

ADMINISTRATIVE PANEL DECISION

María Dolores Montoya Jimenez v. Yaroslav Biliavskyi
Case No. D2024-4860

1. The Parties

The Complainant is María Dolores Montoya Jimenez, Spain, represented by Ubilibet, Spain.

The Respondent is Yaroslav Biliavskyi, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <camarondelaisla.com> is registered with DropCatch.com LLC (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 the same day, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 29, 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 December 2, 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 December 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on January 14, 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 in this proceeding is María Dolores Montoya Jimenez, the widow and heir of José Monje Cruz ("Camarón de la Isla").

José Monje Cruz, known artistically as CAMARÓN DE LA ISLA, was a Spanish gypsy singer considered to be the best contemporary flamenco singers and one of its most modern important figures.

The Complainant has rights over the trademark CAMARON DE LA ISLA (Spanish trademark reg. M2978391) registered on February 6, 2001, and renewed on May 14, 2021, for classes 16 and 41.

The Panel notes that the trademark is owned by several persons (those different to the Complainant are clearly related to both the Complainant and José Monje Cruz), being one of those persons the Complainant.

The disputed domain name was registered on March 15, 2023. The disputed domain name resolves to a website that contains a blog with a heading that refers to the 35th anniversary of Camarón de la Isla's record "La Leyenda del Tiempo", featuring a picture of the artist and the album cover. The blog also contains several posts that are varied and unrelated to the artist, as they refer to medicines for bronchitis and also to medicines to improve sexual performance.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical to the CAMARON DE LA ISLA trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits 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

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(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 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 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.

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.

The Panel finds the disputed domain name as registered, together with its content alluding to the singer's record carries a risk of implied affiliation with the Complainant's CAMARON DE LA ISLA trademark. Noting the composition of the disputed domain name, its use cannot give rise to rights or legitimate interests under the Policy. On the contrary, its use for a blog with several posts that are varied and unrelated to the artist shows the Respondent's intent of taking an unfair advantage of the mentioned 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 Complainant is the widow and heir of a well-known flamenco singer, who was known by the name “Cameron de la Isla” for several decades.
- The disputed domain name was registered on March 15, 2023, this is more than 20 years after the Complainant registered its trademark.
- the Respondent was aware of the Complainant’s trademark since the disputed domain name resolves to a blog with a heading that refers to the 35th anniversary of Camarón de la Isla’s album “La Leyenda del Tiempo”, featuring a picture of the artist and the album cover.
- The posts in the blog are varied and unrelated to the artist, as they refer to medicines to improve sexual performance, and explanations related to the sexual health of men.

The Panel notes that, while the Complainant’s trademark may be widely known, it is comprised of two “dictionary” terms, namely “camaron” and “isla”. While someone could argue that it is at least conceivable that a domain name could include the terms “camaron” and “isla”, the Panel notes that the circumstances points towards the acquisition of the disputed domain name due to its identity with the Complainant’s trademark, and the fame of Camarón de la Isla. trademark.

Based on the totality of evidence including the content of the disputed domain name, the Panel finds that the Respondent has deliberately sought to misrepresent a connection between the disputed domain name and the Complainant’s CAMARON DE LA ISLA trademark. Noting also that the Respondent’s website contains a specific mention to the 35th anniversary of one of the records of the well-known flamenco singer, the Panel can only conclude that the Respondent registered and has used the disputed domain name with the knowledge of the Complainant’s trademark and with the intention of benefitting unfairly from the Complainant’s goodwill attached to that mark. Furthermore, the Panel notes the Complainant’s contentions that it used to own the disputed domain name. In this regard, the Panel notes from visiting the website at the disputed domain name through Web Archive, that the website at the disputed domain name used to display information about the well-known flamenco singer Camarón de la Isla. Respondent’s use seemed to start upon the new registration of the disputed domain name in 2023. The fact that the disputed domain name used to resolve to a website concerning the singer Camarón de la Isla, but that after the Respondent’s acquisition, the Respondent kept images of the singer Camarón de la Isla with unrelated posts, affirms the intention of taking an unfair advantage of the trademark, or the fame of Camarón de la Isla.

In the present case, the disputed domain name resolves to a blog that has several references to sexual health of men, mixed with mention of the Complainant and its records. Panels have held that the use of the complainant’s mark for a website that offers goods and services that tarnishes the mark is evidence of bad faith.

Therefore, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

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 <camarondelaisla.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: January 27, 2025