

## **ADMINISTRATIVE PANEL DECISION**

Automobili Lamborghini S.p.A. v. Luis Esteras  
Case No. D2023-0225

### **1. The Parties**

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

The Respondent is Luis Esteras, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <ailamborghini.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 January 18, 2023. On January 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 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 January 20, 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 January 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2023.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on February 28, 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 brand and manufacturer of luxury sports cars and SUVs based in Sant'Agata Bolognese, Italy. The Complainant was founded in 1963 by Ferruccio Lamborghini under the company name Automobili Ferruccio Lamborghini. The vehicles of the Complainant belong to one of the world's most famous luxury sports cars. The Complainant is owned by the Volkswagen Group through its subsidiary Audi.

The Complainant's registrations of the LAMBORGHINI trademark include:

- European Union Trademark Registration No. 001098383 for LAMBORGHINI registered on June 21, 2000, for goods and services in International Classes 7, 9, 12, 14, 16, 18, 25, 27, 28, 36, 37, 41;
- United States Trademark Registration No. 74019105 for LAMBORGHINI registered on November 13, 1990, for goods in International Class 12;
- International Trademark Registration No. 460178 for LAMBORGHINI registered on March 28, 1991, for goods and services in International Classes 3, 4, 9, 12, 14, 16, 18, 25, 28, 34 and covering various jurisdictions; and
- International Trademark Registration No. 959504 for LAMBORGHINI registered on February 28, 2008 for goods in International Classes 12 and 28 and covering various jurisdictions.

The Complainant operates the official website "www.lamborghini.com" at which it promotes Lamborghini cars in different languages worldwide.

The disputed domain name <ailamborghini.com> was created on December 31, 2022, and directs to a website showing a parking page containing various commercial or sponsored pay-per-click ("PPC") links to third party websites.

#### 5. Parties' Contentions

##### A. Complainant

###### Identical or Confusingly Similar

The Complainant asserts registered rights in the LAMBORGHINI trademark. The Complainant submits that the disputed domain name is confusingly similar to the LAMBORGHINI trademark. The Complainant further contends that its LAMBORGHINI trademark is well-known. Previous UDRP panels has recognized the well-known status and worldwide reputation associated with the LAMBORGHINI trademark.

The Complainant further contends that the disputed domain name contains the LAMBORGHINI trademark in its entirety, simply adding the prefix "ai" at the beginning. The Complainant contends that the two characters-prefix "ai" does not distinguish the disputed domain name from the Complainant's LAMBORGHINI trademark. To the contrary, as "ai" could be seen as an abbreviation of "artificial intelligence" it could lead Internet users to the expectation of the Complainant's services related to artificial intelligence under the disputed domain name.

According to the Complainant's contentions, the LAMBORGHINI trademark still remains clearly recognizable within the disputed domain name.

The Complainant submits that the applicable generic Top-Level Domain ("gTLD") in the disputed domain name should be viewed as a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

#### No rights or legitimate Interests

The Complainant claims that it has never authorized the Respondent in any way to register or use the LAMBORGHINI trademark in any manner. The Complainant also contends that the Respondent is not in any way affiliated with the Complainant.

There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The Complainant claims that it monitors its LAMBORGHINI trademark and would be aware if there were any relevant trademarks of the Respondent.

The Complainant contends that the disputed domain name only resolves to a PPC parking page of the registrar "GoDaddy". The use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users. According to the Complainant's contentions, a noncommercial or fair use of the disputed domain name is not cognizable either.

#### Registered and used in bad faith

The Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant contends that the mere registration of the disputed domain name, that is identical or confusingly similar to the famous the LAMBORGHINI trademark by an unaffiliated entity, can by itself create a presumption of bad faith.

The Complainant further contends that the Respondent must have been aware of the Complainant and its said trademark when it registered the disputed domain name given the fame of the LAMBORGHINI trademark, and such conduct constitutes the bad faith.

The Complainant claims that the use of a domain name that is identical or confusingly similar to a trademark to obtain click-through-revenue can amount to bad faith.

#### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

## A. Identical or Confusingly Similar

Under the first element, the Complainant must establish that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Complainant submitted evidence that the LAMBORGHINI trademark enjoys protection under national, regional and international trademark registrations. Thus, the Panel finds that the Complainant's rights in the LAMBORGHINI trademark has been established pursuant to the first element of the Policy.

The disputed domain name consists of the prefix "ai" followed by the Complainant's distinctive LAMBORGHINI trademark followed by the gTLD ".com". The prefix "ai" may be interpreted as the abbreviation for the term "artificial intelligence".

According to section 1.8 of the WIPO Overview, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term may however bear on assessment of the second and third elements.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Finally, for the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD, see section 1.11.1 of the [WIPO Overview 3.0](#).

