

ADMINISTRATIVE PANEL DECISION

Mercado Libre, Inc., Mercado Libre, S.R.L., Mercado Libre Chile, Ltda.,
Mercado Libre, S.A. de C.V., Institución de Fondos de Pago Electrónico,
Mercado Libre Venezuela, S.R.L., Ebazar.com.br, Ltda. v. Ruslan Kovalenko
Case No. D2025-0045

1. The Parties

The Complainants are Mercado Libre, Inc., Argentina; Mercado Libre, S.R.L., Argentina; Mercado Libre Chile, Ltda., Chile; Mercado Libre, S.A. de C.V., Institución de Fondos de Pago Electrónico, Mexico; Mercado Libre Venezuela, S.R.L., Venezuela; and Ebazar.com.br, Ltda., Brasil, jointly represented by Marval, Argentina.

The Respondent is Ruslan Kovalenko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <casinosconmercadopago.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 7, 2025. On January 8, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2025, 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 Complainants on January 9, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on January 10, 2025.

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 January 15, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2025. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on February 8, 2025.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on February 12, 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

According to the Complaint, the first Complainant, Mercado Libre, Inc., and its subsidiaries, are a technology group in Latin America, which offers e-commerce solutions through a platform hosted at "www.mercadolibre.com" (the Platform), noting that Mercado Libre, Inc. is listed on the NASDAQ stock exchange, and has been part of the NASDAQ 100 Index since 2017. The Complainants were first established in Argentina since 1999. The Complainants assert that the Platform is the most visited e-commerce site in Latin America, with a variety of official international websites, offering integrated solutions with the ability to buy, sell, advertise, pay for, and deliver items, and access credit on the Internet.

The Complainants note that one of their most salient products is "Mercado Pago", introduced to the Latin American market in 2003, through which they offer financial solutions and services related to digital payments for individuals and businesses, under the MERCADO PAGO trademark, via the platform "www.mercadopago.com" and a "Mercado Pago" mobile application. An independent media article dated August 22, 2024 describes "Mercado Pago" as the financial technology arm of "Latin American ecommerce giant Mercado Libre", noting that partnerships had been concluded between "Mercado Pago" and companies based in the United Kingdom and United States of America in 2023 and 2024 respectively, expanding the reach of the service to global merchants and to customers in the United States of America and Canada seeking to make certain direct payments into Latin America. A third-party press release dated February 21, 2023 describes "Mercado Pago" as having grown to become "the leading online payment solution in Latin America", while the headline of an article in "The Banker" publication dated February 6, 2024 states, "Mercado Pago's relationship with banks shows hope for Latam financial inclusion".

The Complainants' 2023 Impact Report shows that, in that year, "Mercado Pago" processed over 9,470 million transactions, and sold over 1,404 million products to more than 68 million unique active users. During the third quarter of 2024, the Complainants reported that "Mercado Pago" processed a total payment volume of more than USD 50,700 million, with unique users of more than 56 million, a credit portfolio of USD 6 billion, USD 8 billion assets under management, and processed 365 transactions per second on the Platform.

The Complainants' group own a considerable number of registered trademarks in respect of the MERCADO PAGO mark in multiple Latin American countries. For example, the Complainants' group company, Mercado Libre, S.R.L., owns Argentinian Registered Trademark Number 3074391 for a mixed mark consisting of the words MERCADO PAGO and an oval device inside which is the image of two hands engaged in a handshake, filed on November 13, 2018 and registered on April 30, 2020 in class 9.

The disputed domain name was registered on March 8, 2024. Little is known about the Respondent, which has not participated in the administrative proceeding, other than that it appears to be a private individual with an address in Kyiv, Ukraine. The website associated with the disputed domain name is in the Spanish language and features a heading "CASINOS CON MERCADO PAGO" together with a green colored stylized logo of two hands engaged in a handshake. The website claims to provide a guide stating which casinos will accept the ARS currency (Argentine Peso) "and the main payment methods that allow you to deposit and withdraw your winnings in Pesos" (Panel's machine translation). The site goes on to highlight and review various gambling operators, providing redirection links to their websites. In discussing methods for making a deposit in online casinos in ARS, the website mentions the Complainants' "MERCADO PAGO" system along with various other payment providers such as credit card companies and virtual wallets.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that they are the owners of the trademark MERCADO PAGO, being the subject of multiple active registered trademarks, in a variety of countries in Latin America, adding that said mark is famous worldwide and well known. The Complainants assert that the disputed domain name reproduces said trademark in its entirety without any distinctive elements, and that the word "casinos" is merely descriptive and does not avoid confusing similarity, while the ".com" suffix of the disputed domain name should be disregarded as a standard registration requirement.

