

Decision for dispute CAC-UDRP-104836

Case number	CAC-UDRP-104836
Time of filing	2022-09-13 15:36:43
Domain names	deliriumbrazilshop.com, deliriumbrazil.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Brouwerij L. Huyghe, naamloze vennootschap
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Complainant representative

Organization	BAP IP BV - Brantsandpatents
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RESPONDENTS

Name	Carlos Alberto Favarao
Name	Crislaine Lessa Maia

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademark registrations for DELIRIUM and DELIRIUM TREMENS, specifically:

- Brazilian trademark registration no. 830822100 for DELIRIUM TREMENS (fig) in class 32, registered on 25 March 2014;
- Brazilian trademark registration no. 911180850 for the word mark DELIRIUM in class 32, registered on 26 November 2019.

FACTUAL BACKGROUND**FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:**

The Complainant is the Belgian company Brouwerij L. Huyghe, naamloze vennootschap, a well-known brewery based in Melle (Belgium) but with a very strong international presence and reputation. In particular, the Complainant's beer DELIRIUM TREMENS with its famous pink elephant logo, which was first launched in 1988, has been a staple of the "special" beer world for almost 40 years, even winning the title "best beer in the world" at the 1998 world beer championships in Chicago.

Since then, the DELIRIUM range has been broadened, with the addition of multiple declinations of the beer, such as DELIRIUM RED, DELIRIUM ARGENTUM, DELIRIUM NOCTURNUM, DELIRIUM CHRISTMAS, DELIRIUM BLOND, DELIRIUM DELIRIA and DELIRIUM BLACK.

As far as necessary, DELIRIUM is a well know brand. The complainant's DELIRIUM beers are successfully being sold in many countries around the world for many decades. Of particular interest for this matter, we refer to the established presence of the Complainant in Brazil.

Moreover, the Complainant can rely on the following protected rights for the mark DELIRIUM:

DELIRIUM is a worldwide registered trademark. There are worldwide around 83 valid trademark registrations in the name of Brouwerij L. Huyghe for or containing 'DELIRIUM' in class 32. The whole EU is protected with several trademark registrations, and further covered countries include Brazil, Argentina, Colombia, Chile the US, Canada, China, Taiwan, Turkey, Korea, Japan, India, Singapore, Australia, New Zealand, Vietnam, Switzerland, Norway and Russia.

As a few showing examples we can mention that are of specific interest in this matter:

- Brazilian trademark registration no. 830822100 for the device mark in class 32, registered on 25 March 2014;
- Brazilian trademark registration no. 911180850 for the word mark DELIRIUM in class 32, registered on 26 November 2019.

Due to its long lasting and intensive use since 1988 the mark DELIRIUM is further to be considered a worldwide reputed brand.

Over the past years, the Complainant was made aware of fraudulent practices in Brazil, where parties such as the Respondent register domain names that suggest a connection with the Complainant or its trademarks, such as the domains in question, create a fake imitation of the Complainant's real website (featuring pictures and fonts copied from the official delirium.be website) sell goods to unsuspecting Brazilian customers and never send the goods in question (as they never were in possession of the goods in the first place).

Along with defrauding unsuspecting customers and the crime that can be derived from these actions, the consequences for the Complainant's reputation are obviously enormous and the negative experience of the duped customers in relation to DELIRIUM has a clear and direct detrimental effect on the Complainant.

As far as the domain name ownership is concerned, Complainant now has decided to submit the matter to arbitration and hereby requests that the complaint be submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy.

1. Grounds of Complaint

First UDRP Element - The Domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The disputed domain names are confusingly to the Complainants' registered trademark rights for DELIRIUM.

The disputed domain names incorporate the Complainants' DELIRIUM trade mark in its entirety under the ".com" generic Top-Level Domain. The added elements "BRAZIL" and "SHOP" are generic, will not be perceived as distinctive elements by the relevant consumer next to the first and dominant "DELIRIUM" element. In the disputed domain names the DELIRIUM trademark stands out and leads the public to think that the disputed domain names are somehow connected to the owner of the registered trademark; most likely being an official Brazilian webshop for the DELIRIUM products.

