

ADMINISTRATIVE PANEL DECISION

Craft Multimodal LTDA. v. Alexandre Guandalini, ALGX CORP
Case No. D2023-1691

1. The Parties

The Complainant is Craft Multimodal LTDA., Brazil, represented by Opice Blum, Brazil.

The Respondent is Alexandre Guandalini, ALGXCORP, Brazil.

2. The Domain Name and Registrar

The disputed domain name <e-craft.com> is registered with Moniker Online Services, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 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 (Moniker Privacy Services, Moniker Privacy Services) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 2023 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 amendment to the Complaint on April 27, 2023.

The Center verified that the Complaint together with the amendment to 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 April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 22, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 26, 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 June 16, 2023, the Panel issued the Procedural Order No. 1 ("PO") inviting the Complainant to provide clarification and produce evidence, within 5 (five) days of the PO showing the date when the Respondent registered or acquired the disputed domain name, also allowing 5 (five) days for the Respondent to comment on an eventual submission made by the Complainant. The Complainant submitted a reply to the PO on June 20, 2023. No reply or comment was submitted by the Respondent.

4. Factual Background

The Complainant is a Brazilian company that was established in 1997 exploiting freight and related services. It is the owner of the following Brazilian trademark registrations:

- No. 827191073 for the word and device mark CRAFT MULTIMODAL, filed on March 1, 2005, registered on February 9, 2010, successively renewed, in class 35;
- No. 827191081 for the word and device mark CRAFT MULTIMODAL, filed on March 1, 2005, registered on August 9, 2011, successively renewed, in class 39;
- No. 827284632 for the word and device mark CRAFT MULTIMODAL, filed on April 6, 2005, registered on April 20, 2010, successively renewed, in class 35;
- No. 827284640 for the word and device mark CRAFT MULTIMODAL, filed on March 1, 2005, registered on April 20, 2010, successively renewed, in class 39;
- No. 840306040 for the word and device mark CRAFT, filed on October 22, 2012, registered on December 11, 2018, in class 35; and;
- No. 840306067 for the word and device mark CRAFT, filed on October 22, 2012, registered on December 11, 2018, in class 39.

The disputed domain name was created on October 13, 2013.

According to the evidence submitted by the Complainant in reply to the Panel's PO, the disputed domain name was acquired for USD 5,187.50 on October 20, 2020 by "LADY MARINA LINES", a company based in Montevideo, Uruguay, the international parent company of the Complainant, a company jointly owned by shareholders, which are also the owners of the Complainant.

At an unknown exact date, the Respondent, a former technology information service provider for the Complainant, transferred the disputed domain name to its own name.

The disputed domain name resolves to an active webpage that is the official website for the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant asserts to have acquired the disputed domain name in October 2020, for the purpose of using it as the Complainant's official webpage. The Complainant engaged the Respondent as a service provider in August 2021. After the termination of the service agreement the Complainant had entered with the Respondent on June 23, 2022 (Annex 6 to the Complaint) and when the disputed domain name was announced for auction (Annex 7 to the Complaint), the Complainant learned that the Respondent had transferred the disputed domain name to the Respondent's name at an exact date which is not known to the Complainant, but after August 2021. In this regard, the Complainant alleges that the Respondent likely registered the domain name in the name of the company ALGXCORP almost a year after the Complainant

completed the purchase in October 2020, as ALGXCORP was not incorporated until August 2021. Therefore, the Complainant further asserts that the Respondent registered the domain name under his company name after August 2021, when ALGXCORP was incorporated and already providing its services to the Complainant. The Complainant claims that the Respondent likely did so by changing the ownership information or by completing a transfer using a transfer code that he obtained only because of his position within the Complainant. The Respondent was the only person with full access to the keys to the disputed domain name configurations.

Under the Complainant's view, the disputed domain name incorporates the Complainant's CRAFT trademark in its entirety, thus creating a likelihood of confusion that is evidenced by the fact that the website available at the disputed domain name is the Complainant's official website, reproducing the Complainant's trademark and information.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- i) the Complainant has never licensed, permitted, or authorized any use by the Respondent, of its CRAFT trademark; not having the Complainant ever given any instruction to the Respondent, as the Complainant's contracted service provider, to register the disputed domain name under the Respondent's name; thus having the Respondent secretly proceeded with the registration of the disputed domain name under its name completely unauthorized;
- ii) the disputed domain name is the Complainant's official website and offer the Complainant's services and not those of the Respondent;
- iii) the Respondent is not commonly known by the disputed domain name; and
- iv) the Respondent has attempted to profit from the sale of the disputed domain name offering it at auction, what does not characterize a *bona fide* offer of goods or services under the Policy.

As to the registration of the disputed domain name in bad faith, the Complainant argues that the Respondent's bad faith is evident given that the Respondent was evidently aware of the Complainant and the Complainant's trademark, having taken advantage of his position as an information technology provider to divert the registration of the disputed domain name into his own personal name. Having thus betrayed the Complainant's trust the Respondent further sought to unduly profit from the Complainant's goodwill and trademark with the attempted auction of the disputed domain name, what characterizes bad faith use of the disputed domain name as per past URDP decisions such as *Nürmont GmbH v. PCC Heilbronn GbR Eberhard Düttra*, WIPO Case No. [D2001-0954](#); *Empro Manufacturing Company, Inc. v. Graf Computers LLC, Justin Graf*, WIPO Case No. [D2009-1732](#); and *The Glorya Kaufman Dance Foundation and Glorya Kaufman v. Carolyn B. Baker & Associates and "Glorya Kaufman Dance Foundation", formerly Domains By Proxy, Inc.*, WIPO Case No. [D2010-0034](#). Lastly, the use of a privacy protection service is a further evidence of the Respondent's bad faith.

B. Respondent

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

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 aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights over the CRAFT trademark.

The disputed domain name reproduces in its entirety the Complainant's CRAFT trademark and is therefore confusingly similar under the Policy which, as recognized by past UDRP panels, involves a "side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the 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) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent whom has never been licensed, permitted, or authorized any use of its CRAFT trademark; not having the Complainant ever given any instruction to the Respondent, as the Complainant's contracted service provider, to register the disputed domain name under the Respondent's name.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainant, the Respondent was evidently aware of the Complainant having rendered services to it, not being the placing of the disputed domain name at auction after the termination of the relationship a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the Respondent serviced the Complainant having taken advantage of its position to transfer the disputed domain name from the Complainant to its own name, therefore being undoubtedly aware of the Complainant and its trademark at the time it acquired the disputed domain name;
- b) upon termination of the service relationship between the Parties the Respondent placed the disputed domain name for auction seeking to unduly profit from the Complainant's trademark and goodwill expressed in the disputed domain name;
- c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- d) the Respondent's choice to retain a privacy protection service;
- e) the disputed domain name currently redirects to the Complainant's official website without any authorization from the Complainant; and
- f) the indication of what appear to be false contact details, not being the Center fully able to deliver communications to the Respondent.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as 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, <e-craft.com>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 5, 2023