

ADMINISTRATIVE PANEL DECISION

Limble Solutions, Inc. v. Domain Admin, Alter.com, Inc
Case No. D2022-4900

1. The Parties

Complainant is Limble Solutions, Inc., United States of America (“United States”), represented by TechLaw Ventures, PLLC, United States.

Respondent is Domain Admin, Alter.com, Inc, United States, represented by ESQwire.com, P.C., United States.

2. The Domain Name and Registrar

The disputed domain name <limble.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name, which differed from the initially named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on December 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 23, 2022.

The Center verified that the Complaint together with the amendment to 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 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. On January 15, 2023, Respondent’s representative requested an automatic extension of the Response due date. The Center granted the automatic extension on January 16, 2023, extending the due date for the Response until January 20, 2023. The Response was filed with the Center on January 20, 2023.

On January 25, 2023, Complainant filed with the Center an unsolicited supplemental pleading under the heading "Supplemental Submission In Reply To Response To Complaint" to address unanticipated defenses raised in the Response.

The Center appointed Scott R. Austin, Douglas M. Isenberg, and The Hon Neil Brown KC as panelists in this matter on February 22, 2023. The Panel finds that it was properly constituted. Each member of 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

Complainant is the holder of the following registered trademark: United States Reg. No. 5,675,242 for LIMBLE, registered on February 12, 2019, for ["c]omputerized maintenance management software as a service" in International Class 42, claiming a first use date of November 30, 2016 (the "LIMBLE Mark").

Complainant is also the holder of the domain name <limblecmms.com>, which it registered on December 3, 2015, and it uses to access its official website at "www.limblecmms.com" (the "Official LIMBLE Mark Website") on which it promotes its computerized maintenance management software services using the unregistered mark LIMBLECMMS as well as the LIMBLE Mark alone, but with no trademark symbol applied such as "TM" for its unregistered mark or a circle R applied to its registered mark that would provide notice that it treats the use of these terms as its trademarks.

The Disputed Domain Name was first registered on June 12, 2006. Respondent, who has traded in a large number of domain names, acquired the Disputed Domain Name as the winning bidder during a public expired domain name auction on July 16, 2021. The Disputed Domain Name originally resolved to a page on Respondent's own brandable domain name marketplace, called Alter, where it was offered for sale, and currently resolves to Squadhelp, another brandable domain name marketplace where domains are offered for sale.

On or around November 15, 2022, Complainant, whose identity as a prospective buyer was obscured under Squadhelp's policies, first contacted Respondent through the Squadhelp marketplace with a USD 11,599 offer to purchase the Disputed Domain Name, which was declined. Complainant countered at a reduced amount of USD 3,000, based on evidence it uncovered of Respondent's USD 1,711 auction purchase price for the Disputed Domain Name. Complainant's counteroffer also included a threat to file an UDRP action against Respondent. Respondent declined the counteroffer and this UDRP proceeding ensued.

5. Parties' Contentions

A. Complainant

Complainant contends that the dominant part of the Disputed Domain Name is identical to Complainant's federally registered LIMBLE Mark; that Complainant's registered LIMBLE Mark is highly unique and distinct from other marks as it is a fabricated term with no dictionary meaning and that the LIMBLE Mark is displayed on Respondent's website. Complainant further claims that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to Complainant, Respondent has not used the Disputed Domain Name in connection with a legitimate use. Also, according to Complainant, Respondent has not been commonly known by the Disputed Domain Name. Complainant also contends that Respondent targeted Complainant and its LIMBLE Mark in registering the Disputed Domain Name and therefore Respondent registered the Disputed Domain Name in bad faith. Finally, Complainant argues that by including Complainant's identical registered trademark as the dominant part of the Disputed Domain Name (e.g., the second-level domain), Respondent is intentionally creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website and therefore, the Disputed Domain Name was registered and is being used in bad faith.

