

ADMINISTRATIVE PANEL DECISION

Automobili Lamborghini S.p.A. v. Ricky Frazier, Performance Parts of Texas, LLC.

Case No. D2023-0506

1. The Parties

The Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Ricky Frazier, Performance Parts of Texas, LLC., United States of America (“United States”)

2. The Domain Name and Registrar

The disputed domain name <lamborhinishanantonio.com> 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 February 2, 2023. On February 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 6, 2023, 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 named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on February 9, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on February 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 3, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on March 9, 2023. 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 Complainant is an Italian manufacturer of sports cars based in Sant'Agata Bolognese, Italy. The company of the Complainant was founded in 1963 by Ferruccio Lamborghini as Automobili Ferruccio Lamborghini. The vehicles of the Complainant belong to the world's most famous luxury sports cars and are promoted in different languages worldwide on the internet, *inter alia* at the Complainant's website "www.lamborghini.com".

The Complainant owns several trademark registrations comprising the word element "Lamborghini", including but not limited to:

- the European Union Trademark LAMBORGHINI (word mark), with Registration No. 001098383, registered on June 21, 2000 for goods and services in classes 7, 9, 12, 14, 16, 18, 25, 27, 28, 36, 37 and 41, and
- the United States Trademark LAMBORGHINI (word mark), with Registration No. 1622382, registered on November 13, 1990, for goods in classes 12 and 19.

The disputed domain name was registered on November 3, 2018, and redirect Internet users to "www.supercarsofsanantonio.com", a website of a car dealership called "Supercars of San Antonio" located in San Antonio, Texas, which advertises cars services, *inter alia* purchase and rental of all kinds of cars from various manufacturers.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

(1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The use of the term "sanantonio" does not prevent a finding of confusing similarity under the first element.

(2) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not granted permission to use its trademark to the Respondent. The Respondent is not in any way affiliated with the Complainant. The Respondent has not been commonly known by "Lamborghini", "sanantonio" or "lamborghinisantonio", but by Ricky Frazier. There does not seem to be a *bona fide* offering of goods or services. Ever since the Respondent registered the disputed domain name in November 2018, the disputed domain name either had led to a parking page of the registrar GoDaddy or was redirected to the website "www.supercarsofsanantonio.com", which advertises cars services, *inter alia* the purchase and rental of all kinds of cars, in San Antonio, Texas, United States. The Respondent must have been aware of the Complainant's trademark.

(3) The Respondent registered and is using the disputed domain name in bad faith. The disputed domain name redirects to the website "www.supercarsofsanantonio.com" by the Respondent and is designed to imply that there is an affiliation between the Complainant and the business "Supercars of San Antonio" even though no such affiliation exists. The Respondent knew of the Complainant's trademark as it is used worldwide and the disputed domain name was registered long after the Complainant's registration of its trademark. There is no conceivable legitimate use. By using the disputed domain name the Respondent

intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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 Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has demonstrated ownership of its LAMBORGHINI trademark in various jurisdictions, including the United States. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the LAMBORGHINI mark. See [WIPO Overview 3.0](#), section 1.2.1.

With the Complainant's rights in the LAMBORGHINI trademark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to the Complainant's mark.

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". See [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark LAMBORGHINI, since it reproduces it in its entirety and is clearly recognizable in the disputed domain name. Merely adding the geographic term "sanantonio" does not prevent a finding of confusing similarity between the disputed domain name and the mark under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#),

sections 1.7 and 1.8. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademark LAMBORGHINI.

The generic Top-Level Domain ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of "proving a negative", in particular as the evidence needed to show the Respondent's rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademark. The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that the term "lamborghinisanantonio" is the Respondent's name or that the Respondent is commonly known under this name. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the trademark, or to apply for or use any domain name incorporating the trademark.

There is also no indication of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, neither in the past nor in the present. Ever since the Respondent registered the disputed domain name in November 2018, the disputed domain name either had led to a parking page of the registrar GoDaddy or was redirected to a website of the Respondent "www.supercarsofsanantonio.com", a website of a car dealership called "Supercars of San Antonio" located in San Antonio, Texas, which advertises cars services, *inter alia* purchase and rental of all kinds of cars from various manufacturers.

Under this Panel's view, since the disputed domain name incorporates the Complainant's LAMBORGHINI trademark in its entirety and adds the geographical term "sanantonio", this composition leads to the suggestion of an endorsement by the Complainant as Internet users could expect respective services in San Antonio.

Prior panels have held that a respondent's use of a complainant's mark to redirect users to another commercial website would not support a claim to rights or legitimate interests, particularly here given the risk of implied affiliation found in the composition of the disputed domain name, falsely conveying a sense of affiliation to the Complainant, contrary to the fact. See [WIPO Overview 3.0](#), sections 2.5.1 and 2.5.3.

Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's trademark registrations significantly predate the registration date of the disputed domain name. As it is proved by the Complainant, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by previous panels (see, for example, *Automobili Lamborghini S.p.A. v. Jon Davachi*, WIPO Case No. [D2022-1243](#)). Therefore, under this Panel's view, the Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See *Carrefour SA v. blackwhite, dolly Tiwari*, WIPO Case No. [D2021-0274](#). Therefore, the Panel finds that the disputed domain name was registered in bad faith.

In light of the fact that the disputed domain name wholly incorporates the Complainant's LAMBORGHINI trademark, the redirection of the disputed domain name to a website that advertises cars services, *inter alia* purchase and rental of all kinds of cars from various manufacturers, and the Respondent's failure to offer any rebuttal, the Panel concludes on balance of probabilities that the Respondent both registered and is using the disputed domain name with the intention of taking unfair advantage of the Complainant's goodwill in its LAMBORGHINI trademark.

Going further, the Panel is convinced that the Respondent registered the disputed domain name to take unfair advantage of the reputation of the Complainant's well-known trademark LAMBORGHINI, and in so doing to disrupt the Complainant's business and to attract, for commercial gain, Internet users to another website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement (paragraph 4(b)(iv) of the Policy). The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <lamborghinisanantonio.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: March 20, 2023