



Mambo Beach mall loses battle over Mambo Beach domain name

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- The complainant, which exploited a mall named Mambo Beach, sought the transfer of the domain name 'mambo-beach.info' under the UDRP
- The panel found that Mambo Beach had become a geographical term
- Where the goods/services offered on a website specifically relate to the descriptive meaning of the domain name, the registrant is making the very kind of good-faith offering that is sufficient to establish legitimate interests

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a three-member panel has denied the transfer of the domain name 'mambo-beach.info', partly on the basis that the complainant had failed to prove the respondent's lack of rights and legitimate interests, given that the domain name reflected a geographic term.

Background

The complainant was Cordelco NV, based in Curaçao. The complainant exploited a mall named Mambo Beach. The mall was located in the area of Seaquarium Beach, commonly known as Mambo Beach, in the south-west of Curaçao. The respondent was an individual based in the Netherlands.

The domain name was 'mambo-beach.info', registered on 27 October 2015. It was used to point to a website providing information about Mambo Beach and the surrounding facilities such as hotels, beach clubs and restaurants.

To be successful in a complaint under the UDRP, a complainant must satisfy the requirements of Paragraph 4(a) of the UDRP, namely that:

- (i) the domain name registered by the respondent is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Decision

Paragraph 4(a)(i)

The complainant contended that the domain name was identical to its MAMBO BEACH trademark registration, filed on 15 November 2002 and renewed on 1 July 2022. The respondent disputed the complainant's ownership of the trademark on the basis that a copy of the deed of transfer to the complainant had not been submitted and that the trademark register of the Curacao Bureau for intellectual property was not publicly accessible. The panel accepted the complainant's supplemental submission of the certificate of trademark renewal from the Curacao Bureau for intellectual property, as it would have otherwise issued a panel order requesting the ownership details of the trademark at issue. As a result, the panel was satisfied that the complainant was the owner of the trademark and found that the domain name was confusingly similar to it. The first element was therefore satisfied.

Paragraph 4(a)(ii)

The complainant asserted that the respondent had not used the domain name in connection with a good-faith offering of goods and services. The complainant added that the respondent was not commonly known by the domain name. According to the complainant, the domain name falsely suggested affiliation with the complainant because the respondent's website provided information about the facilities in the same area as the Mambo Beach mall. Furthermore, it was due to the reputation of the Mambo Beach mall and the widespread publicity and efforts of the complainant that the actual area of Seaquarium Beach had become known as Mambo Beach. As such, the complainant claimed that the respondent had no rights or legitimate interests in the domain name.

The respondent refuted these arguments by stating that Mambo Beach was the popular and locally known name of Seaquarium Beach and came from the name of the popular Mambo Beach Club that was located on the beach until 2012. Moreover, the respondent underlined that the beach was also called 'Mambo Beach' on Google Maps and in a Lonely Planet guide, both of which clearly referred to the beach and not to the complainant's mall. The respondent claimed that it had used the domain name in connection with a good-faith offering of services by informing tourists about the facilities in close proximity to Mambo Beach.

The panel found that Mambo Beach had become a geographical term and it was irrelevant whether that term originated in the presence of the popular Mambo Beach Club, or in the presence of the complainant's Mambo Beach mall. In the panel's opinion, if a domain name consisting of a geographical area resolved to a website providing information about that geographical area, as in the present case, this constituted the very kind of good-faith offering which was sufficient to establish legitimate interests under the UDRP. Moreover, nothing on the respondent's website would mislead internet users into believing that it was the official site of the complainant's mall or had any affiliation with such mall, the complainant or its trademark. Under these circumstances, the complainant had failed to show that the respondent lacked a legitimate interest in the domain name. Therefore, the panel found that the complainant had failed to meet the second element.

Paragraph 4(a)(iii)

Given its findings under the second element, the panel considered that it was unnecessary to extensively analyse the issue of bad faith under the third element. Briefly, the panel noted that the respondent's use of the domain name did not suggest an affiliation with the complainant or its trademark, nor did it create a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website. Therefore, the panel found that the complainant had failed to establish bad-faith registration and use under the third element and the complaint was denied.

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