

ADMINISTRATIVE PANEL DECISION

Automobili Lamborghini S.p.A. v. Lawrence Moats
Case No. D2023-0995

1. The Parties

The Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Lawrence Moats, United States of America ("United States").

2. The disputed domain name and Registrar

The disputed domain name <only-lamborghini.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 6, 2023. On March 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 23, 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 amendment to the Complaint on March 28, 2023.

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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 3, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on May 15, 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

The Complainant is an Italian manufacturer of high-performance sports cars based in Sant'Agata Bolognese, Italy. The Complainant was founded in 1963 by Ferruccio Lamborghini under the company name Automobili Ferruccio Lamborghini. The vehicles of the Complainant belong to one of the world's most famous luxury sports cars.

The Complainant's registrations of the LAMBORGHINI trademark include:

- European Union Trade Mark Registration No. 001098383 for LAMBORGHINI registered on June 21, 2000, for goods and services in International Classes 7, 9, 12, 14, 16, 18, 25, 27, 28, 36, 37, 41;
- United States Trademark Registration No. 74019105 for LAMBORGHINI registered on November 13, 1990, for goods in International Class 12;
- International Trademark Registration No. 460178 for LAMBORGHINI registered on March 28, 1981, for goods and services in International Classes 3, 4, 9, 12, 14, 16, 18, 25, 28, 34 and covering various jurisdictions; and
- International Trademark Registration No. 959504 for LAMBORGHINI registered on February 28, 2008, for goods in International Classes 12 and 28 and designating various jurisdictions.

The registrations have been duly renewed and are still valid.

These registrations will jointly be referred to in singular as the "Trademark".

The Complainant operates the official website "www.lamborghini.com" at which it promotes Lamborghini cars in different languages worldwide.

The disputed domain name <only-lamborghini.com> was created on February 5, 2023, and directs to a website showing a parking page containing various commercial or sponsored pay-per-click ("PPC") links to third party websites, including websites of competing manufacturers or car dealerships.

5. Parties' Contentions

A. Complainant

The Complainant asserts registered rights in the LAMBORGHINI Trademark.

The Complainant submits that the disputed domain name is confusingly similar to the LAMBORGHINI Trademark. The Complainant further contends that its Trademark is well-known. Previous UDRP panels have recognized the well-known status and worldwide reputation associated with the LAMBORGHINI Trademark.

The Complainant also contends that the disputed domain name contains the LAMBORGHINI Trademark in its entirety, simply adding "only-" at the beginning, and the prefix "only-" does not distinguish the disputed domain name from the Complainant's Trademark, as the Trademark still remains clearly recognizable within the disputed domain name. To the contrary, according to the Complainant, it could lead Internet users to the expectation of exclusive services of the Complainant under the disputed domain name, as the word "only" suggests that the website may be dedicated to LAMBORGHINI cars or LAMBORGHINI related products exclusively. Internet users will expect a website that is either operated or at least consented to by the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. There is no indication of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services as the disputed domain name only resolves to a PPC parking page.

The use of the disputed domain name as a parking page itself does not constitute legitimate use. Furthermore, the Complainant filed evidence that the disputed domain name displayed keywords on the parking pages, *inter alia*, relate to the Complainant's car models ("Aventador") and to competing manufactures ("Audi Werkstatt", English: "Audi service station"). By using the disputed domain name as a PPC parking page the Respondent is clearly capitalizing on the Complainant's goodwill in its Trademark. The links redirect the users to websites of competing manufacturers or car dealerships. This use does not support a claim to rights or legitimate interests.

The disputed domain name cannot be used fairly by the Respondent because it is obviously confusing and diverting.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant argues that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous Trademark by an unaffiliated entity can by itself create presumption of bad faith. Moreover, the disputed domain name has resolved to a website containing keywords that lead to sponsored links. The Respondent generated revenues by PPC advertising on the website and therefore used the disputed domain name to exploit the Complainant's Trademarks for commercial gain. This non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

The Complainant also argues that the Respondent obviously had actual knowledge of the Complainant's Trademark when acquiring the disputed domain name as the Complainant's Trademark is distinctive and famous.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

A. Identical or Confusingly Similar

The Complainant has shown that it has rights in the Trademark, valid in various jurisdictions worldwide. The registrations of the Trademark predate the registration of the disputed domain name.

As set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the disputed domain name and the trademark 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 disputed domain name.

According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (*i.e.* the term "only") would not prevent a finding of confusing similarity under the first element.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") ".com" as it is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11).

In light of the foregoing, the Panel finds that the disputed domain name is confusingly similar to the Trademark.

The Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element, a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. In order to satisfy the second element, the complainant has to make out a *prima facie* case that the respondent does not have rights or legitimate interests in the disputed domain name. If the complainant succeeds in doing so, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (See [WIPO Overview 3.0](#), section 2.1).

The Complainant alleges that the Respondent lacks rights to or legitimate interests in the disputed domain name for the reasons set out in section 5.A above.

The Panel finds that the Complainant has thereby fulfilled the obligation to establish *prima facie* that the Respondent has no rights to or legitimate interests in the disputed domain name. Because of its failure to submit a response, the Respondent has not refuted the arguments of the Complainant and/or shown rights to or legitimate interests in the disputed domain name.

The Panel could not establish any indication that any of the circumstances as described in paragraph 4(c) of the Policy in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

The Panel further finds that the composition of the disputed domain name, identical to the Trademark, with only the addition of the term "only", carries a high risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's Trademark registrations significantly predate the registration date of the disputed domain name. As it is proved by the Complainant, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by previous panels (see, for example, *Automobili Lamborghini S.p.A. v. Ricky Frazier, Performance Parts of Texas, LLC*, WIPO Case No. [D2023-0506](#)). Therefore, under this Panel's view, the Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier Trademark. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see *Carrefour SA v. blackwhite, dolly Tiwari*, WIPO Case No. [D2021-0274](#)). Therefore, the Panel finds that the disputed domain name was registered in bad faith.

In light of the fact that the disputed domain name wholly incorporates the Complainant's LAMBORGHINI Trademark, the redirection of the disputed domain name to a PPC website that displayed keywords that, *inter alia* relate to the Complainant's car models and to competing manufactures, and the Respondent's failure to offer any rebuttal, the Panel concludes on balance of probabilities that the Respondent both registered and is using the disputed domain name with the intention of taking unfair advantage of the Complainant's goodwill in its Trademark.

Going further, the Panel is convinced that the Respondent registered the disputed domain name to take unfair advantage of the reputation of the Complainant's well-known Trademark, and in so doing to disrupt the Complainant's business and to attract, for commercial gain, Internet users to another website, by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement (paragraph 4(b)(iv) of the Policy).

The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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, <only-lamborghini.com> be transferred to the Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: May 22, 2023