

ADMINISTRATIVE PANEL DECISION

GERDAU S.A. v. Hathaway Hathaway

Case No. D2023-0165

1. The Parties

The Complainant is GERDAU S.A., Brazil, represented by Dannemann Siemsen Advogados, Brazil.

The Respondent is Hathaway Hathaway, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <geradau.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 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 January 27, 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 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 14, 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, GERDAU S.A., is a company beginning its history back in 1901, in the city of Porto Alegre, in Rio Grande do Sul, Brazil, and it currently alleges it is the largest Brazilian steel producer and one of the main suppliers of long steel in the United States and of special steels in the world, having presence in nine countries in America, and a net revenue of more than USD 8 billion in 2020.

The Complainant holds trademark registrations for GERDAU, such as the following:

- the Brazilian Trademark Registration No. 829043977 for the word GERDAU, filed on March 14, 2007, and registered on October 13, 2009, covering goods in the International Class 6; and
- the Brazilian Trademark Registration No. 811754812 for the word with device GERDAU, filed on October 26, 1984, and registered on February 25, 1986, covering goods in the International Class 6.

The Complainant operates websites at <gerdau.com.br> since 1995 and <gerdau.com> since 1998 in order to facilitate its connection with suppliers and customers, enabling online quotations, placing orders and traceability platforms.

The disputed domain name was registered on October 4, 2022, and, at the time of filing the Complaint, it resolved to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well known trademarks, company name and domain names; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the GERDAU trademark.

The disputed domain name incorporates the Complainant's trademark, with an additional letter "a" inserted between the group of letters "ger" and "dau".

However, numerous UDRP panels have considered that a domain name consisting of a misspelling of the complainant's trademark (*i.e.*, typosquatting) does not prevent a finding of confusing similarity. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (*e.g.*, ".com", ".info", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark GERDAU, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

In line with the case law, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case. There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name.

In fact, the disputed domain name is kept inactive and this, along with the other circumstances in this case, does not amount to a *bona fide* or legitimate use.

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant has been operating its business since 1901, is holding trademark rights for GERDAU since at least 1986 and corresponding domain names since 1995.

The disputed domain name was registered in October 2022 and incorporates the Complainant's distinctive trademark with a minor alteration.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its GERDAU trademark.

Further, the disputed domain name was not connected to an active website.

From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith 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 contacted 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. See section 3.3 of the [WIPO Overview 3.0](#).

In the present proceeding, (i) the disputed domain name incorporates the Complainant's distinctive trademark with an obvious misspelling; (ii) although properly notified, the Respondent failed to participate in this proceeding and to put forward any argument in its favor; (iii) the Respondent apparently provided false or inaccurate contact details in the Whois, as the courier informed the Center when attempting to deliver the hard copy of this Complaint; and (iv) the Complainant holds company name, trademarks and domain names which predates at least 36 years the registration of the disputed domain name.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <geradau.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 28, 2023