

WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Jardines De Paz S.A. v. Equity LLC

Case No. D2009-0616

1. The Parties

The Complainant is Jardines De Paz S.A., of Bogota D.C., Colombia, represented by Muñoz Abogados, Colombia.

The Respondent is Equity LLC, of North Carolina, United States of America.

2. The Domain Name and Registrar

The disputed domain name [jardinesdepaz.com] is registered with GoDaddy.com, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2009. On May 8, 2009, the Center transmitted by email to GoDaddy.com, Inc. a request for registrar verification in connection with the disputed domain name. On May 8, 2009, GoDaddy.com, Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 15, 2009. In accordance with the Rules, paragraph 5(a), the due date for Response was June 4,

2009. The Respondent did not submit a Response. Accordingly, the Center notified the Respondent's default on June 5, 2009.

The Center appointed Enrique Ochoa de González Argüelles as the sole panelist in this matter on June 12, 2009. 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 following information is summarized from information in the Complaint:

- The Complainant is a duly existing Colombian corporation located in Bogota, Colombia.
- The Complainant is the holder of several registered trademarks JARDINES DE PAZ in Colombia in different classes of the International Classification, and which are in full force and effect.

Trademark	Certificate Number	Class
JARDINES DE PAZ	196385	42
JARDINES DE PAZ	371509	44
JARDINES DE PAZ	371514	45
JARDINES DE PAZ	371515	20
JARDINES DE PAZ	371517	16
JARDINES DE PAZ	371518	4
JARDINES DE PAZ AND LOGO	371519	36
JARDINES DE PAZ AND LOGO	371525	45
JARDINES DE PAZ AND LOGO	371526	44

- The Complainant uses the trademarks JARDINES DE PAZ, among others in the following services: funerary services, lugubrious pomps, crematorium services, the selling of tombstones and prepaid funerary services.

– The Complainant is the holder of the web site at “www.jardinesdepaz.com.co” to provide a contact point for its customers and for the promotion of its goods and services.

No Response was filed by the Respondent within the time specified in the Notification of Complaint and Commencement of Administrative Proceedings. As of the date of this decision, no Response has been filed by the Respondent. Consequently, this Panel will issue its Decision based on the Complaint, the Policy, the Rules, the Supplemental Rules, and without the benefit of a Response from Respondent (Mary–Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy’s Antiques, WIPO Case No. D2000–0004).

The disputed domain name, [jardinesdepaz.com], was registered on May 4, 2005.

5. Parties’ Contentions

A. Complainant

The Complainant contends that same learned of the existence of the disputed domain name [jardinesdepaz.com] and its content on June 2008 and that said domain name is identical to its trademark JARDINES DE PAZ and confusingly similar to its domain name [jardinesdepaz.com.co].

The Complainant contends that the Respondent uses in the domain name [jardinesdepaz.com] the whole trademark JARDINES DE PAZ held by Jardines de Paz, S.A. and said circumstance confuses Internet users around the globe, since the website is currently in use as some sort of search engine, which does not work in a proper way.

The Complainant contends that the aforementioned website is not in real use, and in accordance with the Rules, paragraph 3(b)(ix)(2), the Respondent lacks any real, legitimate interest whatsoever in respect of the [jardinesdepaz.com] domain name.

The Complainant contends that the Respondent works under the name Equity LLC,

which bears no relation whatsoever to the name “Jardines de Paz” or any direct or indirect resemblance to its meaning in Spanish (Gardens of Peace, or Peace Gardens), English or any other language.

The Complainant contends that it does not know who the Respondent is, and that there has not been a license or authorization of any kind for the use of the JARDINES DE PAZ trademark in any way whatsoever to the Respondent, nor has there been any prior business relationship between them.

The Complainant contends that it has a better right against that of the Respondent’s and that they own industrial property rights over the set of words “Jardines de Paz” in Colombia, whereas the Respondent does not show any real, legitimate interest in the use of the disputed domain name, further strengthening the Complainant’s demands. In line with the above, the Complainant makes reference to the previous decisions: Xerox Corp. v. Stonybrook Investments, Ltd., WIPO Case No. D2001–0380; Pivotal Corporation v. Discovery Street Trading Co. Ltd., WIPO Case No. D2000–0648; Cellular One Group v. Digital Communications, Inc., WIPO Case No. D2001–0189 and Publicaciones Semana S.A. v. Hermes Fajardo Morán, WIPO Case No. DVE2008–0001.

