

ADMINISTRATIVE PANEL DECISION

Petsupermarket Comércio De Produtos Para Animais S.A. v. Contact Privacy Inc. Customer 0163308040 / Ianis Efstathiadis, Loja Pet World
Case No. D2022-0976

1. The Parties

The Complainant is Petsupermarket Comércio De Produtos Para Animais S.A., Brazil, represented by SP Law (Spiewok Carneiro), Brazil.

The Respondent is Contact Privacy Inc. Customer 0163308040, Canada / Ianis Efstathiadis, Loja Pet World, Brazil.

2. The Domain Name and Registrar

The disputed domain name <lojapetlovebrasil.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2022. On March 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 2022, 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 and contact information in the Complaint. On March 28, 2022, the Center sent an email communication to the Complainant providing the registrant and contact information disclosed by the Registrar, and a notification that the Complaint was administratively deficient. In response to the deficiency notification, the Complainant filed a first amended Complaint on March 29, 2022 and a second amended Complaint with the information provided by the Registrar on April 7, 2022. In response to a notification sent by the Center, the Complainant filed the third amended Complaint on April 8, 2022.

The Center verified that the Complaint, together with first, second and third amended Complaints, 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 25, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was May 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 3, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 14, 2022. 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 Brazilian corporation that explores the resale of domestic animals ("pets"), pet food, and pet products (accessories and toys for domestic animals). In addition to a chain of physical stores it also operates an online shop at <petlove.com.br>. The <petlove.com.br> domain name was registered on March 6, 2005.

The Complainant owns the following trademark registrations:

- Brazilian trademark registration No. 90482800 for the word mark WWW.PETLOVE.COM.BR, registered on January 2, 2018, in class NCL(10) 35;

- Brazilian trademark registration No. 904931366 for the word and device mark WWW.PETLOVE.COM.BR, registered on July 7, 2015, in class NCL(10) 35;

- Brazilian trademark registration No. 914277243 for the word and device mark PETLOVE, registered on March 6, 2019, in class NCL(11) 35; and

- Brazilian trademark registration No. 914277987 for the word and device mark PETLOVE, registered on March 6, 2019, in class NCL(11) 35.

The disputed domain name <lojapetlovebrasil.com> was registered on December 15, 2021, and presently does not resolve to an active webpage. The disputed domain name has been used in the past in connection with an online pet shop depicting the Complainant's logo.

5. Parties' Contentions

A. Complainant

The Complainant claims to be a traditional corporation belonging to a group of companies specialized in the veterinarian and pet markets in Brazil. The Complainant further claims to have used the purple, lilac, and pink colors as prominent elements of its visual identity, as well as using a pink heart as part of its trademark (in substitution of the letter "o" in PETLOVE). Asserting to have heavily invested in the construction and consolidation of its trademark, the Complainant believes that its trademark has become notoriously known amongst its Brazilian clientele.

According to the Complainant, the Respondent, without the Complainant's authorization, registered the disputed domain name which reproduces the Complainant's registered trademark with the addition of the terms "loja" ("store", in Portuguese) and "Brasil" ("Brazil" in Portuguese), creating a likelihood of confusion which is enhanced by the reproduction of the Complainant's logo in the online shop that used to be available at the disputed domain name.

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

(i) the Complainant has no relationship with the Respondent does and has never granted the Respondent

any authorization to use the PETLOVE trademark or to register a domain name incorporating it;

(ii) there is no evidence that the Respondent has been commonly known by the disputed domain name, or that the Respondent has acquired trademark rights corresponding to the disputed domain name; and

(iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, rather showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademark owned by the Complainant.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

(i) the Respondent knew of the Complainant's well-known trademark when registering the disputed domain name given that it has reproduced the Complainant's logo in a competing online shop that resolved from the disputed domain name;

(ii) the Complainant has received complaints from deceived customers that acquired products from the Respondent's online shop and which were never delivered to them, indicating the Respondent's bad faith conduct and the risks for the Complainant's trademark and reputation; and

(iii) the lack of reply to a cease-and-desist letter sent by the Complainant on February 23, 2022, is a further indicative 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 PETLOVE trademark.

The disputed domain name incorporates the Complainant's trademark in its entirety with the addition of the term "loja" ("store" in Portuguese) and of the geographical term "brasil" ("Brazil", in Portuguese). See 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 choosing not to respond to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. 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 that the Respondent has no known connection or affiliation with the Complainant and has received no authorization of any sort from the Complainant to use the PETLOVE trademark or include it in any domain name, nor does the Respondent own any trademark registration relating to the disputed domain name.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with an online pet shop reproducing the Complainant's trademark and logo does not constitute 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

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the reproduction of the Complainant's trademark and logo at the online shop that used to be available at the webpage relating to the disputed domain name, which created a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Other factors that corroborate the Panel's finding of bad faith of the Respondent are:

- a. the absence of a formal Response by the Respondent;
- b. the choice to retain a privacy protection service so as to conceal the Respondent's identity; and

c. the indication of what appears to be false or incomplete contact details provided in Whois information relating to the disputed domain name, communication not being delivered to it by courier.

The fact that the disputed domain name does not presently resolve to an active webpage does not prevent a finding of bad faith.

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 <lojapetlovebrasil.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 28, 2022