The Complainants contend that they have not licensed or otherwise permitted the Respondent to use the MERCADO PAGO trademark, or to apply for a domain name incorporating this wholly or partially, that they have no legal or business relationship with the Respondent, that there is no evidence that the Respondent has been commonly known by the disputed domain name, that the Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name, and that the Respondent is misleadingly using the Complainants' trademark in the disputed domain name to attract the Complainants' clientele without authorization. The Complainants add that the Respondent fails to make clear that there is no affiliation or connection with the Complainants, and/or that the website associated with the disputed domain name is not operated by the Complainants, giving rise to a high risk of association and effectively impersonating or suggesting sponsorship or endorsement by the Complainants.

The Complainants assert that through longstanding use since 2003, the MERCADO PAGO trademark has become notorious in the Latin American region, demonstrable by news articles and advertisements (examples produced), adding that it is almost impossible that the Respondent was not aware of the Complainants and their MERCADO PAGO trademark when the disputed domain name was registered, this being more than 20 years after the Complainants started to use said mark. The Complainants contend that the website associated with the disputed domain name promotes online casinos and betting houses that apparently allow the use of the Complainants' product to place bets, but that the Respondent fails to disclose that it is not affiliated to the Complainants in any way, such that the Respondent's use of the Complainants' mark is intended to attract and mislead Internet users as to sponsorship or endorsement of said website. The Complainants submit that said website creates the misleading impression that the Complainants are associated with or endorse the promotion of the gambling and casino-related activities mentioned by the Respondent when the Complainants do not provide such services and should not be falsely linked with companies with which they have no affiliation or sponsorship, noting in particular that the Respondent's logo is virtually identical to the device element of the Complainants' mixed trademark, suggesting an attempt to capitalize on the Complainants' trademark rights and reputation.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Procedural Considerations – Consolidation of the Complainants

The Complainants request consolidation of their respective complaints against the Respondent, asserting that they have a common grievance against the Respondent because the Complainants share a common legal interest in the trademark rights on which the Complaint is based as a result of their affiliation to the

same corporate group, which group shares previously determined common objectives and policies. The Complainants note that each of them owns trademark registrations for the MERCADO PAGO mark in different Latin American countries as a consequence of belonging to the said corporate group. The Complainants also assert, by reference to a filing before the United States of America Securities & Exchange Commission, that Mercado Libre, S.R.L., Mercado Libre Chile, Ltda., Mercado Libre, S.A. de C.V., Institución de Fondos de Pago Electrónico, Mercado Libre Venezuela, S.R.L., and Ebazar.com.br, Ltda. are subsidiaries of Mercado Libre, Inc. Finally, the Complainants submit that the Respondent's use of the disputed domain name has affected all of the Complainants' respective trademark rights, resulting in the said alleged common grievance, and that it would be equitable and procedurally efficient to permit the consolidation since otherwise the Complainants would need to file almost identical complaints under the Policy.

In assessing whether a complaint filed by multiple complainants 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1.

Having reviewed the Complainants' submissions in respect of consolidation as outlined above, the Panel finds that consolidation is equitable and procedurally efficient, and that the Complainants have a specific common grievance against the Respondent by virtue of their rights in their respective registered trademarks. The Respondent appears to have engaged in common conduct that has affected the Complainants in a similar fashion. The Panel therefore orders consolidation of the Complainants' respective Complaints.

The remedy requested by the Complainants is transfer of the disputed domain name to the first Complainant, Mercado Libre, Inc., which shall be ordered in the event of the Complainants' success in the administrative proceeding.

