

ADMINISTRATIVE PANEL DECISION

Pluspetrol SA v. Mario Hernandez

Case No. D2023-5214

1. The Parties

The Complainant is Pluspetrol SA, Argentina, represented by Allende & Brea Law Firm, Argentina.

The Respondent is Mario Hernandez, Venezuela (Bolivarian Republic of).

2. The Domain Name and Registrar

The disputed domain name <pluspetrol.org> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 14, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (PDR Ltd. D/B/A Public Domain Registry.Com) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 18, 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 the same date.

The Center verified that the Complaint together with the amendment to the 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 December 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2024. The Respondent sent an email communication to the Center on December 19, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on January 15, 2024. 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, PLUSPETROL SA, is a private, independent, international company active in the exploration and production of oil and gas. The Complainant promotes energy development and fosters activities at international level and is present in Argentina, Bolivia, Colombia, Ecuador, the United States of America ("United States"), the Netherlands (Kingdom of the), Peru and Uruguay.

The Complainant holds trademark registration for or incorporating PLUSPETROL, such as the following:

- the Peruvian trademark registration number S00082789 for the PLUSPETROL (word), filed on November 18, 2013, and registered on July 17, 2014, for services in International class 37; and
- the Peruvian trademark registration number P00213162 for the PLUSPETROL (with device element), filed on November 18, 2013 and registered on July 17, 2014, for goods in International class 4.

The Complainant holds and promotes its activity on the website under the domain name <pluspetrol.net>.

The disputed domain name <pluspetrol.org> was registered on November 7, 2023, and, at the time of filing the Complaint, it was being used in relation to a website having the same look-and-feel as the Complainant's official website, allegedly presenting the activities of the Complainant, displaying the PLUSPETROL trademark and logo, and claiming copyright protection.

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 alleges that it is a well-known company in the field of exploration and production of oil and gas in Argentina, Bolivia, Colombia, Ecuador, the United States, the Netherlands, Peru and Uruguay; it has trademark rights in PLUSPETROL since its first filing back in 1990; on the website under the disputed domain name the Respondent displayed false information of purported representatives, using email addresses related to the disputed domain name, and also created fake accounts for such individuals on social platforms, such as LinkedIn, all these probably with the aim of stealing personal data, or to promote any type of economic transaction under the false support or endorsement of the Complainant, as a part of a phishing scheme.

B. Respondent

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

On December 19, 2023, the Respondent sent an email communication to the Center alleging that he is only the web designer of the website under the disputed domain name and that he would forward the case related documents to his client.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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.

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

In its communication sent to the Center, the Respondent only claims that he is the web designer, and the beneficial holder of the disputed domain name is a third party, his client. The Panel notes that the name of the Respondent and the email address used in such communication is the same with the one provided by the Registrar in its verification response, and, noting that the registrant's email address typically gives control over the domain name, the Panel accepts as more likely than not that the Respondent has ownership and control over the disputed domain name and therefore is the proper Respondent in these proceedings.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website copying the look-and-feel of the Complainant's website, displaying its trademark and logo, and claiming copyright protection. Furthermore, email addresses of false representatives are associated with the disputed domain name. Panels have held that the use of a domain name for illegal activity (such as the impersonation/passing off, phishing or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the composition of the disputed domain name carries a high risk of implied affiliation, being identical to the Complainant's mark, company name and domain name. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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 disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant uses in commerce the PLUSPETROL name, trademark and as corresponding domain name since at least 2013. Further, the use of the disputed domain name further enhances such conclusion.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name is identical to the Complainant's trademark, and the website operated under the disputed domain name displays the Complainant's company name, trademark, logo and has no disclaimer, indeed in this Panel's view, the Respondent has intended to attract unsuspecting Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Further, panels have held that the use of a domain name for illegal activity (here, sending email, phishing, identity theft, a copycat version of the Complainant's website, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Respondent failed to provide any argument in its favor and the physical address provided to the Registrar was inaccurate or incomplete. Having in view the other circumstances of this case, such facts constitute further evidence of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

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

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 <pluspetrol.org> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: January 29, 2024