

## **ADMINISTRATIVE PANEL DECISION**

Mario Sergio Cortella, MS Cortella Consultoria Ltda. v. Nanci Nette  
Case No. D2024-3914

### **1. The Parties**

The Complainant is Mario Sergio Cortella and MS Cortella Consultoria Ltda., Brazil, represented by Salusse, Marangoni, Parente e Jabur Advogados, Brazil.

The Respondent is Nanci Nette, United States of America (“United States”).

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

The disputed domain name <mariosergiocortella.com> (the “Domain Name”) 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 25, 2024. On September 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 September 26, 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 amendment to the Complaint on September 27, 2024.

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 September 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 21, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on October 25, 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 to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The first Complainant is a Brazilian philosopher, writer, educator, professor and panelist. He is the author of several books, and has been awarded titles and recognitions throughout his career. Since as early as 1994, the first Complainant started rendering services as a corporate speaker both in private and public sectors. He has provided services under his name "MARIO SERGIO CORTELLA" and established the second Complainant to exploit the activities of licensing and assignment of trademarks and copyrights on literary, artistic, and audiovisual works of the first Complainant. The two Complainants will be referred to the "Complainant" unless specified otherwise.

The Complainant owns several trademark registrations for CORTELLA and MS CORTELLA, such as Brazilian trademark No. 925810886 for CORTELLA, registered on August 8, 2023, and Brazilian Trademark No. 928011550 for MS CORTELLA, registered on January 9, 2024. The Complainant operates official websites from the domain names <mscortella.com.br> and <mariosergiocortella.com.br> (registered in 2014 and 2016, respectively).

The Domain Name was registered on October 27, 2015. The Domain Name has resolved to pay-per-click webpage.

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

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

The Complainant provides evidence of trademark registrations and argue that the Domain Name is confusingly similar to the Complainants' trademarks, the second Complainant's trade name, and the prior domain name <mscortella.com.br>, as well as identical to the first Complainant's name.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. There is no evidence that the Respondent has a trademark, trade name or any other right relating to the Domain Name. The Respondent has not been authorized by the Complainant to use the trademarks in question and there is no business relationship between the Complainant and the Respondent. There is no bona fide use. The Respondent has used the Domain Name to unduly profit from pay-per-click links.

Given the fame of the Complainant, the Complainant argues that the Respondent knew of the Complainant. The Complainant's trademarks have been used in commerce since the 1990s, before the Respondent registered the Domain Name. The Respondent's use of the Domain Name is to resolve to pay-per-click advertising websites for commercial benefit, is evidence of bad faith. The use of a privacy service to conceal the identity of the underlying registrant, and the fact that the e-mail servers associated to the Domain Name have been activated, are further evidence of bad faith. Finally, after the registrant details were revealed to the Complainant, the Complainant argues that the Respondent is a cybersquatter who has lost many UDRP proceedings against trademark holders.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. Where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 1.7.

The Complainant has established that it has rights in the trademarks CORTELLA and MS CORTELLA. The Domain Name incorporates the Complainant's CORTELLA trademark in its entirety, to which is added the terms "mario" and "sergio" that do not prevent a finding of confusing similarity. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") ".com"; see [WIPO Overview 3.0](#), section 1.11.1.

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. See [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 Domain Name. The Respondent has not rebutted the Complainant's showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name. Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services. In addition, the Panel notes the composition of the Domain Name, identical to the first Complainant's name and incorporating in its entirety the CORTELLA trademark, being inherently misleading. The use of such inherently misleading Domain Name to host a pay-per-click webpage with links directly relating to the Complainant's activity does not confer any rights or legitimate interests on behalf of the Respondent. [WIPO Overview 3.0](#), section 2.9.

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.

While the Domain Name predates the Complainant's registered trademarks, it is more likely than not that the Respondent knew of the Complainant when the Respondent registered the Domain Name. It follows from the composition of the Domain Name, which is identical to the Complainant's personal name, and the use to which the Domain Name has been put, namely a pay-per-click webpage with links directly relating to the Complainant's activities under his personal name. It is likely the Respondent has registered the Domain Name to attract Internet users by creating a likelihood of confusion with the Complainant. The Respondent has failed to provide any evidence of good faith use and it has initially concealed its identity. The Panel finds it implausible that the Respondent may put the Domain Name into good faith use in view of the fact that the Domain Name is identical to the name of the first Complainant. Finally, the Respondent appears to be a serial cybersquatter. See, for instance, *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Nanci Nette*, WIPO Case No. [D2019-2545](#); *Volvo Trademark Holding Aktiebolag v. Nanci Nette*, WIPO Case No. [D2022-0299](#); *Canva Pty Ltd. v. Nanci Nette*, WIPO Case No. [D2023-3651](#).

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. 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 the Domain Name <mariosergiocortella.com> transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: October 30, 2024