B. Respondent

Respondent contends that it has rights or legitimate interests in the Disputed Domain Name because it operated a brandable domain name marketplace, called “Alter”, engaged in purchasing and aggregating domain names for resale to startup companies when it purchased the Disputed Domain Name as the winning bidder during a public expired domain auction at GoDaddy. Respondent contends that “Complainant is relatively unknown” and provides sworn evidence that it had never heard of Complainant or its marks at any time prior to the registration of the Disputed Domain Name and it has not targeted Complainant. Respondent contends that it did not register the Disputed Domain Name with Complainant’s purported trademark in mind or with the intent to sell to Complainant, to disrupt Complainant’s business, or to confuse consumers seeking to find Complainant’s website. Respondent contends it purchased the Disputed Domain Name at the GoDaddy auction on July 16, 2021, because it was a domain name that appeared to be publicly available, a short, combination of made up terms, brandable and inherently valuable that anyone was entitled to register. Respondent argues that “[n]oticeably absent from the Complaint is any evidential basis for concluding that Respondent registered the [Disputed] Domain Name because of Complainant”. Nowhere in the Complaint does Complainant show that Respondent has used the Disputed Domain Name for any purpose relating to the goods or services for which Complainant claims to trade. Respondent argues that it did not engage in bad faith registration or use of the Disputed Domain Name, and that it registered the Disputed Domain Name due to its attractiveness as a brandable short and memorable made-up domain name. Finally, Respondent contends Complainant’s conduct shows a classic case of “reverse domain name hijacking” where Complainant, after failed attempts to purchase the Disputed Domain Name, filed the UDRP complaint as a “Plan B” option.

6. Discussion and Findings

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 Complainant to make out its case and it is apparent from the terms of the Policy that 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 under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for 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 Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
3. The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will deal with each of these requirements in turn.

A. Preliminary Matter: Complainant’s Unsolicited Supplemental Filing

As a preliminary matter, the Panel notes that Complainant submitted an unsolicited supplemental filing “to reply to Respondent’s unanticipated defenses”. No provision in the Policy, the Rules or the Supplemental Rules authorizes supplemental filings by either a complainant or a respondent without leave from the Panel.

Paragraph 12 of the Rules provides that the Panel may request, in its sole discretion, further statements or documents from either of the parties. The Panel notes that the Rules and relevant UDRP panel decisions demonstrate a decided preference for single submissions by the parties absent exceptional circumstances. See *Rollerblade, Inc. v. CBNO and Ray Redican Jr.*, WIPO Case No. [D2000-0427](#).

While the Panel finds that much of Complainant's supplemental filing is reiterative of Complainant's original arguments, the Panel has decided to accept it for the sake of completeness and additional facts relating to the sale of the Disputed Domain Name. The Panel further notes that it appears the substance of Complainant's arguments here relate to the sale price of the Disputed Domain Name and would require the Panel to make a determination whether a particular price during negotiations between a willing buyer and willing seller should be used to determine bad faith. The Panel considers such analysis in this case beyond its province, unwise, and unnecessary given the more useful and less problematic factors present here that are more than sufficient for the Panel to reach its decision. One prior UDRP panel has held where an investor in domain names legitimately registers a domain name which appreciates in value, it is reasonable to expect the registrant to seek the full price it believes to be achievable for the sale of that name, specifically where respondent made no approach to the complainant and quoted the price in question in response to an enquiry from the complainant. See *Costa Crociere S.P.A. v. Yoshiki Okada*, WIPO Case No. [D2018-1632](#). From the record it has been made clear that Complainant's identity was kept hidden from Respondent during negotiations and only became known to Respondent when it received the Complaint. Noticeably absent from the Supplemental Filing, given this second opportunity to raise it, is any evidence to support Complainant's assertions of targeting, phishing or actual knowledge of Complainant's LIMBLE Mark.

Complainant's Supplemental Filing does provide some benefit to the Panel. The clarifications provided by Complainant in its supplemental filing regarding: 1) its lack of awareness of Respondent's identity at the time of its first offer, and 2) its motive behind dropping its follow up offer to USD 3,000 made in part to allow Complainant to *forego* the expense of a UDRP action are helpful to the Panel in reaching its decision and, therefore, in the exercise of its discretion pursuant to paragraph 10 of the Rules, the Panel will accept the filing and take it into account.

B. Identical or Confusingly Similar

To prove this element, Complainant must first establish that there is a trademark or service mark in which it has rights. Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the LIMBLE Mark for computerized maintenance management software services in the United States trademark registration for the LIMBLE Mark referenced above in Section 4, for which sufficient evidence has been submitted in the form of electronic copies of a valid and subsisting certificate of registration in the name of Complainant. Complainant has demonstrated, therefore, that it has rights in the LIMBLE Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the LIMBLE Mark established, the remaining question under the first element of the Policy is whether the Disputed Domain Name is identical or confusingly similar to Complainant's LIMBLE Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7.

