

ADMINISTRATIVE PANEL DECISION

Toyota Motor Sales, U.S.A., Inc. v. Privacy Service Provided by Withheld for Privacy ehf / lexus mpo168

Case No. D2022-2413

1. The Parties

The Complainant is Toyota Motor Sales, U.S.A., Inc., United States of America (“U.S”), represented by Dinsmore & Shohl LLP, United States of America.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf / lexus mpo168, Cambodia.

2. The Domain Names and Registrar

The disputed domain names <lexusmpo.biz>, <lexusmpo.com>, <lexusmpo.net>, <lexusmpo.pro>, and <lexus-mpo.xyz> (each a “Disputed Domain Name”, together the “Disputed Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On July 4, 2022 the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 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 July 6, 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 July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on August 28, 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 Complainant Toyota Motor Sales, U.S.A., Inc. is a California corporation that is wholly owned by the Toyota Motor Corporation of Japan (“Toyota”), one of the world’s leading manufacturers of automobiles, trucks, and associated parts and accessories. The Complainant is the exclusive importer and distributor of TOYOTA and LEXUS automobiles in the United States of America, apart from the State of Hawaii.

Toyota is a global company that is primarily known for designing, manufacturing, and selling automobiles. In addition to its well-known TOYOTA brand, the company has also offered goods and services under the LEXUS brand for more than thirty years. Commonly viewed as Toyota’s luxury vehicle line, LEXUS-branded vehicles were introduced in the U.S. in 1989, and in Indonesia in 2007. They are now marketed in over 90 countries and territories worldwide.

Toyota’s LEXUS trademark has been extremely successful, and as recently as 2020 was ranked as one of the top 100 most valuable brands in the world. It is well-known and has achieved global recognition, and has been ranked as one of the top ten car brands globally. The term “LEXUS” is a coined term that has no meaning other than identifying Toyota’s brand.

Toyota is the registrant of U.S. trademark no 1574718 for the word LEXUS registered on January 2, 1990 (the “LEXUS trademark”). It is also the owner of various registrations for the word LEXUS in a stylised script – for example U.S. registration No 1834147 registered on May 3 1994 (the “LEXUS logo”).

The Complainant is authorized to use its parent corporation’s TOYOTA and LEXUS trademarks in the United States. U.S.

The <lexusmpo.com> and <lexusmpo.net> Disputed Domain Names were registered on December 19, 2020. The <lexusmpo.biz> Disputed Domain Name was registered on June 10, 2021. The <lexusmpo.pro> Disputed Domain Name was registered on September 20, 2021. The <lexus-mpo.xyz> Disputed Domain Name was registered on October 18, 2021.

The evidence establishes that each of the Disputed Domain Names either does resolve, or has in the past resolved, to individual websites (the “Respondent’s Websites”) which offer, or purport to offer, gambling facilities. The Respondent’s Websites are, in terms of language and currency, directed at Indonesia. Gambling is illegal in Indonesia. The content of each of the Respondent’s Websites is similar. Each of the Respondent’ Websites displays a “LEXUSMPO” logo in stylised form which is, in terms of style and font, very similar to the LEXUS logo the Complainant commonly uses.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions are set out in some detail and cite numerous previous UDRP decisions. The Panel refers to these in its reasoning below where it considers it useful to do so. The Complainant’s case can be summarized as follows.

The Disputed Domain Name is confusingly similar to the LEXUS Trademark. The letters “MPO” may be a shorthand reference for Multi-Player Online or something else that may be deemed descriptive of or even generic for the online gambling services offered through the Disputed Domain Names but in any event their

inclusion does not detract from the fact that LEXUS remains the dominant element in each of the Disputed Domain Names.

The Respondent has no rights or legitimate interests in the term “LEXUS”.

In consequence the Complainant alleges that the Disputed Domain Names were registered and are being used in bad faith. The Complainant says the Respondent’s Websites promote in Indonesia an activity which is unlawful in that country which is evidence of bad faith registration and use. It infers the Respondent’s motive was financial gain.

B. Respondent

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

6. Discussion and Findings

Preliminary Matter – no communication from Respondent

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Preliminary Matter – Respondent Identity

The Panel also notes this is a case where one Respondent (Privacy Service Provided by Withheld for Privacy ehf) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case the Panel considers the substantive Respondent to be lexus mpo168 and references to the Respondent are to that entity.

Preliminary Matter – Complainant Standing

The Panel considers the Complainant as a wholly owned subsidiary of Toyota has standing to bring this Complaint – see [WIPO Overview 3.0](#) at section 1.4.1.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the LEXUS trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is the recognizable disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark. It is not clear what meaning (if any) the letters “mpo” have, but in the opinion of the Panel the term LEXUS remains within each of the Disputed Domain Names.

