

## ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. Mike Smy, HorseBack, Inc., Mike James, HorseBack LLC  
Case No. D2022-3441

### 1. The Parties

Complainant is PN II, Inc., United States of America (“United States”), represented by Adams and Reese LLP, United States.

Respondents are Mike Smy, HorseBack, Inc., United States, and Mike James, HorseBack, LLC, United States.

### 2. The Domain Names and Registrar

The disputed domain names <pultegroup-inc.com> and <pulte-groupinc.com> are registered with Porkbun LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. September 16, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on September 19, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 19, 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 Respondent of the Complaint, and the proceedings commenced on September 21, 2022. On September 29 and October 4, 2022, Complainant submitted a request to add the disputed domain name <pulte-groupinc.com> to this proceeding. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 13, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on October 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.

Upon request of the Panel on November 15, 2022, the Center transmitted by email to the Registrar, a request for registrar verification in connection with the disputed domain name <pulte-groupinc.com>, and on November 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing the registrant. On November 21, 2022, the Panel issued a Procedural Order inviting Complainant to provide any consolidation arguments it may have regarding the disputed domain names, and inviting the Respondents to file a response or express an interest in participating in this proceeding. Complainant filed a second amended Complaint on November 21, 2022. Respondent did not submit any response.

#### **4. Factual Background**

Complainant is PN II, Inc., a wholly-owned subsidiary of PulteGroup, Inc., a residential home construction company founded in 1950 in the United States. Complainant offers its home building, real estate, mortgage lending, and related services through its official <pulte.com> and <pultegroupinc.com> domain names and websites, as well as its <pultegroup.com> domain name, which is used for employee email addresses. Complainant owns valid and subsisting registrations for the PULTE and PULTEGROUP trademarks in the United States, including the trademark for PULTE (Reg. No. 1,942,747) and the trademark for PULTEGROUP (Reg. No. 4,077,463) with the earliest priority dating back to January 10, 1969 and September 1, 2010, respectively.

Respondents registered the first disputed domain name <pultegroup-inc.com> on August 18, 2022 and the second disputed domain name <pulte-groupinc.com> on September 19, 2022. At the time this Complaint was filed, both disputed domain names resolved to Complainant's official website at "www.pultegroupinc.com".

#### **5. Parties' Contentions**

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

Complainant asserts ownership of the PULTE and PULTEGROUP trademarks and has adduced evidence of trademark registrations in the United States, with earliest priority dating back to January 10, 1969 and September 1, 2010 respectively. The disputed domain names are confusingly similar to Complainant's PULTE and PULTEGROUP trademarks, according to Complainant, because they wholly incorporate Complainant's PULTE and PULTEGROUP trademarks and each differ from Complainant's trademarks only by the inclusion of a hyphen and the abbreviated word "Inc."

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain names based on the lack of evidence that Respondents are known by the disputed domain names, and the fact that Respondents are not using the disputed domain names in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. Rather, according to Complainant, Respondents registered and used the disputed domain name <pultegroup-inc.com> in furtherance of Respondents' theft of 145 laptop computers through a falsified purchase order to a third-party supplier, and thereafter registered the disputed domain name <pulte-groupinc.com> to continue the same fraudulent activities.

Complainant argues that Respondents have registered and used the disputed domain names in bad faith for numerous reasons, including: the fame of Complainant's trademarks; and Respondents' use of the disputed domain names, each a typographical variation of Complainant's official domain name, to impersonate Complainant's employees by sending emails purporting to be from Complainant, with the intention of

