

ADMINISTRATIVE PANEL DECISION

Souza Cruz Ltda v. RAIONE SANTOS REIS, RAIONE SANTOS REIS
Case No. D2024-4859

1. The Parties

The Complainant is Souza Cruz Ltda, Brazil, represented by Demys Limited, United Kingdom.

The Respondent is RAIONE SANTOS REIS, Brazil.

2. The Domain Name and Registrar

The disputed domain name <souzacruzdistribuidora.com> is registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 25, 2024. On November 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 26, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 24, 2024.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on January 2, 2025. 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 Souza Cruz Ltda, operating as BAT Brasil. The Complainant is the leading producer and distributor of tobacco and tobacco products to the BAT group worldwide and its own history goes back to 1903.

The Complainant is one of the biggest tobacco companies in Brazil and its activities employs over 6,000 people. In 2015, Souza Cruz exported 108,000 tons of tobacco. The Complainant operates a wide domestic distribution network, as it serves more than 300,000 points of sale across more than 5,000 Brazilian municipalities.

The Complainant owns an extensive list of registrations that incorporate the trademark SOUZA CRUZ. Among these, it is relevant to this decision to mention the following Brazilian registrations:

- 800139151 for the word mark SOUZA CRUZ, granted on November 30, 1982 in class 25;
- 800135369 for the word mark SOUZA CRUZ, granted on December 07, 1982 in local class 14;
- 909996881 for the word and design mark **SOUZA CRUZ** granted on January 16, 2018 in class 11;
- 909996792 for the word and design mark **SOUZA CRUZ** granted on July 10, 2018 in class 34.

While all these registrations predate the registration of the domain name, it is noted that the oldest one is over 42 years older.

The Complainant notes that the disputed domain name incorporates the mark SOUZA CRUZ in its entirety, only differing by the word “distribuidora” – which is Portuguese for “distributor”.

The disputed domain name was registered on September 12, 2024, and at the time of filing the Complaint and by the time of this decision does not resolve to an active website.

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.

Notably, the Complainant states that the disputed domain name is confusingly similar to the trademark - in fact, the disputed domain name includes the trademark in its entirety, followed by the word “distribuidora”, which has no effect whatsoever in distancing the disputed domain name from the registered trademark.

The Respondent has no rights nor legitimate interests in the disputed domain name, whereas the Respondent has not acquired any trademark rights with respect to the disputed domain name. As stated by the documents presented, the registration and use of the trademark SOUZA CRUZ predates the registration of the disputed domain name in decades.

Moreover, the Respondent is not commonly known by the disputed domain name. The Respondent has also not secured a license nor any other authorization from the Complainant to use the trademark. Lastly, the disputed domain name does not direct to an active page.

In sum, the Complainant alleges that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that 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

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect to 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 disputed domain name is confusingly similar to the SOUZA CRUZ trademark, as the latter is entirely incorporated in the disputed domain name, with the mere addition of the word "distribuidora", which is the Portuguese word for "distributor".

The Complainant has presented consistent evidence of ownership of the trademark SOUZA CRUZ in jurisdictions throughout the world and particularly in Brazil, by presenting registrations for it, as well as comprehensive evidence of the use of the trademark.

The use of the trademark with the addition of the word "distribuidora" in the disputed domain name does not prevent a finding of confusing similarity with the trademark.

The trademark is clearly recognizable in the disputed domain name and as set out in WIPO Overview, section 1.8, the addition of other terms would not prevent a finding that the disputed domain name is confusingly similar to the relevant mark for purposes of the first element.

Lastly, the Panel notes that, in accordance with section 1.11.1 of the [WIPO Overview 3.0](#), the generic Top-Level Domain ("gTLD"), in this case ".com", is disregarded under the first element.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

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.

The Panel notes that the trademark SOUZA CRUZ is widely known as identifying the Complainant's activities, and that the Complainant did not license this to the Respondent.

Furthermore, the Respondent does not appear to be commonly known by the disputed domain name.

It has also been shown that the Respondent is not making any direct use of the disputed domain name, noting the disputed domain name does not resolve to an active website. The Respondent is not making noncommercial or fair use of the disputed domain name, nor a bona fide offering of goods or services.

The Panel finds that the Complainant has established prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted such prima facie case.

The Panel, thus, finds for the Complainant under the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent has probably registered the disputed domain name with the purpose of taking unfair advantage of the Complainant's mark.

The composition of the disputed domain name points towards the Respondent's likely intent to give the impression that the disputed domain name is associated with the Complainant. In the absence of any reasonable explanation for the selection of the disputed domain name by the Respondent, and in the circumstances of this case, the Panel finds that, it is more likely than not, that the disputed domain name has been registered to take unfair advantage due to its value as a trademark owned by the Complainant.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctive and well-known nature of the Complainant's trademark SOUZA CRUZ, the likelihood of confusion arising from the confusingly similar disputed domain name, and the failure of the Respondent to submit a Response support a finding of bad faith.

In the totality of the circumstances, the Panel finds the Respondent has registered and is using the disputed domain name in bad faith.

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 <souzacruzdistribuidora.com> be transferred to the Complainant

/Alvaro Loureiro Oliveira/
Alvaro Loureiro Oliveira
Sole Panelist
Date: January 16, 2025