

## **ADMINISTRATIVE PANEL DECISION**

Medgrupo Participações Ltda. v. Kiwi Falante, MedVideos  
Case No. DIO2022-0015

### **1. The Parties**

The Complainant is Medgrupo Participações Ltda., Brazil, represented Montaury Pimenta, Machado & Vieira de Mello, Brazil.

The Respondent is Kiwi Falante, MedVideos, Brazil.

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

The disputed domain name <medvideos.io> is registered with TLD Registrar Solutions Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2022. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 2022, 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 April 14, 2022 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 April 19, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2022.


The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 24, 2022. 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 Brazilian company that since 1997 offers courses for training doctors and medical students in all segments of the medical field, including online courses.


The Complainant owns the domain name <medgrupo.com.br>, registered on July 29, 2004 as well as the following, amongst other, trademarks (Annexes 2 and 3 to the Complaint):


- Brazilian trademark registration No. 900130253 for the word and device mark  , registered on October 13, 2009, successively renewed, in class 16;

- Brazilian trademark registration No. 910108862 for the word and device mark  , registered on November 28, 2017, in class 16;

- Brazilian trademark registration No. 910108870 for the word and device mark  , registered on November 28, 2017, in class 41;

- Brazilian trademark registration No. 910108897 for the device mark  , registered on November 28, 2017, in class 16;

- Brazilian trademark registration No. 910108900 for the device mark  , registered on November 28, 2017, in class 41;

- Brazilian trademark registration No. 905910222 for the word and device mark  , registered on September 26, 2017, in class 41; and

- Brazilian trademark registration No. 910324360 for the word mark MED ME, registered on May 2, 2018, in class 9.

The disputed domain name <medvideos.io> was registered on August 26, 2021, and resolves to an active webpage offering free and paid online courses for doctors and medical students reproducing the Complainant's copyrighted videos as well as the Complainant's device trademark.

A past version of the Respondent's webpage offering the same services displayed the Complainant's trademark MEDGRUPO and the Complainant's logo (Annex 4 to the Complaint).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts to be one of the largest medical education companies in the world counting with more than 750 employees and having provided, since 1997, renowned courses focused on training doctors and medical students on all segments of the medical field.

Also according to the Complainant, it came across the disputed domain name where the Complainant's copyrighted videos are being offered by the Respondent for purchase at considerably discounted prices (Annex 5 to the Complaint).

Under the Complainant's view, the disputed domain name partially reproduces the Complainant's trademark, not preventing the addition of the dictionary term "videos" a finding of confusing similarity under the Policy given the reproduction of the Complainant's logo and copyrighted materials at the Respondent's website available at the disputed domain name which clearly seeks to profit from an undue association with the Complainant.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) the Respondent is using the disputed domain name to infringe the Complainant's copyrighted videos offering without authorization the Complainant's online courses thus clearly misleading consumers by unlawfully making the Complainant's courses available for purchase at much lower prices; and
- (ii) the Respondent cannot claim to have been commonly known by the disputed domain name.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

- (i) the Respondent knew of the Complainant's trademark when registering the disputed domain name given that the Respondent has used the disputed domain name to offer the Complainant's online courses without authorization and with the reproduction of the Complainant's trademark and logo; and
- (ii) the Respondent's bad faith is further evidenced by the indication of false information on the Whois data having indicated that his name would be "Kiwi Falante" (roughly "speaking kiwi") and his address located at "Rua dos Bobos" ("Fool's Street"), thus masking its true identity and seeking to maintain his wrongdoings more difficult to be combated.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 or is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### **A. Identical or Confusingly Similar**

The Complainant has established rights over the MEDGRUPO trademark.

The disputed domain name consists of a partial reproduction of the Complainant's trademark, with the addition of the term "videos". Furthermore, the use of the disputed domain name in connection with a webpage offering the Complainant's online courses without authorization with the reproduction of the

Complainant's logo affirms that the Respondent seeks to target the Complainant's trademark, and confirms a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.15.<sup>1</sup>

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent showing that the Respondent has not been commonly known by the disputed domain name and neither has been authorized by the Complainant to use its trademark, nor has it been licensed or is there a partnership with the Complainant; being it uncontested that the Complainant has no connection or affiliation with the Respondent.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with a webpage offering the Complainant's copyrighted online courses without authorization with the reproduction of the Complainant's logo, cannot be regarded as a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances. In fact, the Respondent intends for commercial gain to mislead consumers or to tarnish the trademark at issue.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

## **C. Registered or Used in Bad Faith**

The Policy indicates in paragraph 4(b)(iv) that bad faith registration or use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

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<sup>1</sup> Noting the substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel has referred to the [WIPO Overview 3.0](#), where appropriate.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the use of the Complainant's logo and copyrighted materials at the webpage, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

## **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 <medvideos.io> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: June 7, 2022