It is the view of the Panel that it is readily apparent that the Complainant's trademark remains recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the LAMBORGHINI trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

## B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant's contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its LAMBORGHINI trademark.

The Complainant further contends that the Respondent is not commonly known by the disputed domain name and has not made any *bona fide* use – neither commercial nor noncommercial, of the same.

Based on the present case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. (See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#)).

There is no evidence of any actual or contemplated *bona fide* or legitimate use of the disputed domain name, and the Respondent shows no use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

According to section 2.9 of the [WIPO Overview 3.0](#), applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Taking into account that (1) the disputed domain name fully incorporates the Complainant's LAMBORGHINI trademark and closely imitates the Complainant's domain name <lamborghini.com>; and (2) the disputed domain name capitalize on the reputation of the Complainant's LAMBORGHINI trademark as the mere presence of the Complainant's trademark in the disputed domain name will generate increased website traffic and therefore increase PPC revenue, the Panel finds that the use of the disputed domain name could not constitute any *bona fide* offering of goods or services using the disputed domain name. [WIPO Overview 3.0](#), section 2.9. See also, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#).

As it has been established, the disputed domain name incorporates the Complainant's LAMBORGHINI trademark preceded by the prefix "ai". This composition leads to the suggestion of an endorsement by the Complainant as Internet users could expect services of LAMBORGHINI related to artificial intelligence. This conclusion is further endorsed by the fact, that artificial intelligence – and especially autonomous driving – is of great importance in the modern automobile industry in general and for the Complainant which is one of the prominent operators in this industry.

Therefore, the Respondent's use of the disputed domain name cannot be considered fair as it carries a risk of implied affiliation with the Complainant.

By not submitting a Response, the Respondent has failed to invoke any circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name. Under such circumstances, the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Accordingly and absent specific allegations of the Respondent, the Panel finds that 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 show that the Respondent registered and is using the disputed domain name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive

term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.3.

The Registrar has confirmed that the disputed domain name was registered on December 31, 2022, *i.e.* decades after the Complainant first used and registered the LAMBORGHINI trademark.

Based on the evidence submitted by the Complainant, the Panel shares the view of previous UDRP panels and also finds that the Complainant's LAMBORGHINI trademark is inherently distinctive and the Complainant has provided evidences of its repute. See *Automobili Lamborghini S.p.A. v. Johan Schepers*, WIPO Case No. [D2021-1154](#); *Automobili Lamborghini S.p.A. v. CoCo (黄登通)*, WIPO Case No. [D2020-1371](#); *Automobili Lamborghini v. Guri Design*, WIPO Case No. [DAE2017-0003](#); *Automobili Lamborghini Holding S.p.A. v. Primal Ventures Inc.*, WIPO Case No. [D2008-0548](#); *Automobili Lamborghini Holding S.p.A. v. Unity 4 Humanity, Inc.*, WIPO Case No. [DTV2008-0010](#); *Automobili Lamborghini Holding S.p.A. v. Jill Calangian*, WIPO Case No. [D2008-1443](#); and *Automobili Lamborghini Holding S.p.A. v. Andrew David Dawson*, WIPO Case No. [D2002-1003](#).

Thus, the Panel concludes that it is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name given the well-known status of the LAMBORGHINI trademark, which has been also recognized by a number of previous UDRP decisions.

Given the reputation of the LAMBORGHINI trademark and the unlikelihood of the Respondent selecting the disputed domain name for registration by chance, the Panel infers that the registration of the disputed domain name was in bad faith. See, *e.g.*, *LEGO Juris A/S v. Floyd Goddard/ Oneandone, Private Registration*, WIPO Case No. [D2010-0544](#), in which the UDRP panel stated: "The Panel, in accordance with previous decisions issued under the UDRP, is of the opinion that actual knowledge of the Complainant's trademarks and activities at the time of the registration of the disputed domain may be considered an inference of bad faith."

As for the use of the disputed domain name for a PPC site, the Panel finds that the use of a domain name that is identical or confusingly similar to a trademark to obtain click-through-revenue can amount to bad faith use (see, among others, *lflscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#); and *AMADEUS IT GROUP, S.A. v. Contact Privacy Inc. Customer 0151133672, Contact Privacy Inc. Customer 0151133672 / Milen Radumilo*, WIPO Case No. [D2018-2192](#)).

Based on the available record, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

The Respondent's failure to respond to the Complainant's contentions is under the circumstances further evidence of bad faith.

Thus, the Panel establishes that the Respondent registered and is using the disputed domain name in bad faith.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

## 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 <ailamborghini.com> be transferred to the Complainant.

*/Kateryna Oliinyk/*

**Kateryna Oliinyk**

Sole Panelist

Date: March 14, 2023