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, “.biz”, “.pro”, “.net”, and “.xyz”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that each of the Disputed Domain Names is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the LEXUS trademark is, on the evidence before the Panel, a term in which the Complainant and Toyota have developed a significant reputation.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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) the respondent has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. Neither the Complainant nor Toyota has authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use the LEXUS trademark. The Complainant and Toyota have prior rights in the LEXUS trademark which precede the

Respondent's acquisition of the Disputed Domain Names. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Names.

The Panel also agrees with decisions of previous panels that use of a domain name for illegal purposes cannot confer rights or a legitimate interest – see for example *Hertz System, Inc. v. Dong Yao Wu, Jie Guo Jiu Guang Guang Kan Kan*, WIPO Case No. [D2021-2785](#) (finding use of a domain name in connection with illegitimate gambling services not only does not constitute a *bona fide* offering of services but also confirms that the respondent lacks rights or a legitimate interest in the name); *Eczacıbaşı Holding A.Ş v. Wan Li Huang*, WIPO Case No. [D2020-2428](#) (“The use of the Domain Name as a gambling site is not bona fide or legitimate noncommercial or fair use of the Domain Name especially as gambling is illegal in Turkey.”)

Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Names and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the evidence as to the extent of the reputation the Complainant and Toyota enjoy in the LEXUS trademark, and the fact that the Disputed Domain Names were linked to the Respondent's Websites which use a logo manifestly similar to the LEXUS logo, lead the Panel to conclude the registration and use were in bad faith.

The Panel concludes that the Respondent chose to register names comprising the Complainant's LEXUS trademark combined with the letters “mpo” in order to facilitate the promotion of gambling websites directed at the Indonesian market.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (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 web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel concludes that the Respondent deliberately chose to use domain names which incorporated the Complainant's well known LEXUS trademark. Not only is the term a coined word with no other meaning but the evidence establishes it is extremely well known and the use on the Respondent's Websites of a logo

which mimics the LEXUS logo shows the Respondent must have had the Complainant and/or Toyota in mind.

Exactly why the Respondent wished to use the LEXUS trademark in domain names which were to be directed at gambling sites is a matter of conjecture. It does not seem to the Panel to be immediately obvious that persons looking for websites relating to the Complainant and/or Toyota would necessarily be interested in gambling. However the list under paragraph 4(b) of the Policy is non exhaustive and as discussed above, the Respondent is using the Disputed Domain Names in connection with illegal activity, namely, the operation of an online casino and gambling site directed at Indonesia in contravention of Indonesian law. Panelists have repeatedly found that the use of a domain name for illegal or illegitimate activity “in manifestly considered evidence of bad faith” – see for example *Hertz System, Inc. v. Dong Yao Wu, Jie Guo Jiu Guang Guang Kan Kan*, WIPO Case No. [D2021-2785](#) (stating that “the use of a domain name for per se illegitimate activities such as offering illegitimate gambling services, such behavior is manifestly considered evidence of bad faith”). The basis for finding bad faith when a mark is incorporated into a domain name connected with an illegal gambling site was set forth in *Eczacıbaşı Holding A.Ş v. Wan Li Huang*, WIPO Case No. [D2020-2428](#) (October 30, 2020): (“Gambling is banned in Turkey. Implicit in the UDRP is the principle that the use of a domain name constitutes bad faith when a respondent seeks to, or recklessly has the effect of, tarnishing the good name of a complainant whom that respondent wilfully seeks to associate with illegal activity. The Respondent is falsely associating the well respected INTEMA MUTFAK trade mark with activity which is against the law in the Complainant’s country. It is clear that the Respondent employs the fame of the Trade Mark to mislead Internet users into visiting the Website instead of the Complainant’s”).

The Panel considers that similar reasoning supports a finding of bad faith in this case. The gambling sites associated with the Disputed Domain Names have been set up for the commercial benefit of the Respondent, and it is highly likely that consumers may come across one or more of these sites when searching for Complainant’s site or products. The Complainant’s LEXUS trademark is well-known and has a positive reputation, and its association through these sites with gambling, illegal in Indonesia, is likely to tarnish the LEXUS trademark. The Respondent’s conduct was clearly deliberate and in the Panel’s opinion amounts to registration and use in bad faith.

Accordingly, the Panel finds that the Disputed Domain Names has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 Names <lexusmpo.biz>, <lexusmpo.com>, <lexusmpo.net>, <lexusmpo.pro>, and <lexus-mpo.xyz> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: September 09, 2022