6.2 Procedural Considerations – Respondent's location

Paragraph 10 of the Rules requires the Panel to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. The Panel must also ensure that the administrative proceeding takes place with due expedition. As the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that even if the courier has been unable to complete delivery of the written notice to the address which the Respondent has provided in Ukraine (noting the delivery attempt is marked "Delivery failed: Recipient absent"), a physical attempt at delivery to the Respondent's address was able to be effected even if the Respondent was not present at that time. Furthermore, notice has been delivered electronically to the Respondent's email address, without any apparent bounce-back email being received, and also via the "Domain Holder Contact Request Form" provided by the Registrar. The Panel also notes that the disputed domain name was registered on March 8, 2024, just over two years after the commencement of the present conflict on February 24, 2022, indicating that the Respondent provided the said address to the Registrar at the point of registration notwithstanding the ongoing conflict. The Respondent has not opposed the continuation of the proceedings. The Complainants have specified in the Complaint that any challenge made by the Respondent to any decision to transfer the disputed domain name shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar, which is the United States of America.

As described below, the Panel has determined that the Respondent registered and has used the disputed domain name in bad faith to target the Complainants' rights in their MERCADO PAGO trademark. The Panel concludes that the Parties have each been given a fair opportunity to present their case and will proceed to a Decision in order that the administrative proceeding takes place with due expedition.

6.3 Substantive Issues

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 3.0](#), section 1.7.

The Complainants have 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 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](#), section 1.7.

The Panel notes that the majority of the Complainants' relevant trademarks, including that cited in the factual background section above, appear to be "mixed" marks consisting of a word element and a device element. As a device element cannot be compared to a domain name, which cannot contain graphical components for technical reasons, the Panel will excise the device from the Complainants' mark and compare the remaining textual elements with the disputed domain name. [WIPO Overview 3.0](#), section 1.10.

Although the addition of other terms, here, "casinoscon" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name based upon their assertions that they have not licensed the Respondent to use the MERCADO PAGO trademark, they have no legal or business relationship with the Respondent, there is no evidence that the Respondent has been commonly known by the disputed domain name, and that the Respondent is misleadingly using the Complainants' trademark in the disputed domain name to attract the Complainants' clientele without authorization.

The Respondent has not responded to the Complaint and has not directly rebutted the Complainants' prima facie showing. Nevertheless, the term in the disputed domain name and the manner in which it is being used require some scrutiny, since the disputed domain name and the associated website could at first glance be considered to be making a referential use to the Complainants' trademark, the words in the disputed domain name translating from Spanish to English as "casinos with Mercado Pago". The question for the Panel is therefore whether such referential use is genuinely being made rather than being pretextual, and, if so, whether such use may be considered to be fair within the framework of the Policy.

A respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. [WIPO Overview 3.0](#), section 2.5. The question of affiliation is typically assessed by reference to an analysis of the disputed domain name itself and its composition ([WIPO Overview 3.0](#), section 2.5.1), circumstances beyond the disputed domain name including whether it is a pretext for commercial gain ([WIPO Overview 3.0](#), section 2.5.2), and any specific commercial activity evident from the use of the disputed domain name ([WIPO Overview 3.0](#), section 2.5.3). Other aspects of fair use such as criticism sites ([WIPO Overview 3.0](#), section 2.6), fan sites ([WIPO Overview 3.0](#), section 2.7), and nominative fair use by resellers or distributors ([WIPO Overview 3.0](#), section 2.8) are not relevant to the instant case.

Taking the composition of the disputed domain name first, the Panel finds that this does not conclusively indicate that fair referential use is being made of the Complainants' mark. On the one hand, it is arguable that the focus of the disputed domain name is the "casinos" that are first mentioned, and that "con mercado pago" (the Panel has added spaces for ease of reference) merely qualifies that term, indicating overall that the disputed domain name references those casinos which accept payment by way of the Complainants' "Mercado Pago" payment system. On the other hand, if the disputed domain name is to bear this meaning, then the word "con", translating to "with", must do a large amount of work. It might just as easily and reasonably be interpreted as indicating casinos "working with", "associated with" or "endorsed by" "Mercado Pago". The fact that the disputed domain name can bear these latter meanings indicates to the Panel that it is likely to be highly misleading to Internet users as it is capable of triggering an inference of affiliation with the trademark owner, and benefits unfairly from the Complainants' reputation and goodwill.

