

ADMINISTRATIVE PANEL DECISION

Sumol+Compal, S.A. v. Kyobulungi Zam

Case No. D2023-1631

1. The Parties

The Complainant is Sumol+Compal, S.A., Portugal, represented by J. Pereira da Cruz, S.A., Portugal.

The Respondent is Kyobulungi Zam, Uganda.

2. The Domain Name and Registrar

The disputed domain name <sumol-compal.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 2023, 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 ([...]@cosmotown.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not file any amendment to the Complaint.

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 July 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2023. The Respondent sent several email communications to the Center from April 27, 2023 to June 3, 2023. The Respondent did not submit any formal response. Accordingly, the Center informed the Parties of panel appointment on August 10, 2023. The Respondent sent email communications to the Center from August 10, 2023 to August 15, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on August 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

According to the Complainant's website (available at "www.sumolcompal.pt/en/who-we-are"), the Complainant was founded in Portugal, in 1945, by António João Eusébio. In 2009, the Complainant acquired Compal and the merger created the biggest non-alcoholic beverages group in Portugal, also counting with an international presence in relevant markets of juices, nectars and soft drinks in Africa. Presently, in addition to the manufacturing of COMPAL and SUMOL nectars and soft drinks, the Complainant represents in Portugal relevant brands such as Pepsi, 7UP, Lipton, Guaraná Antarctica and Gatorade.

The Complainant is the owner, amongst others, of the Portuguese trademark registration No. 438621, for SUMOL+COMPAL, registered on December 19, 2008, subsequently renewed, in class 32.

The disputed domain name was registered on February 6, 2023 and presently does not resolve to an active webpage. The disputed domain name has been used in connection with a fraudulent email impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant asserts to be the result of the merger of two well-known companies, not only in Portugal but also internationally which owned the historic trademarks SUMOL and COMPAL, being the Complainant the leader in the Portuguese market of non-alcoholic beverages.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark and prior domain name, given that the disputed domain name entirely reproduces the Complainant's SUMOL+COMPAL trademark, as well as the individual registrations the Complainant also holds for the SUMOL and COMPAL trademarks which are high recognized and known, especially in Portugal.

In addition to that, the Complainant contends that the Respondent does not hold rights or legitimate interests in the disputed domain name, having, at times, redirected it to the Complainant's official website (available at the domain name <sumolcompal.pt>).

As to the Respondent's bad faith, the Complainant asserts that the Respondent's sole purpose in registering the disputed domain name was for fraudulent purposes, having the Respondent used the disputed domain name in an attempt to impersonate the Complainant, even unduly using the name of an employee of the Complainant in connection with emails sent to one of the Complainant's suppliers.

B. Respondent

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

On April 27, 2023, the Respondent sent an informal message to the Center stating that it had purchased the disputed domain name for "the purpose of domaining" and that it was willing to sell it "as a premium domain", having no other interest than to sell it to the "highest bidder". Further messages with similar content were

sent by the Respondent on April 28, 2023, May 26, 2023, June 3, 2023, August 10, 2023 and August 15, 2023.

Moreover, the Respondent in his email of August 10, 2023 also indicated that “I have not engaged in any activities that would be deemed fraudulent during the time I’ve owned the domain name.”

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name but first the Panel needs to address the lack of amendment to the Complaint in view of the information on the Respondent revealed by the Registrar.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name except that the sign “+” in the mark is replaced by the sign “-”. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The disputed domain name

has been used in connection with a fraudulent email scheme impersonating one of the Complainant's employees. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Respondent asserts that he registered the disputed domain name in order to sell it to the "highest bidder" "as a premium domain". The Panel notes that "sumol" or "compal" does not appear to have any meaning in English or Portuguese, and "sumol compal" is an unusual combination of these two terms. In the absence of any explanation from the Respondent, it is more likely than not that the Respondent targeted the Complainant and its trademarks when registering the disputed domain name.

The Respondent also asserts that "I have not engaged in any activities that would be deemed fraudulent during the time I've owned the domain name." The evidence provided by the Complainant shows that a fraudulent email was sent from an email address associated with the disputed domain name two days after the disputed domain name was registered. There is no evidence on record suggesting the Respondent was not the owner of the disputed domain name back then.

Therefore, the Panel finds on the balance of probabilities that the Respondent has no rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has not only used the disputed domain name for sending a fraudulent email to one of the Complainant's suppliers but has also indicated that he would like to sell the disputed domain name "as a premium domain" for a "premium price". The Panel further notes that the disputed domain name, which consists of two terms "sumol" and "compal" apparently having no meaning in English or Portuguese, is confusingly similar to the Complainant's distinctive and widely-known trademark. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Although the disputed domain name currently resolves to an inactive website, considering the circumstances of the present case, the Panel finds that the current non-use of the disputed domain name does not change the Panel's finding of the Respondent's bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <sumol-compal.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: August 30, 2023