

ADMINISTRATIVE PANEL DECISION

Les Mills International Limited v. James LeBron
Case No. D2022-4402

1. The Parties

The Complainant is Les Mills International Limited, New Zealand, represented internally.

The Respondent is James LeBron, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Administrator, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 21, 2022, 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 November 21, 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 the Respondent of the Complaint, and the proceedings commenced on November 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 13, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on December 20, 2022. 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

Founded in 1968, the Complainant provides fitness programs and classes under its LES MILLS trade mark.

The Complainant owns many trade mark registrations for its LES MILLS mark in many jurisdictions, including United States trade mark registration No. 3402918 LES MILLS in classes 9, 16, 25, 28, and 41, registered on March 25, 2008.

The Complainant is the owner of the domain name <lesmills.com> which resolves to its primary website.

The Domain Name was registered on November 2, 2022. The Complainant's evidence establishes that the Domain Name has been used for a website seemingly offering the Complainant's official programs and audio-visual content for a fee, prominently featuring the Complainant's logos, imagery, the Complainant's LES MILLS trade mark as well as the Complainant's sub-brands associated with its programs.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its LES MILLS mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that the Domain Name has been used to mislead users into believing that the Domain Name is associated with the Complainant for commercial gain.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant's registered LES MILLS mark is wholly contained within the Domain Name.

Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (here "mall") does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8).

The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its LES MILLS mark was registered and used long prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark, and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the website to which the Domain Name has resolved, including use of the Complainant's logos, imagery, and LES MILLS trade mark, as well as the Complainant's sub-brands associated with its programs, is one of impersonation of the Complainant. This considered with the additional indicators of bad faith addressed below clearly point to an intention to impersonate the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., impersonation) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain.

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

C. Registered and Used in Bad Faith

In *Les Mills International Limited v. James LeBron*, WIPO Case No. [D2022-3246](#) an unsuccessful respondent with the same name as the Respondent, also having an address in the United States, was found to have taken advantage of the Complainant's trade mark and other material in a fashion very similar to that at issue in this case. The respondent in that case used the same registrar as in this case. Thus, on balance of probabilities, the same respondent seems likely to have been involved in both cases. This shows a tendency on the part of the Respondent to target the Complainant.

The Domain Name's website, which has offered the Complainant's programs for a fee, clearly and intentionally impersonated the Complainant. In light of this and the composition of the Domain Name wholly containing the Complainant's mark, the Respondent must have had the Complainant in mind when registering and using the Domain Name. It is clear in these circumstances that the Respondent sought to impersonate the Complainant for commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy (*Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)).

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). The Respondent apparently supplied incomplete address details in the Whois record for the Domain Name; the Center's courier indicated that a "bad address" was supplied and that the Center's package could not be delivered to the Respondent. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit (*Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#)). Finally, the Respondent used a privacy or proxy service, and it would be appropriate to draw adverse inferences in this case ([WIPO Overview 3.0](#) at section 3.6).

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 Domain Name, <lesmills.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: January 3, 2023