

ADMINISTRATIVE PANEL DECISION

ELO v. Carolina Rodrigues, Fundacion Comercio Electronico,
Case No. D2023-4183

1. The Parties

The Complainant is ELO, France, represented by CSC Digital Brand Services Group AB, Sweden.

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

2. The Domain Name and Registrar

The disputed domain name <immochancorp.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 October 9, 2023. On October 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 9, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 October 16, 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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2023.

The Center appointed Moonchul Chang as the sole panelist in this matter on November 21, 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

ELO, previously known as Auchan Holding, is a holding company that brings together three complementary companies such as Auchan Retail International, New Immo Holding and Oney. Since Immochan was founded in 1976 as a real estate subsidiary of Complainant and changed its name to the New Immo Holding, it becomes a global figure in the real estate sector. The New Immo Holding now maintains its presence in 11 countries with 467 commercial sites and employs over 1,052 employees worldwide.

The Complainant is the owner of IMMOCHAN trademark registrations across various jurisdictions; the French trademark (INPI) IMMOCHAN (Reg. No. 1419196, registered on January 8, 1988), INPI trademark IMMOCHAN (Reg. No. 98761352, May 14, 1999) and WIPO trademark IMMOCHAN (Reg. No. 714684, May 10, 1999). In addition, the New Immo Holding is also the owner of the domain name <immochan.com> which was registered on May 12, 1999, and is currently used for the company's official website.

On the other hand, the Respondent registered the disputed domain name <immochancorp.com> on December 16, 2022. The disputed domain name currently resolves to a website featuring pay-per-click links to third-party websites.

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.

The Complainant contends that:

(a) The disputed domain name is identical or confusingly similar to its trademark. The disputed domain name incorporates the Complainant's trademark IMMOCHAN in its entirety. The addition of the term "corp" would not prevent a finding of confusing similarity.

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither authorized nor given its consent to the Respondent to register or use the disputed domain name. The Respondent has no rights or legitimate interests in the IMMOCHAN Mark and the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. In addition, the Respondent has not been commonly known by the name IMMOCHAN.

(c) 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

Under paragraph 4(a) of the Policy, the Complainant must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that: (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark or service mark; 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

A. Identical or Confusingly Similar

The disputed domain name includes the Complainant's trademark IMMOCHAN in its entirety together with addition of the term "corp". Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. (Section 1.2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") It is also well accepted that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. (Section 1.7 of [WIPO Overview 3.0](#)) Adding such term does not prevent a finding of confusing similarity. (Section 1.8 of [WIPO Overview 3.0](#)) In addition, the generic Top-Level Domain ("gTLD") ".com" is disregarded under the confusing similarity test. (Section 1.11.1, [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of [WIPO Overview 3.0](#)).

First, the Complainant contends that it has not authorized the Respondent to use the trademark IMMOCHAN or to register any domain names incorporating it. Nonetheless, the composition of the Respondent's disputed domain name carries a risk of implying that it was affiliated with IMMOCHAN. The Respondent did not reply to the Complaint.

Secondly, the Respondent is using the disputed domain name to direct Internet users to a website featuring pay-per-click links to third-party websites. Previous UDRP panels recognized that the use of a domain name to host a parked page comprising pay-per-click links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation. (Section 2.9 of [WIPO Overview 3.0](#)). Here, the Respondent failed to come forward with any appropriate allegations or evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case. Further, there is no evidence presented to the Panel that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or fair use of the disputed domain name.

Thirdly, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name. The panel noted that the Respondent's name is "Carolina Rodrigues, Fundacion Comercio Electronico", which is a name different to the disputed domain name. In the consideration of the above circumstances the Panel finds that the Complainant has made out a *prima facie* case and the Respondent failed to come forward with any appropriate evidence that might rebut the Complainant's *prima facie* case.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name “has been registered and is being used in bad faith”. Thus, for the Complaint to succeed, a UDRP Panel must be satisfied that a domain name has been registered and is being used in bad faith. These requirements are conjunctive; each must be proven or the Complaint fails. In this proceeding, the Panel needs look no further than the Complaint to determine that the Complainants have established that the Respondent registered the disputed domain name in bad faith.

First, the Complainant obtained the registration of IMMOCHAN trademarks in numerous jurisdictions much earlier than the Respondent registered the disputed domain name in 2022. Having considered that the Complainant’s trademark IMMOCHAN is well known, it is highly likely that the Respondent has been aware of the reputation of the IMMOCHAN mark when registering a confusingly similar domain name that incorporates the Complainant’s mark plus the term “corp”. Thus, it is also considered bad faith registration that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant’s trademark so as to create a false association or affiliation with the Complainant.

Secondly, the Complainant contends that the Respondent is offering to sell the disputed domain name in excess of his out of pocket expenses. Generally speaking, previous UDRP panels have found that the practice as such of registering a domain name for subsequent resale would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). (Section 3.1.1 of the [WIPO Overview 3.0](#)). However, in the consideration of the fact that the disputed domain name is confusingly similar to the Complainant’s well known trademark, that the composition carries a risk of implied affiliation, and the Respondent does not have rights and legitimate interests in the disputed domain name, the Panel also considers that the Respondent likely registered the disputed domain name for its value in connection with a trademark belonging to the Complainant, and finds bad faith on the Respondent’s registration of it.

Thirdly, the Respondent is using the disputed domain name by multiple pay-per-click linking to third parties’ websites. Here, under the circumstance that the Respondent uses the disputed domain name that incorporates the Complainant’s well-known trademark, this may mislead Internet users as to the source of the disputed domain name and could result in traffic increase for pecuniary gains. With respect to automatically generated pay-per-click links, the previous UDRP panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. Neither the fact that such links are generated by a third party such as a registrar or auction platform (or affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. (Section 3.5 of the [WIPO Overview 3.0](#))

Finally, the Respondent here has previously been involved in a number of UDRP cases, in which panels found the Respondent’s pattern of cybersquatting and ordered transfer of the disputed domain names against the Respondent. (See *Asurion, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-3304](#); *American Airlines, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-3270](#); *Carvana, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-1274](#), etc.) Having considered the Respondent’s registration of multiple confusingly similar domain names incorporating widely known trademarks, the Panel finds that these registrations constitute a typical pattern of cybersquatting in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. (Section 3.1 of the [WIPO Overview 3.0](#)) In addition, given the totality of the circumstances, the Respondent’s use of a privacy and proxy service to mask its details on the publicly available WhoIs, the Panel concludes that the Respondent uses the disputed domain names in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

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 <immochancorp.com> be transferred to the Complainant.

/Moonchul Chang/

Moonchul Chang

Sole Panelist

Date: November 27, 2023