fraudulently obtaining products from a third-party supplier. More specifically, Complainant first learned of the disputed domain name <pultegroup-inc.com> on September 13, 2022, when a third-party IT services and equipment supplier contacted Complainant regarding a purchase order for 145 laptop computers. The supplier had received a series of emails from a sender at the disputed domain name <pultegroup-inc.com> claiming to be Complainant's "National Director of Strategic Procurement" and placing the order for the laptops. The supplier forwarded the email correspondence to Complainant. Attached to one of the sender's emails was a falsified purchase order, on what appears to be Complainant's official letterhead (featuring Complainant's official logo), naming another legitimate employee of Complainant as the party responsible for payment, and including a forged signature of Complainant's Chief Financial Officer. The third-party supplier apparently fulfilled this order believing the sender to be a legitimate employee of Complainant. Upon investigation, Complainant learned that the pallet of laptops was indeed delivered to Complainant's loading dock, but the pallet went missing from the loading dock shortly after delivery. The laptops were evidently stolen by Respondents or a co-conspirator of Respondents. Complainant's counsel reported Respondents' use of the first disputed domain name <pultegroup-inc.com> for fraud to the Registrar on September 15, 2022, and the Registrar confirmed suspension of the first disputed domain name <pultegroup-inc.com> the same day. The second disputed domain name <pulte-groupinc.com> was then created on September 19, 2022, and Complainant first learned of it on September 29, 2022. Before either disputed domain name was suspended by the Registrar, both redirected to Complainant's official website at "www.pulte-groupinc.com".

## **B. Respondents**

Respondents did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Consolidation of Multiple Respondents and Addition of Domain Names Following Complaint Notification**

Except in limited cases where there is clear evidence of respondent gaming/attempts to frustrate the proceedings (e.g., by the respondent's registration of additional domain names subsequent to complaint notification), panels are generally reluctant to accept such requests because the addition of further domain names would delay the proceedings (which are expected to take place with due expedition). In those cases where panels would grant such a request, the complainant would need to hold relevant trademark rights and the proposed additional domain names would need to be *prima facie* registered by the same or related respondent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.12.2.

In this case, the Panel concurs that addition of the second disputed domain name <pulte-groupinc.com> is appropriate. Specifically, evidence provided by Complainant establishes that: (i) the second disputed domain name was registered on September 19, 2022, the same day the Center issued the Notice of Registrant Information, which was copied to Respondent Mike Smy, HorseBack Inc; (ii) the second disputed domain name <pulte-groupinc.com> was registered a mere four days after the Registrar suspended the first disputed domain name <pultegroup-inc.com> for fraud on September 15, 2022; (iii) Complainant first learned of the second disputed domain name on September 29, 2022, five days after Complainant's September 24, 2022 deadline to amend its Complaint; and (iv) as addressed in detail below, all evidence points to registration of the second disputed domain name by Respondents to continue the same fraudulent activities targeting Complainant and its third party suppliers.

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable

to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. See [WIPO Overview 3.0](#), sections 4.11 and 4.11.2.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s). *Id.*

In this case, the Panel also concurs that consolidation of Complainant's multiple domain name disputes is appropriate because all evidence supports the conclusion that the same Respondent is responsible for both disputed domain names (the Respondents are hereinafter referred to as "Respondent"). Specifically, evidence provided by Complainant establishes that: (i) both disputed domain names share the same Registrar; (ii) both disputed domain names share the same proxy service, namely Private by Design, LLC; (iii) the second disputed domain name was registered on the same day the Center issued its Notice of Registrant Information, and a mere four days after the Registrar suspended the first disputed domain name for fraud; (iv) both disputed domain names are composed of the same phrase "Pulte Group Inc.", and are differentiated only by placement of a hyphen; (v) both disputed domain names are hosted on the same name servers; (vi) both disputed domain names redirected to Complainant's official website before they were disabled by the Registrar; (vii) both disputed domain names had active MX records, further supporting evidence that each was used to send email in furtherance of the same fraudulent impersonation scheme; (viii) registration data for both disputed domain names shares the same, nonexistent address at 44 "Energy Plaza, New York, NY 10005"; and (ix) the registrants for both disputed domain names share the first name "Mike" and an organization beginning with an identically capitalized word "HorseBack".

