

ADMINISTRATIVE PANEL DECISION

Crystal Lagoons B.V. and Crystal Lagoons Technologies, Inc. v. Gossardhe,
Gossardhe

Case No. D2023-0596

1. The Parties

The Complainant is Crystal Lagoons B.V., Netherlands, and Crystal Lagoons Technologies, Inc., United States of America (“United States”), represented internally.

The Respondent is Gossardhe, Gossardhe, United States.

2. The Domain Name and Registrar

The disputed domain name, <crystal-lagoons.com>, is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 9, 2023. On February 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 2023, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2023, 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 February 14, 2023.

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 February 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2023.

The Center appointed David Stone as the sole panelist in this matter on March 20, 2023. 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

Crystal Lagoons B.V. and Crystal Lagoons Technologies, Inc., together the Complainant, form part of the Crystal Lagoons group, which provides technology to design, build and operate multi-acre artificial lagoons for recreational use, at locations all over the world.

Crystal Lagoons Technologies, Inc. owns numerous trade marks, including the following (the “Marks”).

- **CRYSTAL LAGOONS** : United States registration number 3881936, registered on July 20, 2010 in international class 42;
- **CRYSTAL LAGOONS** : European Union registration number 006326391, registered on September 17, 2008 in international class 42; and
- **CRYSTAL LAGOONS** : European Union registration number 016675671, registered on August 31, 2017 in international classes 19, 36, 40, 41 and 43.

In addition, the Complainant offers said technology and services at the domain name <crystal-lagoons.com>.

The disputed domain name was registered on February 2, 2023.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Marks. Disregarding the Top-Level Domain, “.com”, the disputed domain name differs by the replacement of a single letter: “crystal” vs “crysfal”. The Marks show a high degree of visual similarity, with the single-letter variation located in the middle of the word, making it difficult to detect unless attention is paid. The Complainant further contends that it is almost impossible to detect any phonetic difference between the Marks and the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence to suggest that the Respondent has been commonly known by the name within the disputed domain name. The contents of the website accessed via the disputed domain name indicate that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent does not make a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. Notably, the Complainant's Director of Corporate Finance received email correspondence on February 3, 2023, which was said to come from the President of Crystal Lagoons Corp, being signed off in his name and sent from an email domain matching the disputed domain name. As such, the sender used a mismatched email domain tactic, with the purpose of scamming the receiver, by requesting that the Complainant's Director of Corporate Finance make an urgent bank transfer. On this basis the Complainant contends that the Respondent registered and is using the disputed domain name for fraudulent purposes. The Complainant has directed the Panel to two previous UDRP proceedings it initiated, having similar facts, and where the disputed domain names were used in connection with fraudulent emails (*Crystal Lagoons B.V., Crystal Lagoons Technologies, Inc. v. Privacy service provided by Withheld for Privacy ehf / Barry Whyte*, WIPO Case No. [D2022-1728](#) and *Crystal Lagoons B.V. and Crystal Lagoons Technologies, Inc. v.*

Privacy Service Provided by Withheld for Privacy ehf / conglomerates ships, WIPO Case No. [D2022-2929](#)). In these proceedings the existence of bad faith was established. The Complainant puts forward a presumption that the Respondent in these proceedings is the same Respondent in the previous proceedings.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainant must prove in order to succeed:

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

A. Identical or Confusingly Similar

On the evidence provided by the Complainant, the Panel is satisfied that the Complainant has rights in the Marks. In assessing the similarity between the disputed domain name and the Marks it is permissible to ignore the Top-Level Domain. The disputed domain name then differs from the Marks only in the addition of a hyphen, and by the replacement of a single letter. The replacement of one letter is a case of typosquatting. A domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered to be confusingly similar to the relevant mark. This stems from the fact that the domain name contains sufficiently recognizable aspects of the trade mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9). Therefore, the replacement of the letter 't' for the letter 'f' does not prevent the Marks from being recognizable in the disputed domain name. Neither does the addition of a hyphen or the presence of the Top-Level Domain. The Panel therefore finds that the disputed domain name is confusingly similar to the Marks, and concludes that the condition in paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the criteria that determine whether a domain name registrant has rights or legitimate interests in a 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 organisation) has been commonly known by the disputed domain name, even if the respondent has acquired no trade mark 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 misleadingly to divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant makes out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent has provided no evidence to contradict it.

On the facts and contentions before the Panel, the website associated with the disputed domain name is being used as a parking page with pay-per-click advertisements. The use of a domain name to host a parked page comprising pay-per-click advertisements does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's trade marks or otherwise mislead Internet users ([WIPO Overview 3.0](#), section 2.9). The hosting of such advertisements can be permissible where the disputed domain name consists of dictionary words and the advertisements are genuinely related to the dictionary meaning of those words ([WIPO Overview 3.0](#), section 2.9), but if the advertisements are automatically generated then they do not vest the Respondent with rights or legitimate interests ([WIPO Overview 3.0](#), section 3.5). The Complainant provided evidence that the advertisements consist of links such as "Aitukaki Lagoon Resort & Spa" and "Beqa Lagoon Resort", relating to resort services, and others relating to the sale of crystals or jewellery.

Further, the disputed domain name differs from the Complainant's official domain name by only a single letter, and the Respondent has not put forward any evidence of their rights or interests. The Panel therefore finds it implausible that the Respondent could be planning either to use the disputed domain name in connection with a *bona fide* offering of goods or services, or to put it to any legitimate noncommercial or fair use.

The Complainant has provided evidence that in February 2023 the disputed domain name was in fact used in a phishing email. Needless to say, this is neither use in connection with a *bona fide* offering of goods or services, nor legitimate noncommercial or fair use of the disputed domain name. Previous UDRP panels have held that the use of a domain name for illegal activity, including phishing, can never confer rights or legitimate interests on a respondent (see *American Machinery Works Inc. v. Registration Private, Domains by Proxy LLC / Name Redacted*, WIPO Case No. [D2021-3006](#)).

Therefore, the Panel concludes that the Respondent does not have rights or a legitimate interests in the disputed domain name within the meaning of the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out the non-exhaustive criteria for bad faith. Generally, for the purposes of the Policy, bad faith constitutes registration and use of a domain name in order to:

- (i) sell, rent or transfer the domain name to the trade mark owner (or a competitor thereof) for a profit;
- (ii) prevent the trade mark owner from registering its trade mark in a domain name, provided that the respondent is engaged in a pattern of such conduct;
- (iii) disrupt the business of a competitor; or
- (iv) divert Internet traffic for commercial gain.

As discussed above, the Complainant contends that the disputed domain has been used in bad faith in relation to a phishing attempt made via a fraudulent email sent from the disputed domain name. Further, this email purported to have been sent from the Complainant's President. The use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing and identity theft. Such cases include the use of the disputed domain name to send deceptive emails to solicit payment, as is the case here ([WIPO Overview 3.0](#), section 3.4). Further, and as highlighted by the Complainant, the use of a domain name for illegitimate activity is considered as evidence of bad faith (*Colas, Société Anonyme v. Concept Bale*, WIPO Case No. [D2020-2733](#)).

The Respondent has not put forward any other reason for their registration of the disputed domain name, and is not using it in any other legitimate way. The Panel concludes that the disputed domain name was registered and is being used for the purpose of sending fraudulent phishing emails.

The Panel therefore finds that the condition in paragraph 4(a)(iii) of the Policy is satisfied with respect to the disputed domain name.

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 name <crsfal-lagoons.com> be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: April 3, 2023