

## **ADMINISTRATIVE PANEL DECISION**

Souza Cruz Ltda v. Raione Santos Reis

Case No. D2024-4856

### **1. The Parties**

The Complainant is Souza Cruz Ltda, Brazil, represented by Demys Limited, United Kingdom.

The Respondent is Raione Santos Reis, Brazil.

### **2. The Domain Name and Registrar**

The disputed domain name <souzacruzsa.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 25, 2024. On November 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 25, 2024, 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 December 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 23, 2024.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on December 30, 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 Souza Cruz Ltda, operating as BAT Brasil. The Complainant is a leading producer and distributor of tobacco and tobacco products to the BAT group worldwide and its own history goes back to 1903.

The Complainant is one of the biggest tobacco companies in Brazil and its activities employs over 6,000 people. In 2015, the Complainant exported 108,000 tons of tobacco. The Complainant operates a wide domestic distribution network, as it serves more than 300,000 points of sale across more than 5,000 Brazilian municipalities.

The Complainant owns an extensive list of registrations that incorporate the trademark SOUZA CRUZ. Among these, it is relevant to this decision to mention the following Brazilian registrations:

- 800139151 for the word mark SOUZA CRUZ, registered on November 30, 1982, in class 25;
- 800135369 for the word mark SOUZA CRUZ, registered on December 7, 1982, in local class 14;
- 909996881 for the word and design mark **SOUZA CRUZ** registered on January 16, 2018, in class 11;
- 909996792 for the word and design mark **SOUZA CRUZ** registered on July 10, 2018, in class 34.

While all these registrations predate the registration of the disputed domain name, it is noted that the oldest one is over 42 years older.

The disputed domain name was registered on September 12, 2024, and resolved to a website that featured the Complainant's trademark SOUZA CRUZ as well as the logo for BAT BRASIL, , and offered for sale the Complainant's products, as evidenced in the Complaint's Annex 6.

Following a formal complaint to the Registrar, the disputed domain name was suspended. At the time of the Decision, the disputed domain name does not resolve to an active website.

#### 5. Parties' Contentions

##### A. Complainant

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

Notably, the Complainant states that the disputed domain name is confusingly similar to the trademark - in fact, the disputed domain name includes the trademark in its entirety, followed by the term "SA" which presumably is the abbreviation for "Sociedade Anônima", the legal expression for "joint-stock company" in Brazil, and which does not dispel the possibility of confusion between the disputed domain name from the registered trademark.

The Respondent has no rights nor legitimate interests in the disputed domain name, whereas the Respondent has not acquired any trademark rights with respect to the disputed domain name. As stated by the documents presented, the registration and use of the trademark SOUZA CRUZ predates the registration of the disputed domain name in decades.

Moreover, the Respondent is not commonly known by the disputed domain name. The Respondent has also not secured a license nor any other authorization from the Complainant to use the trademark. Lastly, the disputed domain name resolved to a page that uses the Complainant's mark SOUZA CRUZ, as

well as the logo for BAT BRASIL, in the exact format that the Complainant uses on its own website and social media platforms. The page for which the disputed domain name resolved created a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement.

In sum, the Complainant alleges that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- 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 to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

### **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.

The disputed domain name is confusingly similar to the SOUZA CRUZ trademark, as the latter is entirely incorporated in the disputed domain name, with the mere addition of the term "sa".

The Complainant has presented evidence of ownership of the trademark SOUZA CRUZ in Brazil, by presenting registrations for it, as well as comprehensive evidence of the use of the trademark.

The use of the trademark with the addition of the term "sa" in the disputed domain name does not prevent a finding of confusing similarity with the trademark.

The trademark is clearly recognizable in the disputed domain name and as set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms would not prevent a finding that the disputed domain name is confusingly similar to the relevant mark for purposes of the first element.

Lastly, the Panel notes that, in accordance with section 1.11.1 of the [WIPO Overview 3.0](#), the generic Top-Level Domain ("gTLD"), in this case ".com", is typically disregarded under the first element.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant and 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

The Panel notes that the trademark SOUZA CRUZ is widely known as identifying the Complainant’s activities, and that the Complainant did not license this trademark to the Respondent.

Furthermore, and based on the available record, the Respondent does not appear to be commonly known by the disputed domain name.

The disputed domain name reproduces the Complainant’s mark SOUZA CRUZ in its entirety, with the addition of the term “sa”, which carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Moreover, the evidence provided by the Complainant indicates that the Respondent has used the disputed domain name to resolve to a website that impersonates the Complainant, which also prevents a finding of rights or legitimate interests in favour of the Respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the Complainant has established prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted such prima facie case.

The Panel, thus, finds for the Complainant under the second element of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that the Respondent has registered the disputed domain name with the purpose of taking unfair advantage of the Complainant’s mark.

The composition of the disputed domain name points towards the Respondent’s likely intent to give the impression that the disputed domain name is associated with the Complainant. In the absence of any reasonable explanation for the selection of the disputed domain name by the Respondent, and in the circumstances of this case, the Panel finds that, it is more likely than not, that the disputed domain name has been registered to take unfair advantage due to its value as a trademark owned by the Complainant. The content of the website at the disputed domain name, which effectively impersonated the Complainant, further supports such finding.

Here, the Panel notes the distinctive and well-known nature of the Complainant’s trademark SOUZA CRUZ, the failure of the Respondent to submit a Response, and the use of the disputed domain name, support a finding of bad faith. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

In the totality of the circumstances, the Panel finds the Respondent has registered and is using the disputed domain name in bad faith.

## **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 <souzacruzsa.com> be transferred to the Complainant.

*/Alvaro Loureiro Oliveira/*

**Alvaro Loureiro Oliveira**

Sole Panelist

Date: January 13, 2025