## 6.2. Substantive Issues

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- (i) The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- (ii) 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

## A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the PULTE and PULTEGROUP trademarks have been registered in the United States with priority dating back to January 10, 1969 and September 1, 2010, respectively. Thus, the Panel finds that Complainant's rights in the PULTE and PULTEGROUP trademarks have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to Complainant's PULTE and PULTEGROUP trademarks. In this Complaint, the disputed domain names are confusingly similar to Complainant's PULTE and PULTEGROUP trademarks because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the trademarks are contained in their entirety within the disputed domain names. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regard to gTLDs, such as ".com" in the disputed domain names, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the term "Inc." does not prevent a finding of confusing similarity between Complainant's PULTE and PULTEGROUP trademarks and the disputed domain names. [WIPO Overview](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark."). Indeed, the Panel concurs with Complainant that the additional term "Inc." does not dispel the confusing similarity between Complainant's PULTE and PULTEGROUP trademarks and the disputed domain names. Furthermore, it is well established that neither the mere addition or removal of a hyphen is sufficient to dispel confusing similarity. See *Chernow Comm'ns, Inc. v. Kimball*, WIPO Case No. [D2000-0119](#) (holding "that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark").

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

## B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain names as Mike Smy, HorseBack, Inc., and Mike James, HorseBack, LLC, is not commonly known by the disputed domain names or Complainant's PULTE and PULTEGROUP trademarks.

UDRP panels have categorically held that use of a domain name for illegal activity - including the impersonation of the complainant and other types of fraud - can never confer rights or legitimate interests on

a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent's website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13. See e.g. *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrenge*, WIPO Case No. [D2009-1017](#) ("Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives") see also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) ("In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names"). In its Complainant, Complainant has submitted persuasive evidence that: Respondent has used the first disputed domain name <pultegroup-inc.com> to impersonate Complainant's employee and send a false purchase order to a third-party supplier. After the Registrar suspended <pultegroup-inc.com>, Respondent registered the second disputed domain name <pulte-groupinc.com> in furtherance of the same fraudulent scheme, but it was also quickly suspended by the Registrar.

To this end and as discussed in greater detail below, the second and third elements of the Policy may be assessed together where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

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

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that respondent has registered or respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to complainant who is the owner of the trademark to a competitor of that complainant, for valuable consideration in excess of respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed 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.

UDRP panels have categorically held that registration and use of a domain name for illegal activity - including impersonation, passing off, and other types of fraud - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant." *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrenge*, WIPO Case No. [D2009-1017](#); see also *GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). As



discussed above, Complainant has proffered substantial evidence that: (i) both disputed domain names resolved to Complainant's own website in attempt to lend each an air of legitimacy, and (ii) Respondent used both disputed domain names as part of Respondent's fraudulent scheme to impersonate Complainant through false purchase orders with third-party suppliers of Complainant. Such evidence includes copies of fraudulent emails exchanged between Respondent and third-party suppliers of Complainant.

Moreover, where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant, or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. [WIPO Overview 3.0](#), section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with Respondent's use of the disputed domain names as part of Respondent's fraudulent scheme to impersonate Complainant.

Finally, the Panel considers configuration of an email server on the disputed domain names as additional evidence that the disputed domain names have been registered and used in bad faith. The disputed domain names contain in their entirety Complainant's PULTE and PULTEGROUP trademarks, and the record is devoid of any evidence to suggest that Respondent has any legitimate interest in sending emails from the disputed domain names. Conversely, Complainant has provided evidence that Respondent's proactive configuration of an email server, was used in furtherance of Respondent's fraudulent impersonation scheme, thereby using an email address associated with Complainant to try to steal valuable products from Complainant and its third-party suppliers. Prior WIPO panel determinations have recognized the same risk, and considered it as additional evidence of bad faith. See *e.g. Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*, WIPO Case No. [D2017-1225](#); *Carrefour S.A. v. WhoisGuard, Inc / Gaudet Jose*, WIPO Case No. [DCO2018-0041](#) ("The Panel concurs with the Complainant that the connection of the disputed domain name with an email server configuration enhances a likelihood of confusion and presents a risk that the Respondent is engaged in a phishing scheme.")

In view of the foregoing, the Panel concludes that Complainant has established the third element of the Policy.

## 8. 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 <pultegroup-inc.com> and <pulte-groupinc.com> be transferred to Complainant.

*/Phillip V. Marano/*

**Phillip V. Marano**

Sole Panelist

Date: December 2, 2022