

ADMINISTRATIVE PANEL DECISION

Sergio Leonardo Rico Fernandez v. Jose Gonzalez Oviedo
Case No. D2023-2925

1. The Parties

The Complainant is Sergio Leonardo Rico Fernandez, Mexico, represented by Basham, Ringe y Correa, S.C., United States of America (“United States”).

The Respondent is Jose Gonzalez Oviedo, Mexico.

2. The Domain Name and Registrar

The disputed domain name <lluviasolida.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2023. On July 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 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 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 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 18, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on August 24, 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 is a Mexican company that commercializes a product for plant growth.

The Complainant owns the following trademark registration:

MARK	Registration Number	Registration Date	Class	Jurisdiction
	765656	October 30, 2002	1	Mexico

The Complainant registered the domain name <lluviasolida.com.mx> on June 26, 2003, which resolves to the Complainant's official website.

The disputed domain name <lluviasolida.com> was registered on November 19, 2016. The disputed domain name currently resolves to an inactive website, but according to the evidence submitted with the Complaint, the disputed domain name redirected to a website purporting to sell products similar to the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant argued the following:

I. Identical or Confusingly Similar

That the disputed domain name incorporates the Complainant's trademark entirely and that, therefore, the disputed domain name is confusingly similar to the Complainant's trademark.

II. Rights or Legitimate Interests

That the Complainant has made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name.

That the Respondent has no rights or legitimate interests whatsoever in respect of the disputed domain name, in view of the Complainant's trademarks.

That, at some point, when entering the disputed domain name <lluviasolida.com> into a web browser, it re-directed users to <riegosolido.com> which resolved to a website in which products similar to those of the Complainant were advertised.

That the Respondent is not making any preparations for carrying out a *bona fide* offering of goods or services. That, on the contrary, the Respondent used the disputed domain name to mislead users to a website offering products that were quite similar to those offered by the Complainant under the LLUVIA SOLIDA trademark.

That the Respondent is not commonly known by the disputed domain name either. That neither the Respondent's name, nor his nickname, or moniker identifier correspond to the disputed domain name.

III. Registered and Used in Bad Faith

That the disputed domain name was registered on November 19, 2016, whilst the Complainant's trademark was registered in 2002.

That the Respondent is a competitor of the Complainant and at some point used the disputed domain name to offer substantially similar products to those of the Complainant.

That the Respondent used the disputed domain name to redirect users to its own website offering products similar to those of the Complainant. That, therefore, it is clear that the disputed domain name was chosen specifically for its capacity to suggest an association with the Complainant, to confuse users looking for the LLUVIA SOLIDA-branded products and make them visit the site of a competitor instead.

B. Respondent

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

6. Discussion and Findings

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules, (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

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. Accordingly, the disputed domain name is identical or 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 Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The fact that the Respondent chose to register the disputed domain name, which comprises only the Complainant's trademark, and which, according to the evidence submitted by the Complainant and not challenged by the Respondent, redirected users to a website where competing products were offered, suggests that the Respondent knew the Complainant, its trademark, and its business when registering the disputed domain name. Therefore, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

Given the fact that the Respondent's domain name is identical to the Complainant's registered mark and, which, according to the evidence filed by the Complainant was used to offer products that are substantially similar to those of the Complainant, the Respondent created a risk by means of which users could have been misled into believing that the Respondent's domain name is related to the Claimant. Further, under section 2.5.3 of the [WIPO Overview 3.0](#) "a respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests."

The Complainant has established a *prima facie* case asserting that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant's assertions.

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 caused the disputed domain name to resolve to a website that apparently offered the same type of products that the Complainant sells, which suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name, and that the Respondent has targeted the Complainant.

The evidence submitted by the Complainant comprised in the case docket shows that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain names resolved, by creating the impression among Internet users that said website was related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#).; see also *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#); and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response

or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of 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 <lluviasolida.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: September 7, 2023