

ADMINISTRATIVE PANEL DECISION

Gestamp Automoción S.A. v. webmaster, Expired domain caught by auction winner.***Maybe for sale on Dynadot Marketplace***

Case No. D2023-3898

1. The Parties

The Complainant is Gestamp Automoción S.A., Spain, represented by Baylos 5.0 Legal Advisors, S.L., Spain.

The Respondent is webmaster, Expired domain caught by auction winner.***Maybe for sale on Dynadot Marketplace***, China.

2. The Domain Names and Registrar

The disputed domain names <fundaciongestamp.com> and <gestampfoundation.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 20, 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 amendment to the Complaint on September 20, 2023.

The Center verified that the Complaint together with the amendment to the Complaint/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 September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 23, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on October 27, 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 is in the automotive industry; it designs, manufactures, and distributes automotive components in nearly 100 production facilities worldwide.

The Complainant is the owner of the trademark GESTAMP, first registered in 1991. The Complainant has since then obtained registrations for the trademark GESTAMP in several jurisdictions. The Complainant's GESTAMP trademark has been recognized as well-known at least by the local trademark office and in Spain and it also has presence worldwide.

In addition, the Complainant has obtained the European Union trademarks FUNDACIÓN GESTAMP (reg. No. 18909050) and GESTAMP FOUNDATION (reg. No. 18909051) with the application date of August 2, 2013 (the same date as the disputed domain names were registered).

The Complainant operates under several trading companies: the holder of its GESTAMP trademarks is the company GESTAMP AUTOMOCIÓN S.A., incorporated on December 27, 1997. On the other hand, GESTAMP SERVICIOS, S.A., affiliate of the Complainant, has owned, since September 17, 1997, the domain name <gestamp.com>; and the company FUNDACION GESTAMP (another related entity to the Complainant), incorporated on July 26, 2023 and holder of the European Union trade mark applications FUNDACION GESTAMP and GESTAMP FOUNDATION.

On August 2, 2023, the Respondent registered the disputed domain names identical to the trademarks. The disputed domain names are not in use.

It is important to note that on August 2, 2023, the Complainant applied for the European Union trademarks No. 18909050 and No. 18909051 for FUNDACIÓN GESTAMP, and on the same date the Respondent registered both disputed domain names.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that:

- the disputed domain names are confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names;
- the Respondent has registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the trademarks GESTAMP, FUNDACION GESTAMP and GESTAMP FOUNDATION are reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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 in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often impossible 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. 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that:

- the Respondent registered on August 2, 2023 the two disputed domain names; on the same day the Complainant applied for two identical trademarks before the European Union Intellectual Property Office;
- There is no logical use that the disputed domain names can be designated for since both domain names refers to an entity of the Complainant;
- It is thus clear that the Respondent was targeting the Complainant;
- The disputed domain names were registered in bad faith, given the reputation of the GESTAMP trademarks;
- Even more so when we have been able to verify that these domain names are not being used, so they were surely registered to prevent GESTAMP from registering them in its name.

Panels have considered bad faith where the domain name was registered on the same day a complainant registered its trademark. [WIPO Overview 3.0](#), section 3.8.2, *Tosara Pharma Limited v. Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2019-2536](#); *Alstom S.A v. Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2019-1804](#), and *Calzedonia S.p.A. v. Domain Administrator, Dynadot Privacy Service*, WIPO Case No. [D2023-2208](#).

In this case the Panel is of the view that it is not credible that the Respondent registered the disputed domain names without knowledge that the Complainant has filed a trademark application and was also involved in the project to produce wines under that particular and distinctive name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain names do not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 names <fundaciongestamp.com> and <gestampfoundation.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: November 10, 2023