The Panel has considered a side-by-side comparison between the Disputed Domain Name and Complainant's LIMBLE Mark and finds the LIMBLE Mark is incorporated in its entirety and identical to the Disputed Domain Name, except for the addition of the Top-Level Domain ".com", which is irrelevant in determining whether the Disputed Domain Name is confusingly similar. See, *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

Accordingly, the Panel finds the Disputed Domain Name confusingly similar to the LIMBLE Mark in which Complainant has rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant has the burden of establishing that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It is established through prior UDRP decisions under the Policy that it is sufficient for Complainant to make a *prima facie* showing that Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of rebuttal on Respondent. See *Champion Innovations, Ltd. v. Udo Dussling (45FHH)*, WIPO Case No. [D2005-1094](#).

It is clear from the record there is no pre-existing business relationship here between Respondent and Complainant. Complainant has also asserted that it has granted no license or other authorization to Respondent to use the LIMBLE Mark. Complainant submits that Respondent is not using the Disputed Domain Name for a legitimate use. Respondent argues, however, that it has equitable interests in the Disputed Domain Name, and that it made legitimate use of the Disputed Domain Name for resale as a short, brandable memorable term on its brandable domain name marketplace.

Often, in cases where a complainant has a recently registered mark and appears to have filed the UDRP complaint because it lost a bid for the disputed domain name containing its mark, the case becomes a matter of fine balancing of conflicting evidence to determine which side of the scales the preponderance of evidence falls. Complainant here has given the Panel assertions and speculation but without sufficient evidence to balance. Asserting without evidence that Respondent has no legitimate interests because Complainant has a trademark and Respondent's portfolio contains a domain name that is the same is not enough for this Panel to find Respondent had actual knowledge of Complainant's LIMBLE Mark and targeted Complainant when it purchased the Disputed Domain Name. Although targeting is possible based on these facts, it is not probable or even more likely than not, and in reality it is sheer speculation until and unless supported by sufficient evidence to show it is probable that Respondent had Complainant's LIMBLE Mark in mind when it purchased the Disputed Domain Name. That level of evidence has not been shown by Complainant here.

In contrast, Respondent's evidence, including a declaration by its owner signed under oath, shows that it is running a business offering brandable domain names and development services which business model has been recognized by prior UDRP panels as capable of establishing rights or legitimate interests under the Policy, provided the domain name was not registered to profit from and exploit a complainant's trademark. See, e.g., *Metro Sportswear Limited (trading as Canada Goose) v. Vertical Axis Inc. and Canadagoose.com c/o Whois Identity Shield*, WIPO Case No. [D2008-0754](#); and *Bacchus Gate Corporation d/b/a International Wine Accessories v. CKV and Port Media, Inc.*, WIPO Case No. [D2008-0321](#). See also [WIPO Overview 3.0](#), relevant decisions collected under Sections 2.1 and 2.10. Section 2.1 of the [WIPO Overview 3.0](#) provides, "panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not per se illegitimate under the UDRP". Section 2.10 of the [WIPO Overview 3.0](#) clarifies that such business in domain names can include common words and phrases so long as the intended use is not to trade off third-party trademark rights.

Respondent's evidence also shows that its "brandable domain marketplace" business, described by Respondent as the sort of domain name business where it had to be on the lookout for memorable domain names to buy, develop, and resell at high prices because startup businesses are in the market for memorable domain names and would be legitimately attracted to a name like the Disputed Domain Name for its intrinsic value as short and memorable for businesses, which memorable terms may be very limited in availability in today's market.

To better illustrate and distinguish the weaknesses in Complainant's case that support denying transfer here, the Panel believes it useful to compare a similar recent decision involving a domain aggregator respondent in which the complainant established evidence necessary to find actual knowledge for targeting and bad faith sufficient to warrant transfer. The case, *Kubota Corporation v. Perfect Privacy, LLC / Domain Admin, Media Matrix LLC* *Media Matrix LLC*, WIPO Case No. [D2022-3397](#), involved a substantial and widely known Complainant based in Japan with more than 41,000 employees and consolidated revenue of almost two trillion Japanese Yen. Complainant had used its "Kubota" name since 1897 and owned "hundreds of

worldwide trademark registrations containing the KUBOTA trademark.”