The Complainant contends that, since the disputed domain name is not being used in a proper way, it is clear that it was registered in order to block its legitimate owner and that with such behavior, the Respondent is disrupting the Complainant’s business by creating confusion among Internet users who want to locate the latter’s web site and may easily find the former’s unused website. The Complainant also states that said circumstance is affecting the Complainant’s image in a very corrosive way.

The Complainant contends that on July 4, 2008, an email was sent to the Respondent, requesting to evidence its interest in the disputed domain name. The Complainant set forth that to this date, it has not received any reply to such inquiry. The Complainant also states that such behavior constitutes an event of bad faith, even if it is not listed on the Policy’s paragraph 4(b) (See Paule Ka v. Paula Korenek, WIPO Case No. D2003–0453) and that there are no plausible circumstances by which the Respondent may be able to use the disputed domain name in good faith.

The Complainant contends that the Respondent’s passive conduct regarding the

“www.jardinesdepaz.com”, in accordance to Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, amounts to the Respondent acting in bad faith.

The Complainant contends that the webpage linked to the “www.jardinesdepaz.com” website is a deceptive domain name and that said website is using, without the rightful owners’ permission, the well known trademark JARDINES DE PAZ, as well as the business goodwill for the sole purpose of generating revenue from Internet advertisement.

The Complainant contends that Internet users who enter the website identified as “www.jardinesdepaz.com” will find a search page, which uses words and seems to offer similar services to those offered by the Colombian and legitimate owner of the JARDINES DE PAZ trademark. In line with the above, the Complainant states that those users are redirected to a domain name that displays advertising generating revenues.

Finally, the Complainant contends that the domain name [jardinesdepaz.com] has no legitimate purpose, and it is only used to deceive and confuse Internet users and to generate revenue when an advertisement is clicked.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, the Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested:

(i) the 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 domain name; and

(iii) the domain name has been registered and is being used in bad faith. Policy, Paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the registrations cited by the Complainant and provided as Exhibits to this Complaint, the Panel is convinced that the Complainant has rights in the mark JARDINES DE PAZ.

The disputed domain name is [jardinesdepaz.com]. It is well established that the gTLD suffix “.com” or similar, being an integral and necessary part of a domain name, may be disregarded in the determination of confusing similarity. (Empresa Brasileira de Telecomunicações S.A. – Embratel v. Gustavo Teles, WIPO Case No. D2000–0155).

Consequently, it is clear that the domain name [jardinesdepaz.com] is identical to the trademark registered and used by the Complainant.

B. Rights or Legitimate Interests

In accordance with prior decisions under the Policy, “a 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, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, paragraph 2.1. See Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003–0455.

Accordingly, as a result of the Complainant’s supported allegations which have established its prima facie case and without any evidence of the Respondent’s rights or legitimate interests in the disputed domain name, the Panel is satisfied that the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four circumstances that, without limitation, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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

The Panel verified that the Respondent website leads to several links which offer a wide variety of products and services, and some include products and services which compete with the Complainant business. Taking together this evidence it is not possible to escape the conclusion that the Respondent has knowingly incorporated the Complainant trademark in the domain name without authorization.

The overall intended function of the Respondent's website is clearly to cause Internet users to be redirected to the websites of competitors of the Complainant and it may reasonably be concluded that the Respondent has set up this redirection system with the expectation of some financial return.

Consequently, it may reasonably be concluded that the disputed domain name contains the words “jardines de paz” in order to attract Internet users searching for that term via search engines, including users who expect to be taken to the Complainant’s authentic website or to websites endorsed by the Complainant.

Thus, the Respondent is trading illegitimately on the Complainant’s trademark in order to attract visitors by initial interest confusion as to the affiliation or endorsement of the website. That is, the Respondent is taking advantage of the trademark JARDINES DE PAZ for commercial gain. (Baudville, Inc. v. Henry Chan, WIPO Case No. D2004-0059).

Therefore, the Panel is convinced of the existence of bad faith registration and use, and the Complainant has proven the third of the three elements required by the Policy.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, [jardinesdepaz.com] be transferred to the Complainant.

Enrique Ochoa de González Argüelles

Sole Panelist

Dated: June 26, 2009