

## **ADMINISTRATIVE PANEL DECISION**

LifeWave Inc. v. Wolfgang Klein

Case No. D2023-3333

### **1. The Parties**

The Complainant is LifeWave Inc., United States of America (“United States”), represented by ARC IP Law, P.C, United States.

The Respondent is Wolfgang Klein, Germany.

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

The disputed domain name <x39s.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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 (Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 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 August 4, 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 August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 13, 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 a corporation organized under the laws of the State of Georgia in the United States. Very little detail has been provided regarding the Complainant and its activities, other than that it is engaged in the provision of non-transdermal adhesive patches for phototherapy for general wellness. The Complainant notes that it provides these “throughout the United States and internationally” under the mark LIFEWAVE X39, in use since 2018.

The Complainant asserts that it is the owner of registered word and design marks for the LIFEWAVE X39 mark in the following countries: Australia, Canada, China, European Union, Israel, Japan, Malaysia, Mexico, Philippines, Singapore, Republic of Korea, and Taiwan province of China. For example, the Complainant is the owner of International Registered Trademark Number 1475321 for the said mark, registered on March 20, 2019, in Class 10 (Non-transdermal adhesive patches with a non-porous surface for phototherapy for general wellness) and designated in respect of Australia, European Union, Japan, Mexico, and Republic of Korea.

The Complainant is also the owner of United States Registered Trademark Number 6038473 for the word mark X39, registered on April 21, 2020 in Class 10 (Non-transdermal adhesive patches with a non-porous surface for phototherapy for general wellness).

The disputed domain name was registered on August 29, 2022. Little is known of the Respondent, which has not participated in the administrative proceeding, other than that it has an address in Düsseldorf, Germany (noting that the address erroneously listed Afghanistan as the country name, which will be discussed below). According to screenshots supplied by the Complainant, the website associated with the disputed domain name is entitled “x39s.com URL Shortener” and states that the disputed domain name is a URL shortener used by thousands of businesses. The site goes on to provide an abuse email address for the reporting of unsolicited emails, SMS texts or other “spam” containing a link operated by the disputed domain name, and promises a response within 48 hours. The site also specifies a privacy policy that notes that cookies are used to track clicks on the associated tracking links, adding that personally identifiable information is not stored.

On January 24, 2023, the Complainant sent a cease and desist notice to the Respondent by email to the address provided by the Respondent’s privacy service but did not receive any reply. The Complainant does not appear to have copied this communication to the abuse email address provided on the website associated with the disputed domain name.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it has invested substantial time, energy, and resources in developing its LIFEWAVE X39 mark, and that this has become widely known worldwide, and is closely identified with the Complainant. The Complainant asserts that the Respondent intends to misleadingly divert consumers and devalue the Complainant’s mark for its personal gain. Finally, the Complainant submits that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or the location of a product or service thereon, adding that the Respondent’s use and registration of the disputed domain name is a blatant attempt to trade on the goodwill of the Complainant’s marks.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Preliminary matter: Respondent's contact address**

Following upon verification by the Registrar, the Respondent's address was disclosed as an address in Düsseldorf, Afghanistan. Düsseldorf is in Germany, not Afghanistan, and the address supplied by the Respondent appears to be a genuinely German address including postal code. While not conclusive of the issue, the Respondent's name also appears to be German in origin.

The Panel considers that the Respondent most probably provided Afghanistan as its country erroneously when completing the registrant details for the disputed domain name. This is not an entirely uncommon error which can result from the fact that Afghanistan is often the first country in a list of possible countries provided in the form of a drop-down menu for the registrant to choose during the registration process. If the registrant does not select an alternative country via the menu, Afghanistan may remain as the default.

In these circumstances, and in terms of its general powers under paragraph 10 of the Rules, the Panel determines that Germany should be substituted for Afghanistan as the Respondent's country. The Panel notes that the Center notified the Complaint to the Respondent's address in Düsseldorf, Germany, rather than Afghanistan, and that the response from the courier was "consignee has moved from the address provided", suggesting that this was the Respondent's address in the past.

### **B. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's X39 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here, the letter "s", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complaint is perfunctory in nature. The Complainant merely asserts that its marks have become widely known worldwide and are closely identified with the Complainant, and that the Respondent intends to misleadingly divert consumers and devalue such marks for its personal gain. No evidence has been provided to support these claims, albeit that the Complainant's list of registered trademarks represents a reasonably substantial body of registered rights extending over a wide range of territories.

The Respondent's website asserts that the disputed domain name is in use as a URL shortener. This type of facility is typically offered by certain website operators to third parties who wish to substitute a shorter link for that of an existing URL on the worldwide web. It is in the nature of such resources that the substituted URL is usually intended to be shorter than the original, for example to provide convenient use in SMS messages where it is desirable to maintain a restricted character length. The shortness of the substituted link is usually facilitated by a redirect which features an intentionally short domain name to limit the character length. Accordingly, this is not an implausible use for a four character domain name such as the disputed domain name. The Complainant does not address this possibility to any extent that would assist the Panel in reaching its determination.

The Panel has no information before it that suggests that, while apparently plausible, the alleged use of the disputed domain name is likely to be a pretext for cybersquatting that targets the Complainant's mark. Nor is there any information on the available record (beyond the Complainant's unsubstantiated and conclusory allegations) that describes the reach and extent of the goodwill in the Complainant's mark whereby it would be reasonable for the Panel to infer that the Respondent selected the letters "x39" in the disputed domain name because it references the Complainant's mark rather than coincidentally.

In the above circumstances, the Panel considers that the Complainant has not made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has not been established.

#### **D. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent focuses on paragraph 4(b)(iv) of the Policy, adding that the use and registration of the disputed domain name is a blatant attempt to trade on the goodwill of the Complainant's marks. In the Panel's opinion, that has not been established on the basis of the available record. In the first place, the Complainant has not shown the extent of any goodwill in its marks. It has merely demonstrated that it has a portfolio of registered trademarks that covers a range of territories. There is no evidence that would allow the Panel to find that the disputed domain name was registered with the Complainant and/or its rights in mind, still less with the intent of targeting those rights or any goodwill therein.

There is no evidence before the Panel that the disputed domain name has been used to target the Complainant's rights, nor is there evidence that its alleged use for a URL shortener is merely pretextual. As noted in the preceding section, the Complainant has not engaged with this possibility at all in its submissions. The Panel does not know, for example, whether there is or is not any evidence of the actual use of the disputed domain name for the claimed purpose. There is no indication as to whether a website can or cannot be found where such URLs may be registered in order to generate the desired shorter result via the disputed domain name (such as in the typical deployment method for a URL shortener).

The Panel also does not know, for example, the levels of Internet traffic from which the Complainant's websites might benefit, such that it could reasonably be inferred that the Respondent's motivation was in some way to take unfair advantage of any traffic redirection. Even if the levels of traffic could have been established, it is not entirely clear to the Panel how the use of the disputed domain name for the claimed purpose would take unfair commercial advantage of the Complainant's rights in general. The Panel has not identified any particular commercial purpose in operation, at least on the webpage associated with the disputed domain name, other than perhaps that the data gathered from cookie tracking might have some value.

In conclusion, the Panel finds that the available record does not support the notion that the Respondent's use and registration of the disputed domain name is a blatant attempt to trade on the goodwill of the Complainant's marks, as the Complainant contends, or that the Complainant has made out a case of registration and use in bad faith in terms of paragraph 4(b)(iv) of the Policy or otherwise.

Based on the available record, the Panel finds the third element of the Policy has not been established.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: September 27, 2023