

ADMINISTRATIVE PANEL DECISION

LendUS, LLC v. Contact Privacy Inc. Customer 1245251843 / Kory Balogun
Case No. D2022-1126

1. The Parties

Complainant is LendUS, LLC, United States of America (“United States”), represented by K&L Gates, United States.

Respondent is Contact Privacy Inc. Customer 1245251843, Canada / Kory Balogun, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 2, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on April 4, 2022.

On April 20, 2022, Respondent sent two informal communications. On April 21, 2022, the Center sent a request for confirmation. On April 24, 2022, Respondent sent another informal communication.

In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2022. Respondent did not submit any formal response. Accordingly, the Center notified the Parties that it will proceed to Panel Appointment on April 25, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on April 29, 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

Complainant has been a financial services company since 2017. Complainant owns various trademark registrations for the trademark LENDUS, including United States Patent and Trademark Office (“USPTO”) Reg. No. 5,361,550, registered on December 19, 2017 in connection with, among other things, “financial services, namely, mortgage loan services, mortgage banking services, home equity loan financing services”, and related services, with a September 21, 2017 date of first use in commerce.

Complainant owns the domain name <lend.us>, at which site Complainant advertises and offers its financial products.

According to the Complaint:

“Complainant is known as one of the leading providers of mortgage banking services, loan financing, and credit intermediation, and has developed a reputation for excellence in that field. As a result of widespread public recognition, consumers identify the [LENDUS] Marks exclusively with [Complainant’s] superior lending products and services.”

There is nothing in the record to support any of the above-quoted assertions by Complainant.

Respondent’s principal (“KB”) formed a California corporation called “KB Stated Loans Inc.” on September 24, 2019, and renamed that company “Atlendus Inc.” on February 4, 2020. On January 21, 2022, KB renamed the company “KB Capital Group Inc.”.

The Domain Name was registered on August 14, 2019. The Domain Name resolves to a website purporting to offer mortgage, refinance, and related services. Visitors to the site are invited to sign up and apply for Respondent’s purported financial services.

Complainant alleges that “Respondent is actively misusing the Dispute Domain to deceive and defraud innocent consumers” by creating the false impression that Respondent’s website is somehow authorized by, or affiliated with, Complainant.

On February 5, 2021, Respondent filed an application with the USPTO to register the mark ATLENDUS in connection with “mortgage banking, mortgage lending, mortgage refinancing”. On November 3, 2021, complainant filed a Notice of Opposition with the USPTO, seeking to oppose Respondent’s application to register ATLENDUS on the basis that Complainant’s registered LENDUS mark had priority and that Respondent’s purported mark presented a likelihood of consumer confusion with Complainant’s senior mark.

Respondent filed nothing in response to Complainant’s Notice of Opposition. On December 24, 2021, the Trademark Trial and Appeal Board (“TTAB”) entered a notice of default, giving Respondent 30 days to respond and explain why its application should not be refused. Again, Respondent took no action. On February 5, 2022, the TTAB entered an order refusing Respondent’s application to register the mark ATLENDUS. Two days later, on February 7, 2022, the USPTO sent an email to respondent to confirm that, in view of the TTAB ruling, the application to register ATLENDUS was deemed abandoned.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's substantive contentions. Rather, on April 20, 2022, Respondent sent two emails to the Center (almost identical in content), stating:

"I am requesting an extension for the following case I will be changing the nature of the business to a car rental company and not a mortgage company I have since registered my new mortgage company under a different name and will no longer be operating as Atlendus I need some time to make all the necessary changes with the website and contact Information."

On April 24, 2022, Respondent sent another email to the Center, stating:

"Atlendus will no longer be a mortgage company moving forward, we tried to upload the new site but couldn't get it resolved at this time we are working on it see below a link to the new site for Atlendus Inc. [link omitted]."

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark LENDUS through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to the LENDUS mark. The entire mark is incorporated within the Domain Name, and the additional word "at" does not prevent a finding of confusing similarity between the mark and the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any legitimate reason for registering the Domain Name, which is very similar to Complainant's senior and registered mark, and which Respondent has used to offer the same types of services (mortgage loans and home refinancing loans) as Complainant offers under its LENDUS mark. The Panel also notes Complainant's clear allegation that Respondent has used the Domain Name to deceive and defraud consumers by creating the false impression that Complainant and Respondent are somehow affiliated. In the Panel's view, a legitimate respondent should normally be expected to reply to such an allegation. In the circumstances of this case and the record presented here, the Panel views Respondent's silence as an admission of Complainant's allegation.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. The Panel first observes that Complainant's registered mark LENDUS has been registered for less than five years, and notes its nature (LENDUS in connection with a lending business is neither fanciful nor arbitrary). In addition, despite Complainant's bald allegations, there is no evidence in the record that the LENDUS mark enjoys any meaningful renown as a source identifier for Complainant's services.

Nevertheless, and on the record here, the Panel finds it more likely than not that Respondent registered the Domain Name with Complainant's registered trademark LENDUS in mind. Again, the similarity of the Parties' services reinforces this conclusion. Also, an innocent party in Respondent's situation typically responds to a UDRP complaint by asserting that he was not aware of the complainant's trademark at the time of domain name registration, and by raising arguments to convince the panel that such a denial of awareness is not implausible. Here, Respondent did no such thing (rather, Respondent only claimed that he will "be changing the nature of the business to a car rental company and not a mortgage company"). In the

circumstances of this case, the Panel finds it more likely than not that Respondent was aware of Complainant's registered trademark LENDUS at the time Respondent registered the Domain Name.

Having concluded, on a balance of probabilities, that Respondent was aware of the LENDUS mark when it registered the Domain Name, it follows rather easily that Respondent's use of the Domain Name – setting up a website which offers services essentially identical to Complainant's services – constitutes bad faith use within the meaning of the above-quoted Policy paragraph 4(b)(iv). The fact that Respondent claims that he will be changing the nature of his business does not serve to cure his bad faith under the Policy.

Complainant has established Policy paragraph 4(a)(iii).

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 <atlendus.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 9, 2022