

ADMINISTRATIVE PANEL DECISION

Carrefour SA, Atacadão - Distribuição, Comércio e Indústria LTDA v. Domain Privacy, Domain Name Privacy Inc
Case No. D2024-4938

1. The Parties

The Complainants are Carrefour SA, France and Atacadão - Distribuição, Comércio e Indústria LTDA, Brazil (“the Complainant”), represented by IP Twins, France.

The Respondent is Domain Privacy, Domain Name Privacy Inc, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <atacado.site> is registered with Communigal Communications Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2024. On November 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 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 sent an email communication to the Complainant on December 5, 2024, providing the registrant and further 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 6, 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 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on January 6, 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

Carrefour SA is a French corporation set up in 1959, doing business in the hypermarket sector since 1963 in 30 countries and with more than 384.000 employees.

Atacadão-Distribuição, Comércio e Indústria LTDA is a Brazilian retail chain established in 1960 which became a subsidiary of the Complainant in 2007.

The Complainant is the owner of the following trademarks:

European Union trademark ATACADAO with registration No. 012020194, registered on May 24, 2015. Brazilian trademark ATACADÃO with registration No. 006937497, registered on May 25, 1979.

The Complainant enjoys substantial online presence through different social platforms in connection to ATACADÃO.

ATACADÃO or ATACADAO are to be considered well-known for UDRP purposes.

The disputed domain name <atacado.site> was registered on August 27, 2024 and resolves to a pay-per-click site with links to Complainant's competitors' sites where is also offered for sale.

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 there is no evidence or circumstances under Paragraph 4(c) of the Policy that would give rise to any rights or legitimate interest for the Respondent.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a 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 was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Consolidation of the Complainants

As set out in WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.11.1: In assessing whether a complaint file by multiple complaints may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Panel notes that the Complainants are part of a group and therefore they have common grievance in the dispute. Regarding equity and procedural efficiency, the Panel sees no reason why consolidation of the disputes would be inequitable to any Party or, procedurally inefficient.

B. 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 ATACADAO 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.

C. 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.

Indeed, none of the circumstances described in paragraph 4 (c) of the Policy can be inferred from the file.

Furthermore, the Panel notes that the composition of the disputed domain name incorporating the Complainant's trademark gives the false impression to be part of the Complainant organization which carries out an implied risk of affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Moreover, the well-known value of the ATACADAO trademarks as well as the use of pay-per-click ("PPC") links in the site to which the disputed domain resolves prevent the Panel from recognizing rights or legitimate interests in favour the Respondent.

The Panel finds the second element of the Policy has been established.

D. 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 Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users by displaying links to websites of third parties' competitors to the Complainant. Therefore, the Panel finds that the Respondent targeted the Complainant and its trademarks with the apparent purpose to gain some advantage. Such activity is considered to be in bad faith under paragraph 4(b)(iv) of the Policy.

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.

From the record and its evidence, the Panel finds that the Respondent knew or should have known the Complainant and its trademarks at the moment of the registration of the disputed domain name. The distinctiveness of the mark and its post registration use support such a finding.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <atacado.site> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: January 20, 2024