

ADMINISTRATIVE PANEL DECISION

LO IP SA and Banque Lombard Odier & Cie SA v. Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2023-0037

1. The Parties

The Complainants are LO IP SA, Switzerland, and Banque Lombard Odier & Cie SA, Switzerland, represented by Baker McKenzie Zurich, Switzerland.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <lombarbodier.com> 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 January 4, 2023. On January 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 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 (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on January 10, 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 January 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to information in the Complaint, the Complainants are members of the Lombard Odier group of companies, which is a bank founded in Geneva in 1796 and which is among the leading providers of wealth management services worldwide. Lombard Odier has used its trademarks continuously and extensively all over the world even before their registration in 1994.

The Complainant LO IP SA is the owner of the following trademarks:

- the International trademark LOMBARD ODIER & CIE, having registration number 627468, and registered as of October 13, 1994;
- the Swiss trademark LOMBARD ODIER & CIE, having registration number 2P-412721 and registered as of October 13, 1994.

The disputed domain name was registered on August 9, 2022, and does not resolve to an active website.

5. Parties' Contentions

A. Complainants

The Complainants argue that the change of the letter "d" to a "b" in the disputed domain name does not create sufficient difference between the disputed domain name and the trademark LOMBARD ODIER & CIE of the Complainants. The Complainants also operate under the website "www.lombardodier.com". Due to the high degree of similarity of the signs, the relevant public will err and attribute the disputed domain name to the Complainants.

As regards the second element, the Complainants argue that the Respondent is not related to the Complainants and was not authorized by the Complainants to register the disputed domain name. Moreover, the Respondent can have no legitimate interest to keep the disputed domain name, as there is no effective use of it.

With respect to the third element, the Complainants argue that the registration of the disputed domain name constitutes a clear case of domain name squatting and/or typosquatting, therefore the disputed domain name registration must have been made in bad faith. In addition, the Complainants argue that they have strong reasons to fear that the disputed domain name has been registered by the Respondent in order to send fraudulent emails to mislead recipients about the origin of the emails.

B. Respondent

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

6. Discussion and Findings

6.1. Multiple Complainants

The Complainants argue that they demonstrate a common grievance against the Respondent because both Complainants have a common legal interest in relevant rights that are affected by the Respondent's conduct.

According to section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[when] assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

The Complainants are part of the same group of companies, hence the co-Complainants have a common grievance against the Respondent, as they share common interests. In the circumstances, and absence of any objection on behalf of the Respondent, the Panel accepts the single consolidated Complaint against the Respondent, which it finds fair and equitable to all the parties and will accept both Complainants as party to the proceedings.

6.2. Substantive matters

No substantive response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainants as per paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy directs that the Complainants must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainants have provided evidence of their rights in the LOMBARD ODIER & CIE trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainants hold rights. According to section 1.7 of the [WIPO Overview 3.0](#), "this test typically 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".

Here the disputed domain name consists of the obvious misspelling of the distinctive part of the trademark LOMBARD ODIER & CIE of the Complainants. This misspelling in the disputed domain name, also referred to as typosquatting, is insufficient to avoid a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainants' trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainants have the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainants to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainants have established a *prima facie* case that they hold rights over the trademark LOMBARD ODIER & CIE and claim that the Respondent was not authorized by the Complainants to register the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The Respondent has not replied to the Complainants' contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainants must prove that the disputed domain name was registered and is being used in bad faith.

According to the unrebutted assertions of the Complainants, their LOMBARD ODIER & CIE trademarks were widely used in commerce well before the registration of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainants' trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference, particularly when considering the Complainant's use of the domain name <lombardodier.com> for its website.

As regards the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainants is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainants' contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. The Respondent also engaged the use of a privacy services to mask its contact details on the publicly-available WhoIs and also provided incomplete contact information in the WhoIs for the disputed domain name since the Center's written communication could not be delivered. These facts further support the Panel's bad faith finding.

Based on the evidence and circumstances of this case, the Panel concludes that the that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

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 <lombarbodier.com> be transferred to the Complainant LO IP SA.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: March 10, 2023