

ADMINISTRATIVE PANEL DECISION

Travel Reservations S.R.L. v. Gustavo Alvares, Gustavo Alberto Alvares
Case No. DCO2023-0044

1. The Parties

The Complainant is Travel Reservations S.R.L., Uruguay, represented by Philippi Prietocarrizosa Ferrero DU & Uría, Colombia.

The Respondent is Gustavo Alvares, Gustavo Alberto Alvares, Colombia.

2. The Domain Name and Registrar

The disputed domain name <despegar.net.co> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 3, 2023. On May 4, 2023, 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 May 5, 2023 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 May 9, 2023. 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 May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 2, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 7, 2023. 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, registered in Uruguay, is a travel agency offering third-party air travel tickets, hotel reservations, tour packages, travel reservations, car rentals, medical insurances, and assistance cards. The products are sold by the Complainant via the Internet and directly in its corresponding agencies.

The Complainant carries its business online on, *inter alia*, the website “www.despegar.com.co” registered on January 13, 2000.

The Complainant owns trademark registrations for DESPEGAR (the “DESPEGAR Trademark”), such as the following:

- the Colombian trademark registration/certificate no. 638720, D DESPEGAR (device), filed on March 15, 2019, and valid until December 21, 2030, for services in International Classes 39 and 43; and
- the Colombian trademark registration/certificate no. 230944, DESPEGAR.COM (device), filed on January 28, 2000, and valid until December 21, 2030, for services in International Class 39.

The disputed domain name was registered on January 28, 2023, and, at the time of filing the Complaint, according to the evidence provided with the Complaint, it was used in relation to a website offering travel services in Colombia, displaying the Complainant’s trademark and logo, in a slightly altered version (*i.e.* the word element “.com” from the DESPEGAR.COM Trademark were replaced by “.net”), was using the same colors, fonts, as well as third parties’ trademarks.

The Complainant provided evidence of administrative proceedings initiated in December 2017, when the disputed domain name was registered by a third party, but that involved also the Respondent. The administrative proceeding was decided on October 13, 2020 and to the Panel’s knowledge only the third party appealed such decision, procedure which is still pending at the time of the present proceeding.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its DESPEGAR Trademark, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith, promoting similar services. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the DESPEGAR Trademark.

According to the standing practice, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

If the domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The disputed domain name incorporates the dominant element of the Complainant's Trademark with an additional final term ".net". However, such addition does not prevent a finding of confusing similarity, as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity, where the relevant trademark is recognizable within the domain name. See section 1.8 of the [WIPO Overview 3.0](#).

Further, it is well established in decisions under the Policy that the ".co" Top-Level Domain ("TLD"), being a technical requirement for registering domain names, may typically be disregarded for the purpose of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's DESPEGAR Trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the DESPEGAR Trademark, that the Respondent is not commonly known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element". See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions and has not come forward with any explanation and relevant evidence to rebut the Complainant's *prima facie* case.

According to the records before it, the Respondent has used the disputed domain name in connection with a website clearly impersonating the Complainant, and providing services similar to those offered by the Complainant, in Colombia where the Complainant is providing services under its DESPEGAR Trademark and corresponding website for about two decades.

UDRP panels have categorically held that the use of a domain name for illegal activity (*e.g.* impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

The Panel further notes that the website at the disputed domain name imitates the Complainant's website, which affirms the impersonation.

For these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds rights in the DESPEGAR Trademark since at least early 2000.

The disputed domain name was registered in 2023, reproduces the Complainant's trademark and domain name with a slight alteration, the replacement of the word "com" with "net". Further, the disputed domain name was registered under the ".co" TLD for Colombia, the country where the Complainant carries its activity; and is displaying the Complainant's trademark and logo, in a slightly altered version, to promote similar services to those provided by the Complainant under its DESPEGAR Trademark. This in itself is sufficient to conclude that the Respondent was targeting the Complainant with the registration and use of the disputed domain name.

Furthermore, before commencing the present procedures, the Complainant initiated in 2017 an infringement action against the Respondent and a third party, before the administrative authorities in Colombia, in relation to the disputed domain name (at the time registered by a third party), where the administrative authorities rendered a decision favorable to the Complainant. While it seems the decision was appealed, it is clear that the Respondent was aware of the Complainant's Trademark at the time of the registration of the disputed domain name in 2023.

Therefore, the Panel finds that the disputed domain name was registered by the Respondent in bad faith, with knowledge of the Complainant and targeting its trademark.

At the time of filing the Complaint, the disputed domain name resolved to a page impersonating the Complainant, providing services related to those of the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, 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" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's Trademark, is very similar to the Complainant's official website, and the website operated under the disputed domain name provides related services to those of the Complainant, particularly in Colombia where the Complainant carries its activity, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. Furthermore, this activity is likely to disrupt the Complainant's commercial activity.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <despegar.net.co> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: June 21, 2023