

## **ADMINISTRATIVE PANEL DECISION**

Fundacion Cesar Manrique v. Jackie Bragg, Costa Almeria Tours  
Case No. D2025-0823

### **1. The Parties**

The Complainant is Fundacion Cesar Manrique, Spain, represented by AB Asesores Propiedad Industrial e Intelectual S.L.P., Spain.

The Respondent is Jackie Bragg, Costa Almeria Tours, Spain.

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

The disputed domain name <cesarmanrique.store> 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 February 27, 2025. On February 27, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 4, 2025, 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 March 5, 2025.

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 March 10, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2025. An Automatic Response Extension was granted by the Center to the Respondent, upon request, on March 31, 2025. The Response was filed with the Center on April 3, 2025.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on April 9, 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 a private, non-profit cultural institution set up in 1983 and based in Lanzarote, Spain which aims to conserve and disseminate the work of the Canarian artist César Manrique. The Complainant is focused on four complementary areas of work: César Manrique, plastic arts, environment and territory, and cultural reflection.

The Complainant is the owner of different trademarks. By way of example:

Patent and Trademark Spanish Office, for CESAR MANRIQUE, with registration number 3.665.473, filed on May 11, 2017 and registered on January 11, 2018.

Patent and Trademark Spanish Office, for FUNDACION CESAR MANRIQUE, with registration number 2609831, filed on May 13, 1994 and registered on August 5, 2004, duly registered.

CESAR MANRIQUE trademark is well-known in Spain and thus should have that consideration for UDRP purposes.

The disputed domain name was registered on April 12, 2019 and redirects to a website where Cesar Manrique's work of arts is offered to the public together with work of arts of third artists and products of Lanzarote Island.

The disputed domain name includes the following disclaimer: "PLEASE NOTE THAT I AM NOT THE CESAR MANRIQUE FOUNDATION - just an art collector of more than 40 years of the great maestro and lover of his island of birth - Lanzarote".

The Complainant sent both cease and desist letters on May 2 and October 3, 2024, but did not receive an answer.

#### **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 that the Top-Level Domain ".store" is a standard descriptive term referring to commercial generic activity that do not provide distinctiveness to the disputed domain name and, increases the misleading impression that it is linked to the Complainant.

The Complainant alleges that the Respondent has no relationship with the Complainant, nor has been authorized to register the disputed domain name.

The Complainant also affirms that the Respondent is given the impression of being an official distributor of the Complainant. Further, the OKI Data criteria is not met since the Respondent is offering products of third parties and is not disclosing her relationship with the Complainant due to the lack of disclaimer which only

was displayed once the Respondent received the cease-and-desist letter. And indeed, insist the Complainant, the current disclaimer is not prominently displayed on the site.

With regard to the third element, the Complainant asserts that the Respondent was aware of its rights at the moment of the registration of the disputed domain name and, therefore, the Respondent intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of products on the website.

## **B. Respondent**

The Respondent contends that she has never intended to mislead anyone concerning Cesar Manrique and Lanzarote items. The Respondent affirms that when buying an available domain name in Godaddy, she had no knowledge that it was under any sort of copyright. She admits to have displayed CESAR MANRIQUE logo on the website by taking photos of a tile and reproduced it in the site.

The Respondent also says that she has changed her email address on her website and has changed all trademarks on the website so that it is no similar to the Complainant's marks.

The Respondent knew Cesar Manrique personally and claimed to be a collector of art.

She only set up a website during Covid and once her business collapsed only to take advantage of her collection of Manrique items gathered during her stay in Lanzarote for over twenty years.

The Respondent insists that each of her items is second hand, some vintage, "described fully and transparently on the website" and states that she set up the website as a hobby and not a business. Thus, the website is focused on to sell to a limited number of art fan, often other collectors, who come from all over the world and like to discuss Cesar Manrique's work.

## **6. Discussion and Findings**

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (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.

### **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.

Besides, the Top-Level Domain (“TLD”) is generally considered a requirement for the composition of a domain name and is not usually taken into account in the comparison of this requirement. See [WIPO Overview 3.0](#), section 1.11.

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).

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.

As noted in [WIPO Overview 3.0](#), section 2.5.1, UDRP panels have found that domain names that are identical to a complainant’s trademark carry a high risk of implied affiliation. In the present case the Panel notes that the use of “.store” generates confusion with the Complainant because it may be referred to its merchandising or a site where the Complainant’s activity could be developed.

Noting the composition of the disputed domain name, the Panel finds the disclaimer at the Respondent’s website does not cure the finding of the lack of rights or legitimate interests in the disputed domain name.

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 Respondent falls in paragraph (iv) that is to say: “intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark.” The selection of the TLD “.store” supports this finding because of the confusion it generates.

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.

The Respondent admits knowledge of Cesar Manrique and ignorance of the Complainant’s trademark rights. While the Respondent may be a fan of Cesar Manrique’s work, that does not alter the fact that the composition of the disputed domain name creates a risk of implied affiliation.

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 <cesarmanrique.store> be cancelled.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: April 23, 2025