Decision for dispute CAC-UDRP-103367

Case number	CAC-UDRP-103367
Time of filing	2020-10-26 09:16:20
Domain names	bodegaaurera.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Wal-Mart de México, S.A.B. de C.V

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	Milen Radumilo

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

(i) Mexican word trademark BODEGA AURRERA, No. 17797, filed on 20 February 1985 and registered on 20 January 1987; (ii) Mexican word trademark BODEGA AURRERA, No. 19350, filed on 1 September 1993 and registered on 27 April 1994; and (iii) Chilean word and device trademark BODEGA AURRERA, No. 1143858, filed on 11 September 2013 and registered on 2 December 2014.

("Complainant's Trademarks").

The disputed domain name <bodegaaurera.com> was registered on 24 February 2020.

FACTUAL BACKGROUND

As the Respondent did not file any response to the Complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) The Complainant owns and operates self-service stores in Mexico and Central America. The Complainant operates discount stores, hypermarkets, supermarkets, membership self-service wholesale stores, and pharmacies. It operates 1,910 Bodega Aurrerá discount stores, 274 Walmart hypermarkets, 91 Superama supermarkets, and 163 Sam's Club membership self-service wholesale stores. The Complainant is part of the well-know Wal-Mart Group.

(b) The Complainant is the owner of Complainant's Trademarks which predate registration of disputed domain name. Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown in Mexico and Latin America.

(c) The Complainant owns also the registration of the domain name <bodegaurrera.com> dated 20 May 2006 and <bodegaaurrera.net> dated 9 May 2018. The Complainant uses the domain name <bodegaaurrera.net> to connect to a website through which it informs potential customers about the BODEGA AURRERA brand and its products and services.

(d) The disputed domain name was registered on 24 February 2020.

(e) The disputed domain name is pointing to pay-per-click ("PPC") website where Internet visitors find related links under headings which are related to Complainant's products and trademarks such as "BODEGA AURRERA".

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) Disputed domain name is confusingly similar to Complainant's Trademarks as it contains an obvious misspelling of Complainant's Trademarks. The omission of the letter "r" in the disputed domain name is not sufficient to exclude the likelihood of confusion with Complainant's Trademark, as they look highly similar from visual perspective. Thus it is a clear case of typosquatting.

(ii) The Respondent has no legitimate interest in the disputed domain name. He has not been permitted or licensed to use Complainant's Trademarks. Respondent is not affiliated with the Complainant nor authorized by it in any way to use its trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

(iii) Disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's Trademark and its reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the Complainant's Trademarks. Moreover, the disputed domain name points to a parking page with commercial (pay-per-click) links. The Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's Trademarks. Past Panels have held that this is an evidence of bad faith registration and use. Moreover, the disputed domain name is offered for sale at the infringing website for a price higher than the normal out of pocket expenses. And finally, the Respondent appears to have engaged in pattern of similar conduct as evidenced by whole range of previous UDRP cases where the claims against the Respondent have been made for domain name rights infringements.

THE RESPONDENT:

The Respondent did not provide any response to the Complaint.

RIGHTS

The Panel concluded that the disputed domain name is confusingly similar to the Complainant's Trademark within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

For details, please see "Principal Reasons for the Decision".

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

For details, please see "Principal Reasons for the Decision".

PROCEDURAL FACTORS

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

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

(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 and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is confusingly similar to Complainant's Trademarks. As the Complainant correctly pointed out, mere omission of the letter "r" in the disputed domain name is not sufficient to exclude the likelihood of confusion with Complainant's Trademarks. It is an obvious, and in the opinion of the Panel also deliberate misspelling of Complainant's Trademarks and thus a clear case of typosquatting.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP

(please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The disputed domain name points to an inactive website with a parking page and commercial links. As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The disputed domain name points to an inactive website with parking page and commercial links (pay-per-click). The Panel agrees with the Complainant that the Respondent attempted to attract internet users by registering disputed domain name with a spelling error and thus deliberately created a likelihood of confusion with the Complainant's Trademark. Such practice is a clear example of typosquatting and thus bad faith of the Respondent in registration and use of the disputed domain name. Also, the disputed domain name appears to be for sale as "premium domain name" for costs exceeding the costs of registration. The Respondent also has been involved in numerous other domain names disputes and therefore it is clear that the Respondent regularly engages in cybersquatting conduct.

As a result, the Panel found that the disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BODEGAAURERA.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2020-11-27

Publish the Decision