In similar situations, prior panels deciding under the Policy have held that “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”. See, for example, *Playboy Enterprises International, Inc. v. Zeynel Demirtas, WIPO Case No. D2007-0768*, <playboyturkey.com>.

Second UDRP Element - the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the Complaint:

The Respondent defences under UDRP paragraph 4(c) are applicable in this case:

- Before any notice of the dispute, the Respondent did not use the disputed domain names or a name corresponding to the disputed domain names in connection to bona fide offering of goods or services, nor are there any indications that the Respondent was preparing to use the domain name in such a way. For the recorded past, the domain name was only used as a fraudulent imitation of the Complainant's website.
- The Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain names, even if the Respondent has acquired no trademark or service mark rights. While there may exist people with rights on the name DELIRIUM, it is highly implausible that the Respondent would be known by this name. This is supported by the fact that the domain names are actually used and feature imitations of the Complainant's website. In any case, if there was any party with a lawful claim to the domain name, the Complainant would necessarily know it.

Moreover, the Complainant has not licensed or otherwise permitted the Respondent – or any other party for that matter - to use any of its trademarks or to apply for or use any domain name incorporating its marks. In the course of business DELIRIUM can be considered to be an invented word, and as such it is not a name traders would legitimately choose unless seeking to create an impression of an association with the Complainant.

- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names. His intention is for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. In our view, there is not much discussion to be had on the fact that the use in question is obviously misleading and could – as it has happened already – lead to consumer confusion and diversion.

It is provided a comparison of the websites featured on the disputed domain names, and the Complainant's Official website on www.delirium.be as well as its Facebook page <https://www.facebook.com/Deliriumbrewery>.

There is little doubt that we are dealing with a fraudulent copy of the Complainant's content and, in that sense the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names.

Moreover, according to the established practice on the second UDRP element, the burden of proof regarding a possible legitimate interest shifts to the Respondent. If the Respondent fails to come forward with such relevant evidence, we ask the Panel to confirm that the Complainant are deemed to have satisfied the second element.

Third UDRP Element - the disputed domain name has been registered and is being used in bad faith.

Considering the disputed domain names feature fraudulent copies of the Complainant's official website and are being used to defraud unsuspecting customers by offering goods for sale without the intention of providing them, it is quite obvious in the Complainant's view that the disputed domain name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. To facilitate assessment of whether this has occurred, UDRP paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

[...]

- by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.

Considering the circumstances described above, it is clear that this paragraph is completely applicable in this case and that the disputed domain names were registered and are being used in bad faith.

It is added an extract of a conversation between the Complainant and it's official Brazilian representative. There is no question for the local representative, these are fraudulent websites.

Based on the above, the Complaint believes to have sufficiently substantiated our Complaint and requests the transfer of the disputed domain names <deliriumbrazil.com> and <deliriumbrazilshop.com> to Brouwerij L. Huyghe, naamloze vennootschap.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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

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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

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

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

1. RIGHTS

The disputed domain names are confusingly similar to the Complainant's registered trademarks since they reproduce the Complainant's mark 'DELIRIUM', merely adding BRAZIL and SHOP.

As stated in *Crédit Industriel et Commercial v. Manager Builder, Builder Manager*, WIPO Case No. D2018-2230:

“The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term “banks”, which even is the English translation of the French term “banques” as it is reflected in Complainant’s CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of Complainant’s CIC trademark in the disputed domain name.”

1. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which, *prima facie*, allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the *prima facie* showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists.” WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the Complainant has provided evidence that the Respondent's website clearly imitates the Complainant's website, which makes it possible to establish a clear intention to impersonate. Obviously, this use cannot be considered as legitimate.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

1. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant’s allegations and evidence with regard to the Respondent’s registration and use of the disputed domain names in bad faith.

The Complainant has filed evidence of the well-known character of its DELIRIUM trademark for beers. The Respondent's website clearly imitates the Complainant's one. It seems clear that the Respondent is trying to impersonate the Complainant.

It is therefore clear that the Respondent registered the disputed domain names for this fraudulent purpose.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain names have been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **deliriumbrazilshop.com**: Transferred
- 2. **deliriumbrazil.com**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION 2022-10-21

Publish the Decision