

## **ADMINISTRATIVE PANEL DECISION**

MasTec North America, Inc. v. John Cater  
Case No. D2024-1525

### **1. The Parties**

The Complainant is MasTec North America, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is John Cater, Gambia (the).

### **2. The Domain Name and Registrar**

The disputed domain name <mastecusa.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 April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2024, 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 April 15, 2024, 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 April 17, 2024.

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 April 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2024.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on May 29, 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 following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a national infrastructure construction company operating mainly throughout the United States across a range of industries.

The Complainant is the owner of the following trade mark registration in the term MASTEC:

- United States Trade Mark MASTEC No. 2130081, registered on January 20, 1998.

The Complainant is also the owner of the domain name <mastec.com>.

The disputed domain name was registered on February 13, 2024 and points to a Registrar parking page with pay-per-click ("PPC") links. The disputed domain name was used to create email addresses and facilitate fraudulent activities impersonating the Complainant.

There is no information known on the Respondent apart from the details as they appear on the Whois record.

#### **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 name is confusingly similar to the MASTEC trade mark in which the Complainant has rights as the disputed domain name incorporates the exact MASTEC trade mark with the addition of the term "usa" after the MASTEC trade mark and this does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. The Complainant points to the use of the disputed domain name to impersonate the Complainant and carry out fraudulent activities to conclude that this type of use could not qualify as fair or legitimate.

The Complainant contends that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark. The Complainant also alleges that the Respondent is using the disputed domain name in bad faith as the Complainant provided evidence showing that the disputed domain name was used to send fraudulent emails impersonating the Complainant. The Complainant thus considers that the disputed domain name has been registered and is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the MASTEC trade mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of another term here, "usa", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trade marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 disputed 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 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.

Here, the Complainant has stated that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark MASTEC. In addition, there is no indication that the Respondent is known by the disputed domain name. Further, the use of the disputed domain name to fraudulently impersonate the Complainant cannot qualify as either use of the disputed domain name (or demonstrable plans for such use) with a bona fide offering or a legitimate noncommercial fair use.

Panels have held that the use of a domain name for illegal activity such as here, phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

The disputed domain name reproduces the exact MASTEC trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including: (i) the reputation of the Complainant's MASTEC trade mark, (ii) the fact that the disputed domain name was registered relatively recently and many years after the registration of the trade mark MASTEC, (iii) the choice of the term "usa" added after the MASTEC trade mark in the disputed domain name which corresponds to the country where the Complainant mainly operates and (iv) the fact that the first page results obtained by the Panel by searching for the term "mastec" on Google all relate to the Complainant (a panel may undertake limited factual research into matters of public record, if it would consider such information useful to assessing the case merits and reaching a decision, [WIPO Overview 3.0](#), section 4.8).

As for use of the disputed domain name, the use of the disputed domain name to send fraudulent emails impersonating the Complainant is very persuasive and clear evidence of the Respondent's bad faith use of the disputed domain name and typically the type of use the Policy is designed to tackle. Panels have held that the use of a domain name for illegal activity such as here, phishing and impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Particularly with respect to "automatically" generated PPC links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). [WIPO Overview 3.0](#), section 3.5

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and the third element of the Policy has thus 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 name <mastecusa.com> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: June 12, 2024