In addition to the distinguishing factors in *Kubota* of a globally well-known complainant showing decades of prior use of its trademark, the respondent’s disputed domain name, unlike in the present case, was used in connection with “a parked webpage displaying pay-per-click (‘PPC’) advertisements for services related to the KUBOTA trademark.”

The respondent in *Kubota*, like Respondent here, was involved in the bulk acquisition of domain names. However, given the strength of the Kubota trademark and the PPC usage of the disputed domain name, a majority of the panel in *Kubota* granted transfer to Complainant and said:

In this case the Majority Panelists find that the Respondent, in making a bulk acquisition of domain names, failed to check whether the disputed domain name presented such a risk in circumstances that the Complainant had prior rights and also failed to take steps to ensure that the disputed domain name was not used to trade off the Complainant’s trademark rights pending such a review....

At the very least the Respondent could have implemented a policy of checking its newly acquired portfolio before putting the domain names to use to generate income, but it did not do so. Rather, it permitted the disputed domain name initially to redirect Internet users to a PPC webpage featuring links to the same goods or services as previously or currently offered by the Complainant. This amounts to trading off the reputation attaching to the Complainant’s mark and to conduct that falls under paragraph 4(b)(iv) bad faith.

In contrast to the evidence presented establishing the facts in *Kubota*, Complainant here appears to be a small, relatively little known business with 31 employees and a single recently registered trademark, and Complainant has provided no evidence to support Complainant or its mark as “well-known” or widely recognized by media or consumers such that the Panel could reasonably conclude Respondent had actual knowledge or even reasonably should have known of Complainant. Equally important, Respondent here did not use the Disputed Domain Name for PPC links to trade off Complainant’s reputation for profit like the respondent in *Kubota*.

Accordingly, Respondent has demonstrated that it has rights and legitimate interests in respect of the Disputed Domain Name and Complainant has failed to meet its burden under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Given the Panel’s finding on the issue of rights and legitimate interests, it is unnecessary to consider the issue of bad faith registration and use. However, the Panel considered the issue and in the view of Panel, Complainant has failed to establish on the balance of probabilities that Respondent registered the Disputed Domain Name in bad faith. Any such finding would require not only that Respondent knew (or should be taken to have known) of a relevant trademark in which Complainant had rights, but also that it registered the Disputed Domain Name with the intention of benefitting unfairly from the goodwill attaching to those rights.

Respondent has plausibly denied that it knew of Complainant when Respondent registered the Disputed Domain Name. There is no evidence that Respondent had actual knowledge of Complainant or its LIMBLE Mark and it is clear from the record that factors such as Complainant’s small size, a single registration of its mark obtained relatively recently, use of a different mark on its website with no use of any symbols showing treatment of “Limble” or “Limblecmms” as trademarks, all support Respondent’s lack of actual knowledge of Complainant and weigh against such knowledge and against Complainant’s assertion that Respondent targeted Complainant or Complainant’s LIMBLE Mark in bad faith.

Finally, the Panel considers that Respondent was at liberty to register the Disputed Domain Name as a short, brandable, memorable term made up from a combination of common words. Given the decisions of prior UDRP panels upholding business models for domain name aggregation and resale similar to Respondent’s as legitimate under the Policy, the Panel finds Respondent has not used the Disputed Domain

Name in bad faith in acquiring the Disputed Domain Name and offering it for resale as part of Respondent's brandable domain names marketplace business, especially considering that unlike in *Kubota*, there is no evidence here of Respondent using PPC links to Complainant or its competitors or any other means to profit from Complainant's trademark rights.

Complainant has failed to meet its burden under paragraph 4(a)(iii) of the Policy.

7. Reverse Domain Name Hijacking (“RDNH”)

Respondent argues that Complainant brought this case in bad faith, as “Plan B” solely to obtain the Disputed Domain Name without buying it, after its attempts at purchase failed because the purchase price was too high.

Although Complainant may have been optimistic in bringing its case without further evidence in support of its claims, the Panel finds no RDNH given the Disputed Domain Name and Complainant's registered mark are identical. Complainant was justified in bringing this Complaint based on a reasonable belief that it had a plausible legal basis and for the reasons set out above does not amount to a filing merely for the purpose of harassing Complainant.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Scott R. Austin/
Scott R. Austin
Presiding Panelist

/Douglas M. Isenberg/
Douglas M. Isenberg
Panelist

/The Hon Neil Brown KC/
The Hon Neil Brown KC
Panelist
Date: March 8, 2023