

ADMINISTRATIVE PANEL DECISION

Mr. Patrice Pastor and Pastor Real Estate Limited v. George Miller
Case No. D2022-0665

1. The Parties

The Complainants are Mr. Patrice Pastor (Monaco) and Pastor Real Estate Limited, (United Kingdom), represented by Monaco Intellectual Property (Mipro), Monaco.

The Respondent is George Miller, United States of America.

2. The Domain Name and Registrar

The disputed domain name <propertypastor.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 25, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint; and
- (c) confirming that English is the language of the registration agreement.

The Center sent an email communication to the Complainant on March 1, 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 amended Complaint on March 2, 2022.

The Center verified that the Complaint together with the amended 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 March 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2022. The Respondent did not submit a formal response. Accordingly, the Center notified the Respondent's default on March 30, 2022. In response to that notification, the Respondent sent a short email to the Center.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 4, 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

The first Complainant, Mr. Patrice Pastor, is a director of the eponymously named second Complainant, Pastor Real Estate Limited, and a number of other companies. The second Complainant has been incorporated since 2010 and conducts a real estate business in the United Kingdom with offices in Mayfair, London. According to the Complaint, it operates in the luxury residence market. Other companies in the group operate in Monaco in the fields of building construction and real estate services also.

Amongst other things, the first Complainant is the owner of the following registered trademarks:

(1) Monaco Registered Trademark No. 1128520, PASTOR, which was registered in red on May 19, 2011, in respect of a wide range of goods and services in all classes;

(2) United Kingdom Registered Trademark No. UK00003096215, PASTOR GROUP in a stylized border, which was registered in red on May 29, 2015, in respect of a range of services in International Classes 35, 36, 37, 39, and 40; and

(3) Monaco Registered Trademark No. 1800393, PASTOR PROPERTIES, which was registered on July 7, 2018, in respect of a range of services in International Classes 35, 36, and 37.

According to the Whois record, the disputed domain name was first registered on May 19, 2021.

So far as the record in this proceeding shows, it has never been used. Indeed, the email from the Respondent received by the Center on March 30, 2022, states that it is not a domain name which he uses.

There is evidence in the record which indicates that the Respondent holds at least 348 registered domain names.

5. Discussion and Findings

As an email has been received from the account which the Registrar has confirmed is the email address for the Respondent, there can be no dispute that the Respondent has received notification of the Complaint and the associated documents.

Accordingly, paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

A. Identical or Confusingly Similar

The first element that the Complainants must establish is 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 Complainants must demonstrate that they have rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainants have proven the first Complainant's ownership of the three registered trademarks identified in section 4 above.

As the second Complainant is the first Complainant's company through which he conducts a real estate business in the United Kingdom, the second Complainant can be regarded as a licensee of at least the United Kingdom trademark. Unless it becomes necessary to distinguish between them, therefore, the Panel will refer to the "Complainants" for ease of reference.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy, e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the first Complainant's first registered trademark and the term "properties". As this requirement under the Policy is essentially a standing requirement, the addition of such a descriptive term does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Furthermore, the disputed domain name consists of the first Complainant's third registered trademark with the word order reversed. This simple transposition of word order is also insufficient to avoid a finding of confusing similarity.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The word "pastor" is presented in much larger and bolder type than the word "group" in the first Complainant's United Kingdom trademark. It is also the distinctive element of the trademark in the sense that it is the word "pastor" which informs which "group" is being identified. The Panel considers that the disputed domain name is therefore confusingly similar to the United Kingdom registered trademark as well.

Accordingly, the Panel finds that the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainants must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainants. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainants state that they have not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated in any way with them.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent registered the disputed domain name after the first Complainant registered his trademarks and also after the second Complainant began using the trademark.

The Respondent has not disputed any of these matters.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainants must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

While the words “properties” and “pastor” are ordinary English words, their combination does not convey any particular meaning other than, perhaps, a reference to the properties of someone called “Pastor” or who is a pastor. In neither case does there appear to be any basis to conclude that they describe or refer to the Respondent or his vocation (being different *e.g.*, from a mark like “lawn doctor”).

It appears that the Respondent engages in the activity, if not a business, of registering domain names. Whether he does so for resale or some other purpose has not been explained and is unclear on the record.

Further, the Respondent has not denied the Complainants’ allegation that he registered the disputed domain name with knowledge of the Complainants’ group reputation in “Pastor”. Rather, the Respondent’s email appears to disclaim any further interest in the disputed domain name.

In addition, it has long been established that the “passive” holding of a domain name in the absence of rights or legitimate interests in it constitutes use in bad faith. See *e.g.*, *Telstra Corporation Limited Nuclear Marshmallows* WIPO Case No. [D2000-0003](#).

In these circumstances, the Panel finds that the Complainant has established the third element under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <propertypastor.com>, be transferred to the Complainants.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: April 28, 2022