# Decision for dispute CAC-UDRP-103095

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| Case number | CAC-UDRP-103095 |
| Time of filing | 2020-06-11 08:47:17 |
| Domain names | anibaldamiao.com |

## Case administrator

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| Name | Šárka Glasslová (Case admin) |

## Complainant

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| Name | Anibal Jose Gaspar Damiao |

## Respondent

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| Name | Karlis Akis |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant invokes rights in his personal name, Anibal Jose Gaspar Damiao.

FACTUAL BACKGROUND

The Complainant, Anibal Jose Gaspar Damiao, is residing in Denmark.

The disputed domain name has been registered on January 31, 2020, and refers to a criticism website related to the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant states that the disputed domain name is identical to his personal name and is used to defame him.

RESPONDENT:
The Respondent argues that the website is intended to inform as many people as possible passively about the Complainant. According to the Respondent, no threats have been made towards the Complainant.

RIGHTS

The Panel finds that the Complainant has not shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Not relevant given the Panel's decision on the first requirement.

BAD FAITH

Not relevant given the Panel's decision on the first requirement.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

2. The Respondent has no rights or legitimate interests in respect of the domain name; and

3. The domain name has been registered and is being used in bad faith.

1. Identity or confusing similarity

The UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant's goods or services (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.5.2).

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services (WIPO Overview 3.0, section 1.3).

In this case, the Complainant does not show that he uses his personal name in commerce as a distinctive identifier of his goods or services. Therefore, the Panel finds that the Complainant cannot invoke rights in his personal name within the meaning of paragraph 4(a)(i) of the Policy.

Given the Panel's finding on the first requirement of the Policy, it is unnecessary to consider the second and third requirements, as all three requirements must be proven to obtain an order to have the disputed domain name transferred as requested by the Complainant.

The Panel's decision cannot be considered as a recognition of rights or legitimate interests of the Respondent in respect of the disputed domain name, or as a confirmation of the absence of bad faith registration and/or use of the disputed domain

name by the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ANIBALDAMIAO.COM**: Remaining with the Respondent

## PANELLISTS

| Name | **Flip Petillion** |
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DATE OF PANEL DECISION 2020-07-15

Publish the Decision