

ADMINISTRATIVE PANEL DECISION

Innoviti Technologies Private Limited v. Richard Cardenas, INNOVITI S.A.S.
Case No. DCO2023-0108

1. The Parties

The Complainant is Innoviti Technologies Private Limited, India, represented by K&S Partners, India.

The Respondent is Richard Cardenas, INNOVITI S.A.S., Colombia

2. The Domain Name and Registrar

The disputed domain name <innoviti.com.co> (“the Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 amended Complaint on December 20, 2023.

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 December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 16, 2024. 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 an Indian company. It was incorporated in 2002 and is a leading Indian finance technology company engaged in the design, development, manufacturing, marketing, distribution, and sale of payment technology products, solutions, and ancillary products in the field of financial services sector. Its technology powers around 76 per cent of India's enterprise offline purchases paid digitally. It processes over USD 10 billion of commerce annually and provides services to over 25,000 stores across more than 2,000 cities. Based on the Complaint, there is no evidence that it has any business outside India.

The Complainant's business is promoted via its website which is linked to the domain name <innoviti.com> which it registered in 2002. The Complainant owns various registered trademarks in India for the term "Innoviti" – see for example Indian registration no 1354600, registered on May 2, 2005. These are referred to as the INNOVITI trademark in this decision.

The Disputed Domain Name was registered on July 30, 2013. It resolves to the website of a Colombian technology company (see further below). This website is referred to as "the Respondent's Website" in this decision.

5. Parties' Contentions

A. Complainant

The Complainant says that the Disputed Domain Name is identical to the INNOVITI trademark.

It says the Respondent has no rights or legitimate interests with respect to the Disputed Domain Name. The Respondent is not connected with the Complainant in any manner and the Complainant has no knowledge of the Respondent. The Complainant has not authorized or permitted the Respondent either expressly or impliedly to apply for, register, or use the Disputed Domain Name which incorporates the Complainant's registered mark INNOVITI.

The Complainant says as follows: "The Respondent is not using the Disputed Domain Name in connection with bona fide offering of goods or services. To the best of the Complainant's knowledge (a) the Respondent is not conducting any meaningful business under the name and mark INNOVITI to warrant registration of the Disputed Domain Name in its name; and (b) the Respondent is not commonly known by the Disputed Domain Name. This establishes it beyond doubt that the Respondent has no legitimate rights and/or interests in the disputed domain name".

The Complainant says the Disputed Domain Name was registered and is being used in bad faith.

It says as follows: "The Respondent cannot possibly have any justification whatsoever for the adoption and use of the Complainant's well-known mark INNOVITI as part of the Disputed Domain Name, which was created by the Respondent only in the year 2019. It is apparent that the Respondent has registered the Disputed Domain Name with an intent to commercially gain and take undue advantage of the reputation and goodwill enjoyed by the Complainant in its world famous and well-known mark INNOVITI. All of this, individually and cumulatively demonstrate and establish beyond doubt the bad faith of the Respondent. It is also apparent that the Respondent has complete knowledge of the Complainant and its well-known and coveted mark INNOVITI".

The Complainant accordingly contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2. Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the INNOVITI trademark. The Panel finds the Disputed Domain Name is identical or confusingly similar to this trademark. It is also well established that the Top-Level Domain ("TLD"), in this case ".co", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#). The Panel considers the same applies to the TLD (".co").

Accordingly, the Panel finds that the Disputed Domain Name is identical to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

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 any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no 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 difficulty the Complainant faces on this issue is that the Disputed Domain Name resolves to what is in the Panel's opinion clearly a bona fide web site of an established Colombian technology company. The Panel has exercised its general powers to visit that web site. The site is in Spanish but shows a company offering data center and cloud storage services. It has premises in Bogota and Medellin. The website says that the Respondent has more than ten years' experience. In this regard the Panel notes that the Disputed Domain Name was registered in 2013 (not 2019 which appears to be the date the Complainant suggests).

Accordingly, the Panel finds that, before notice to the Respondent of the dispute, the Respondent used the Disputed Domain Name in connection with a bona fide offering of goods or services and hence paragraph 4(c)(i) of the Policy applies. Paragraph 4(c)(ii) may also apply but the Panel does not need to decide that. See generally WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 2.2.

The Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

The Panel declines to find that the Disputed Domain Name was registered or used in bad faith. The Panel has no difficulty in accepting the Complainant's evidence that it is a very large, successful and well-known business in India. There is however no evidence at all of it having any business or reputation outside India. There is nothing to suggest that the Respondent based in Colombia would have known of the Complainant. The one exception to this is that conceivably it may have found the <innoviti.com> domain name was already registered if it carried out searches prior to registering the Disputed Domain Name. Even if it had done so, and investigated further, it would not have found anything to suggest the Complainant had any business, or any relevant rights, outside India. Nothing the Respondent is doing appears to be targeting the Complainant in any way. The Respondent appears to have been in business for 10 years trading under its name and using the Disputed Domain Name. It appears to the Panel to simply be a coincidence that the Respondent has chosen the same name as the Complainant for its business.

The Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

The circumstances of this case have led the Panel to consider whether the filing of the Complaint constitutes "using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name" – see the Rules, paragraph 1, definition of Reverse Domain Name Hijacking ("RDNH"). Paragraph 15(e) of the Rules provides that if after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH, or was brought primarily to harass the domain name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The Rules, paragraph 15(e), call for this analysis even when the respondent has not expressly requested a finding of abuse – see *Timbermate Products Pty Ltd v. Domains by Proxy, LLC / Barry Gork*, WIPO Case No. [D2013-1603](#).

The Complaint contains the following certification "The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument".

The Panel does not see how that certification can properly have been given. As indicated above the Complaint is absolutely silent about the Respondent's Website and contains no information of any kind (such

as for example screenshots) about it. Instead, it says “The Respondent is not using the Disputed Domain Name in connection with *bona fide* offering of goods or services”. The Complainant or its representatives presumably must have visited the Respondent’s Website. The Panel notes that the Complaint contains this statement “The Disputed Domain Name gives an unmistakable impression as if the Disputed Domain Name has something to do with the Complainant and/or its services, which is certainly not the case. This is more so considering the fact that the Respondent claims to be engaged in technology related services”,] which would seem to confirm that the Respondent’s Website had been reviewed. Overall, the Panel regards the Complaint as highly misleading given the Respondent’s Website clearly relates to a bona fide business. Thus, for example the statement that “To the best of the Complainant’s knowledge (a) the Respondent is not conducting any meaningful business under the name and mark INNOVITI to warrant registration of the Disputed Domain Name in its name” was at best highly misleading and at worst simply untrue.

The Panel is unfortunately left with the distinct impression that the Complainant and/or its representatives will have been well aware that the Respondent’s Website indicated the Respondent was carrying out a bona fide business and chose not to tell the Panel that was the case. The Panel should be able to rely upon the certification given in the Complaint and deplors what appears to be an attempt to mislead the Panel. The only sanction available to the Panel is to make a finding of Reverse Domain Name Hijacking and the Panel so finds.

7. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: January 30, 2024