

ADMINISTRATIVE PANEL DECISION

Lennar Pacific Properties Management, LLC, Lennar Corporation v. Privacy Service Provided by Withheld for Privacy ehf / Hasan Rahman
Case No. D2022-2163

1. The Parties

The Complainants are Lennar Pacific Properties Management, LLC, and Lennar Corporation, United States of America (“United States”), represented by Slaters Harwell LLP, United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Hasan Rahman, Bangladesh.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 20, 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 June 20, 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 June 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2022.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on July 25, 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. Preliminary procedural issue: multiple complainants

In these proceedings there are two named complainants, Lennar Pacific Properties Management, LLC and Lennar Corporation. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels have looked at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Complaint states that the named complainants have the same grievance against the Respondent because Lennar Pacific Properties Management, LLC is the owner of the relevant trade mark and Lennar Corporation is a related company and the authorized licensee of that trade mark. Further, both are the target of misconduct by the Respondent, which has affected their individual legal interests.

The Panel accepts those submissions and determines that the proceedings should continue as filed with the two named complainants, referring to them together in this Decision as the “Complainant” unless indicated otherwise.

5. Factual Background

The factual findings pertinent to the decision in this case are that:

- (1) the Complainant provides real estate management, brokerage, development, construction, mortgage, and financial services by reference to the trade mark, LENNAR (the “Trade Mark”);
- (2) the Trade Mark is the subject of United States Patent & Trademark Office (“USPTO”) Reg. No. 3,108,401 from June 27, 2006, in name of Lennar Pacific Properties Management, LLC;
- (3) the disputed domain name was registered on February 20, 2022, and has not been used;
- (4) there is no commercial or other relationship between the Parties and the Complainant has not authorized the Respondent to use the Trade Mark or to register any domain name incorporating the Trade Mark; and
- (5) the Complainant sent a cease and desist letter to the Respondent on April 18, 2022, which has gone unanswered.

6. Parties’ Contentions

A. Complainant

The Complainant asserts trade mark rights in LENNAR. It holds a national registration for the Trade Mark and submits that the disputed domain name is identical to the Trade Mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name because it has no trade mark rights of its own; is not known by the disputed domain name; and the disputed domain name has not been used.

The Complainant alleges that the Respondent registered and has used the disputed domain name in bad faith.

The Complainant requests the Panel to order transfer of the disputed domain name to Lennar Pacific Properties Management, LLC.

B. Respondent

The Respondent did not submit a Response.

7. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

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

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trade mark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights for the purposes of the Policy.¹ The Complainant provides evidence of its registration of the Trade Mark with the USPTO, a trade mark authority, and so the Panel finds that the Complainant has trade mark rights.

The disputed domain name takes the Trade Mark and merely adds the generic Top Level Domain (“gTLD”), “.bond”, which can be disregarded for the purposes of comparing the disputed domain name with the Trade Mark.² The Panel finds that the disputed domain name is identical to the Trade Mark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the *onus* shifts to the Respondent to rebut such *prima facie* case by providing evidence demonstrating rights or legitimate interests in the disputed domain name.³

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its

¹ See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

² See section 1.11.1 of the [WIPO Overview 3.0](#).

³ See, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

“(i) before any notice to you 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 (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 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”.

In consequence of these administrative proceedings, the Registrar confirmed the name of the domain name registrant as “Hasan Rahman”, which does not provide any suggestion that the Respondent is commonly known by the disputed domain name. The Panel finds no other evidence that the Respondent might be commonly known by the disputed domain name.

Further, the Complainant states that there is no association between the Parties and there is nothing to contradict that claim. There is no evidence that the Respondent has any trade mark rights and the disputed domain name has not been used.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By failing to reply to the Complainant’s contentions the Respondent has not rebutted that *prima facie* case.

The identical composition of the disputed domain name as compared to the Trade Mark, cannot constitute fair use since it falsely suggests affiliation with the Complainant⁴. Additionally, the “.bond” gTLD relates to the Complainant’s services in the financial industry and thus reinforces the implied affiliation caused by the nature of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s

⁴ See section 2.5.1 of the [WIPO Overview 3.0](#).

mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

The applicable standard of proof in UDRP cases is sometimes described as the “preponderance of the evidence”, meaning that a complainant should demonstrate to the panel’s satisfaction that it is more likely than not that a claimed fact is true. It may be enough for a panel to draw reasonable inferences based on the evidence taken as a whole.⁵ That said, the Panel finds nothing that supports a finding of bad faith use and registration based on any of the above four scenarios, though notes that said scenarios are non-exhaustive. Accordingly, the Complaint must somehow support separate findings of registration in bad faith and use in bad faith.

The submissions in both respects are minimal but the Panel finds, on balance, bad faith premised upon the following facts: (i) the Respondent cloaked its identity by a privacy service, (ii) the Respondent did not reply to the cease and desist letter nor to this proceeding, (iii) the Trade Mark appears to be an invented word⁶, and (iv) the chosen gTLD “.bond” relates to the Complainant’s services in the financial industry and reinforces the inference that the Respondent sought to target the Complainant.

There being no use of the disputed domain name, the Complainant has cited (without more) the argument of “passive holding” in bad faith.⁷ That argument was first elaborated in the case of *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. [D2000-0003](#)) and has been applied in countless later decisions. The decisive factors which supported the complainant’s case there were its reputation in its trade mark and the implausibility of any good faith use to which the at-issue domain name could be put.

The question is whether the Complaint provides sufficient evidence of those same matters. The Panel notes the Trade Mark has been used since 1973 and that the Complainant is “one of America’s leading homebuilders ... and develops, builds and sells homes in twenty-one (21) [S]tates...”. There is some corroboratory evidence in the form of the USPTO registration which shows a claim to first use in commerce in 1973. Noting the registrant obligations under paragraph 2 of the Policy, the Respondent would have been alerted to the Complainant’s prior rights via a simple internet search⁸. Further, as previously noted by the Panel, the Trade Mark is also an invented term without common meaning. Prior panels have consistently found that the mere registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated entity can be itself create a presumption of bad faith⁹. Moreover, it is difficult to conceive of obvious good faith use of the disputed domain by the Respondent since the Trade Mark is not a dictionary word (at least not in English), nor a common family name, nor, manifestly, the Respondent’s name. Coupled together with the Panel’s findings regarding the Respondent’s use of a privacy service, the Respondent’s failure to respond or participate in these proceedings, and the Respondent’s intent to target the Complainant via the identical disputed domain name registered in the “.bond” gTLD, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel finds that the Complainant has satisfied the third and final element of the Policy.

⁵ See section 4.2 of the [WIPO Overview 3.0](#).

⁶ A casual search of the internet explains that the Complainant’s name is a portmanteau of the first names of two of the company’s founders, Leonard Miller and Arnold Rosen.

⁷ See also, section 3.3 of the [WIPO Overview 3.0](#).

⁸ See section 3.2.3 of the [WIPO Overview 3.0](#).

⁹ See section 3.1.4 of the [WIPO Overview 3.0](#).

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel finds that the Complaint has been established. Accordingly, the Panel orders that the disputed domain name <lennar.bond> be transferred to Lennar Pacific Properties Management, LLC in line with the Complainant's request.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: August 8, 2022