online platform to perform a variety of actions related to its services, and the domain name <wgresorts.com> (registered on April 3, 1998), which is used for email communications with its customers.

The disputed domain name was registered on August 18, 2021, and resolves to a landing index page that indicates the apparent date of its last modification (August 19, 2021), with no additional content. According to the evidence provided by the Complainant, the disputed domain name has been used to contact some of the Complainant’s customers, through email communications displaying the Complainant’s WESTGATE RESORTS mark with the same or very similar graphic representation used by the Complainant. In these emails, the Complainant’s customers were requested to pay certain sums of money, and some of these clients effectively transfer as a “processing fee” the sum of USD 96,079.12, which was the same amount as the balance of these clients owed to the Complainant, to a bank account that does not belong to the Complainant.

5. Parties’ Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The Complainant acquired valid and enforceable common law rights in the WESTGATE, WESTGATE RESORTS, WG RESORTS, and WGRESORTS.COM marks prior to the registration of the disputed domain name. The disputed domain name incorporates the entirety of the Complainant’s trademarks WG RESORTS and WGRESORTS.COM adding a dash between the terms “wg” and “resorts”, so the disputed domain name is almost identical and confusingly similar to these trademarks.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known under the disputed domain name, has no relationship with the Complainant and has no permission to use the Complainant’s trademarks. The Complainant’s trademarks are well known and established, universally accepted as associated with the Complainant and its services, particularly among its customers that are used to receive official communications from the Complainant through its domain name <wgresorts.com>. The Respondent is intentionally targeting the Complainant’s email address in order to conduct a fraudulent scheme. The Respondent’s use of the disputed domain name relates to a fraud to the Complainant’s customers by deceiving them into believing they were making payments to the Complainant, when, in fact, their payments were being diverted to the Respondent.

The Respondent registered and is using the disputed domain name in bad faith. The registration and use of a domain name for an illegal activity - including impersonation, passing off, and other types of fraud – is considered evidence of bad faith. The disputed domain name is being used to perpetrate an email scam that specifically targeted the Complainant’s customers in a deliberate scheme to defraud these third parties of their money. Although the disputed domain name has not been used in connection with an active website, it has been used in email addresses to send fraud emails, which constitutes a clear example of bad faith.

The Complainant has cited previous decisions under the Policy and various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Preliminary Issue: Language of the Proceedings

According to the Registrar verification, the language of the registration agreement for the disputed domain name is Spanish. The Complaint was submitted in English and the Complainant submitted a request for English to be the language of the proceedings. The Respondent did not comment on the language of the proceedings.

Pursuant paragraph 11 of the Rules, in the absence of an agreement between the parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Administrative Panel to determine otherwise.

The Panel considers fair and equitable to the Parties to consider English as the language of the proceedings. Particularly, considering that the disputed domain name has been used to send emails in English language, which corroborates the Respondent’s understanding of this language, and taking into account that it would be unfair and would represent an unnecessarily delay to request a translation of the Complaint into Spanish when the Respondent has not replied to the notification of the Complaint. See section 4.5, [WIPO Overview 3.0](#).

B. Identical or Confusingly Similar

The term “trademark or service mark” as used in the Policy encompasses both registered and unregistered (sometimes referred to as common law) marks. See section 1.1, [WIPO Overview 3.0](#).

The Complainant has rights in the WESTGATE, WESTGATE RESORTS, WG RESORTS, and WGRESORTS.COM marks, by virtue of its continuous use of these trademarks over approximately 40 years (since 1982) to identify its services. In this respect, the Panel has corroborated the Complainant’s continuous use of these trademarks over the Internet at least since 1998, through the public Internet archive WayBackMachine, finding captures of the Complainant’s website at “www.westgateresorts.com” since February 1998 until March 2023.

The disputed domain name incorporates the WG RESORTS and WGRESORTS.COM marks in their entirety, adding a hyphen to separate the terms “wg” and “resorts”, and the generic Top-Level-Domain (“gTLD”) “.com”. The Complainant’s trademarks are recognizable in the disputed domain name, and the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11.1, [WIPO Overview 3.0](#).

Accordingly, the Panel finds the disputed domain name is confusingly similar to the Complainant’s trademarks and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

C. Rights or Legitimate Interests

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, that may establish rights or legitimate interests in the disputed domain name in order to rebut the Complainant’s *prima facie* case. See section 2.1, [WIPO Overview 3.0](#).

The Respondent, however, has not replied to the Complainant’s contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that the Complainant has constructed a strong *prima facie* case evidencing that the Respondent has not been authorized to use the Complainant’s trademarks, there is no relationship between the Parties, and the disputed domain name has not been used in connection to a *bona fide* offering of goods or services.

According to the evidence provided by the Complainant, the disputed domain name has been used in an email phishing scam to defraud the Complainant’s customers. The disputed domain name has been used to send emails to several of the Complainant’s customers impersonating the Complainant. These emails prominently displayed the Complainant’s figurative trademark (with the same or very similar graphic representation and the legend “official vacation headquarters”), to request payments from these third parties in a fraudulent scam.

The use of a domain name for an illegal activity can never confer rights or legitimate interests on a respondent under the Policy. See section 2.13, [WIPO Overview 3.0](#). Therefore, the circumstances of this case lead the Panel to conclude that nothing in the case file gives any reason to believe that the Respondent has any rights or legitimate interests in respect of the disputed domain name, and the second element of the Policy under paragraph 4(a)(ii) has been established.

D. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

- (i) the Complainant’s trademarks have strong presence over the Internet and have been continually used for approximately 40 years by the Complainant in connection to its services;

- (ii) the disputed domain name incorporates the Complainant's trademarks WG RESORTS and WGRESORTS.COM almost identically, only adding a hyphen to separate the terms "wg" and "resorts", denoting a risk of confusion or implied association, creating the impression that the disputed domain name refers to a Complainant and its business;
- (iii) the disputed domain name is further almost identical to the Complainant's domain name <wgresorts.com>, which is used by the Complainant to correspond with its customers;
- (iv) the disputed domain name has been used to send emails to the Complainant's customers, which prominently displayed the Complainant's figurative trademark with the legend "official vacation headquarters", and requested fraudulent payments from these third parties; and
- (v) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to formally reply to the Complaint.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and has been used targeting the Complainant's trademarks as part of a fraudulent scheme, which evidences the Respondent's bad faith.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element 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 <wg-resorts.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: March 27, 2023