

## **ADMINISTRATIVE PANEL DECISION**

Clube de Regatas do Flamengo v. Diogo Almeida  
Case No. D2024-3696

### **1. The Parties**

The Complainant is Clube de Regatas do Flamengo, Brazil, represented by Montaury Pimenta, Machado & Vieira de Mello, Brazil.

The Respondent is Diogo Almeida, Brazil, represented by Steering Legal Brasil (Monteiro, Tocantins, Cardoso, Polvora & Ribeiro Advogados), Brazil.

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

The disputed domain name <mundorubronegro.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 September 11, 2024. On September 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 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 September 20, 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 September 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2024. The Response was filed with the Center on September 28, 2024.

On October 9, 2024, the Center received, via email, a supplemental filing from the Complainant. On October 11, 2024, the Center received, via email, a supplement filing from the Respondent.<sup>1</sup>

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on October 24, 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 is Clube de Regatas do Flamengo, based in the city of Rio de Janeiro, Brazil. Founded in 1895 as a regatta club, the Complainant has become one of the most popular soccer clubs in the world, with an estimated fan base of over 40 million people, with its fans known as “Nação Rubro-Negra,” and the term “Rubro-Negro” being widely associated with the Complainant.

The Complainant owns trademarks rights concerning the trademark RUBRO NEGRO, including Brazilian trademark registrations No. 817860916 for RUBRO NEGRO, in local class 41/20.60, registered on May 28, 1996, and No. 829194894 for PASSAPORTE RUBRO NEGRO, in class 41, registered on January 19, 2010.

On January 2, 2019, the trademark FLAMENGO (registration No. 006085547) was declared by the Brazilian Trademark Office as a highly renowned trademark, protected in all fields of activities.

The Respondent was identified as Diogo Almeida, from Rio de Janeiro, Brazil.

The disputed domain name <mundorubronegro.com> was registered on October 30, 2014, and resolves to a website with news related to Flamengo soccer and other sports teams and it also redirects to bet gambling pages.

#### **5. Parties' Contentions**

##### **A. Complainant**

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

The Complainant argues that the disputed domain name is very similar to its RUBRO NEGRO formative trademarks.

The Complainant has no relationship with the Respondent and has never authorized the Respondent to use the disputed domain name or any other domain name reproducing its RUBRO NEGRO trademarks.

The Complainant's RUBRO NEGRO trademarks are widely known and had been in continuous use for several years before the Respondent registered the disputed domain name. Additionally, the Complainant is internationally famous.

To the best of the Complainant's knowledge, the Respondent is not commonly known or identified by the expression MUNDO RUBRO NEGRO.

The Respondent does not make legitimate use of the disputed domain name. On the contrary, it seems to the Complainant that the disputed domain name was indeed registered and is being used in a complete act

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<sup>1</sup> In view of submissions of unsolicited Supplemental Filings by both Parties, the Panel has chosen to accept both Parties' submissions and will consider them herein.

of bad faith by the Respondent. The website to which the disputed domain name resolves consists of varied hyperlinked advertisements for betting sites, with at least on betting advertisement on each link that the website redirects to. In the Complainant's Supplemental Filing, responding as regards the Respondent's reliance on the concept of laches, the Complainant states that prior panels have found that that such doctrine does not apply in UDRP proceedings and notwithstanding the above, participation in interviews and access to press credentials does not equate to permission to exploit a trademark for commercial purposes.

The Respondent, when registering the disputed domain name, was fully aware of the Complainant's RUBRO NEGRO trademarks. A third party associated with the Respondent filed a trademark application that includes the terms "rubro negro" reflecting a commercial scheme to profit from consumer confusion as to the Respondent's affiliation with the Complainant. The Respondent is intentionally trying to attract, for commercial gain, Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's trademarks as to the source of sponsorship, affiliation, or endorsement and/or taking advantage of the Complainant's fame to gain undue economic advantage.

## **B. Respondent**

On September 28, 2024, and October 11, 2024, the Respondent filed its Response and Supplemental Filing, respectively. In these submissions it informed that:

- (1) The disputed domain name is a news website, exclusively focused on matters related to Flamengo (the "Complainant"), such as match analysis, players performances, new signings and issues concerning Flamengo's internal politics.
- (2) There are several examples of websites like the one operated by the Respondent - dedicated exclusively to news coverage of a specific sports team.
- (3) The disputed domain name has no direct link to the name and trademarks registered by the Complainant, but rather refers to a Flamengo nickname, "rubro-negro," which refers to the colors red and black.
- (4) "mundo rubro negro" is not confusingly similar to any trademark or service mark in which the Complainant claims it has rights.
- (5) Attempts by soccer clubs to prevent their fan base from operating websites supporting their teams will have repercussions for the entire ecosystem of fan websites.
- (6) The Respondent's professionals are members of the Association of Sports Reporters of Rio de Janeiro ("ACERJ") and accredited by the Brazilian Football Confederation ("CBF") in its official matches. Therefore, the website has a long history in the Brazilian sports press, even though being an exclusive news channel related to the Complainant.
- (7) The disputed domain name was not registered for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant and that the Complainant failed to prove that the trademark RUBRO NEGRO is registered and recognized by the Brazilian Trademark Office.
- (8) The disputed domain name was registered almost 10 years ago and the Complainant has been fully aware of the Respondent's extensive activities for such time since "top executives of the Complainant have granted exclusive interviews to the Respondent".
- (9) The "administrative procedure was filed with the sole purposes of attacking [the Respondent's] journalistic freedom, its free right of expression and creating obstacles for the [Respondent]", therefore the Respondent requests that the Panel declare that the Complainant's conduct constitutes an abuse of the administrative process.

(10) In the Respondent's Supplemental Filing, the Respondent requests that the Panel reject the Complainant's unsolicited Supplemental Filing, raises issues with a previously "extinguished" trademark filing by the Complainant for the term "rubro negro", and raises issues with the Complainant for contesting the Respondent's links to gambling and betting in view of the fact that the Complainant itself has partnered with such gambling/betting entities.

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (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**

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 trademark rights in Brazil for RUBRO NEGRO formative trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. In view of the existence of active trademark registrations (as cited above), the Respondent's concerns with a previously "extinguished" trademark filing is of no consideration in this matter.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7.

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 that the Complainant has established prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent failed to prove that it is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain regarding the online betting/gambling advertising. Given that the website to which the disputed domain name resolves prominently features a header with click-through links, the foremost of which is “apostas” (in English, “bets”), it is clear that the Respondent intends to commercially benefit from the implied affiliation carried in the composition of the disputed domain name. [WIPO Overview 3.0](#), sections 2.5.3 and 2.7.1.

While the Respondent claims that the disputed domain name is a “news website, exclusively focused on matters related to Flamengo (the ‘Complainant’),” the Respondent then goes on to argue that the disputed domain name has no direct link to the Complainant’s name but is solely a nickname that refers to the colors red and black. This self-contradictory statement reinforces the Panel’s belief that the registration is merely a pretext for commercial gain. Particularly, given the nature of the disputed domain name, as assessed above, it is clear that the Respondent sought to mislead Internet users as to the disputed domain name’s affiliation to the Complainant.

Lastly, the Respondent also raises the defense of laches and acquiescence. Panels have generally declined to specifically adopt concepts such as laches or its equivalent in UDRP cases. Further to [WIPO Overview 3.0](#), section 4.17, “in specific cases, certain delays in filing a UDRP complaint may make it more difficult for a complainant to establish its case on the merits, particularly where the respondent can show detrimental reliance on the delay”. Here, the Panel finds the Respondent’s evidence of its interviews with the Complainant is largely circumstantial. Questions remain whether the Respondent’s interviews with the Complainant would have necessarily exposed the Respondent’s use of the disputed domain name<sup>2</sup> and particularly not that the Respondent was using such disputed domain name to redirect Internet users to third party gambling websites thereby commercializing on the Complainant’s trademark.

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 was clearly aware of the Complainant trademarks, since the Complainant’s trademark registrations predate the registration date of the disputed domain name, and the Respondent himself argues that the disputed domain name resolves to a news website, exclusively focused on matters related to the Complainant’s soccer team. While the Response attempts to distance the disputed domain name from the Complainant, claiming a generic use of the nickname for the colors red and black, as well as pointing to third party users of such color scheme, these defenses fall flat in the face of the clear targeting of the Complainant in both the disputed domain name composition and use.

Moreover, the Panel notes that a third party filed the Brazilian trademark application No. 934407037 for MUNDO RUBRO NEGRO & design, in class 41, with a logo that is identical to the one used in the disputed domain name. The Complainant has shown evidence that the third party is directly related to the Respondent, which is evidence that the Respondent is trying to register a trademark containing the Complainant’s trademark and that the use of the disputed domain name is intended to exploit the Complainant’s trademark for commercial gain.

The Panel notes that the disputed domain name resolves to a website promoting betting/gambling advertisements, i.e., it is not a mere fan website without intention of commercial gain.

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<sup>2</sup> The evidence submitted in Annex 3 to the Response reflects the use of disputed domain name as an email through which the Respondent registered for its press credentials, but not whether the disputed domain name would then have been published on any credentials visible to any person being interviewed (i.e., the Complainant).

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.

It is genuinely impossible that the Respondent was not aware of the Complainant's rights to RUBRO NEGRO when creating the disputed domain name and using it for promoting betting/gambling advertisements for commercial gain.

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 <mundorubronegro.com> be transferred to the Complainant.

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: November 7, 2024