Turning to the use of the disputed domain name, while there is some apparent referential use of the Complainants' mark on the website associated with the disputed domain name, this is not entirely consistent, and only goes so far. It must be noted that the Complainants' payment method is only one of several which are covered by the guide provided by the Respondent's website. Crucially, there is no clear and prominent disclaimer or other form of statement indicating that the use of the Complainants' mark is merely intended to designate an allegedly available payment system for some of the casinos featured, and that the website associated with the disputed domain name is neither operated, nor endorsed by, or affiliated with the Complainants. On the contrary, the Respondent has designed a prominently displayed "handshake" logo for its website which mimics that of the Complainants' mixed mark, thus enhancing the apparent affiliation. In any event, even had the Parties' non-affiliation been made clearer, the Panel cannot see it as a fair referential use to associate the Complainants' mark with gambling activities just because certain gambling houses will allegedly accept the Complainants' means of payment. To take a real-world example, one can tender a payment via a credit card issued by a well-known card provider for many different kinds of service but that does not mean that it is automatically fair or reasonable to publicly associate the credit card provider's trademark or brand (and consequently its reputation or goodwill) with the service for which one has paid. In some cases, doing so could lead to tarnishment of the provider's trademark, depending upon the service concerned.

Finally, the Panel turns to the question of commercial use of the website associated with the disputed domain name. While there is some apparent referential use of the Complainants' mark in the website content, e.g., a lengthy discussion of the Complainants' payment system and how this is accepted in certain casinos, this appears to the Panel to be largely pretextual. It is clear that the real purpose of said website is to draw Internet users to a variety of online casinos by way of a series of hyperlinks (each contains the Spanish word "JUGAR" (meaning "GAMBLE" or "PLAY") in prominent capitalized letters beside the casino

listing) by which the Respondent seeks to benefit commercially. It cannot be overlooked in this context once again that the Respondent's website is misleading as to source or sponsorship, and that the Respondent is leveraging the Complainants' goodwill and reputation in their trademark, which the evidence on the record shows to be substantial, in order to draw Internet users to websites from which it obtains a commercial benefit, and with which the Complainants do not necessarily wish to be associated. This cannot confer rights or legitimate interests upon the Respondent.

Finally, it must be noted that the Respondent has remained silent in the face of the Complainants' assertions. There has been no attempt on the Respondent's part to put forward any case of fair use, and of fair referential use in particular, to assert that the use is not pretextual, or otherwise to explain or justify the use of the Complainants' mark in the disputed domain name and on the associated website.

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.

The outcome of the third element analysis here largely mirrors that of the second element above. The Panel notes that the Respondent has evidently registered the disputed domain name in the knowledge of the Complainants' mark, since this is clearly referenced, as such, on the associated website. The Panel has found that any apparent referential use of the Complainants' mark in the disputed domain name and on the associated website is largely pretextual, and that the Respondent is leveraging the reputation and goodwill in the Complainants' mark to encourage Internet users to visit certain online casinos and gambling facilities for the Respondent's own commercial gain. The Panel has also found that the Respondent has used a "handshake" logo on its website similar to that of the Complainants' device marks, which seems designed to enhance the confusion as to whether the site is associated with or endorsed by the Complainant. The Panel has found that the disputed domain name is ambiguous and that, to a not inconsiderable extent, it signals an affiliation with or endorsement by the Complainants rather than making a fair referential use of the Complainants' mark. The Panel has noted that there is no attempt on the website associated with the disputed domain name to reduce or eliminate the confusion arising, for example, by way of a disclaimer regarding the absence of any such endorsement or affiliation.

Consequently, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website and other online locations, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of such website or location.

The Respondent has chosen not to engage with the administrative proceeding, and accordingly, it has failed to address any of the Complainants' submissions on this topic. Notably, it has not asserted any good faith reason or explanation for the registration and use of the disputed domain name.

The Panel finds that the Complainants have 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 <casinosconmercadopago.com> be transferred to the first Complainant, Mercado Libre, Inc.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: February 21, 2025.