

## **ADMINISTRATIVE PANEL DECISION**

### **LPL Financial LLC v. Cowtrading Cowtrading, NGUYEN THANH HUNG Case No. D2023-1030**

#### **1. The Parties**

The Complainant is LPL Financial LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Cowtrading Cowtrading, NGUYEN THANH HUNG, Hong Kong, China.

#### **2. The Domain Name and Registrar**

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

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 8, 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, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 6, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on April 14, 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 was founded in 1989 and is one of the largest independent broker-dealers in the United States. The Complainant has over 4,800 employees and has provided brokerage and investment advisory services to more than 19,100 financial professionals and around 800 financial institutions, managing over USD 1.1 trillion in advisory and brokerage assets. The Complainant owns a number of trademark registrations for the marks LPL and LPL FINANCIAL including the following:

- United States trademark registration number 1801076, LPL registered on October 26, 1993, for services in international class 36; and
- United States trademark registration number 3662425 LPL FINANCIAL registered on August 4, 2009, for services in international classes 36 and 42.

The Complainant also owns many domain names consisting of or containing "LPL", including <lpl.com>, registered in 1994, from which it operates its main corporate website, as well as <lpl.net>, <lpl-financial.com> and <lplaccountview.com>.

The Respondent appears to be located in China. The disputed domain name was registered on January 29, 2023, and, at the time of the filing of the Complaint, was not connected to any active web page. However, the Complainant has provided evidence of prior use of the disputed domain name for a website that impersonated the Complainant.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant's contentions can be summarized as follows:

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's LPL and LPL FINANCIAL trademarks in their entirety. The Complainant further submits that the addition of the term "fx" - being a reference to "foreign exchange" or "forex" - to the Complainant's LPL and LPL FINANCIAL trademarks in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's trademarks, which remain clearly recognizable in the disputed domain name. The applicable generic Top-Level Domain ("gTLD"), in this case ".com", may be disregarded for the purposes of the assessment under the first element, as it is viewed as a standard registration requirement.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not received any license or other authorization of any kind to make use of the Complainant's trademarks in a domain name or otherwise and the Respondent cannot assert that prior to any notice of this dispute it was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, just as there is no evidence to suggest that the Respondent is commonly known by the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is used in bad faith. The Complainant thus asserts that the Respondent could not credibly argue that it did not have knowledge of the Complainant and its trademark rights registering the disputed domain name in January 2023, over 29 years after the Complainant's first registration of its LPL trademark. The Complainant further states that the Respondent's use of the disputed domain name is fraudulent in nature. The Respondent has used the disputed domain name to pass itself off as the Complainant, purporting to provide trading services under the Complainant's "LPL Financial" name and logo, as well as seeking to obtain Internet users' detailed personal identifying information and/or financial information, including a copy of their ID card. The Complainant finally submits that the Respondent's address on the WhoIs record, "hk hk, hk, Hk 00001 HK", is fictitious and constitutes further evidence of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademarks LPL and LPL FINANCIAL since the disputed domain name contains these marks in their entirety. The addition of the term "fx" does not prevent confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The gTLD ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### **B. Rights or Legitimate Interests**

It is obvious from the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use the trademark LPL or LPL FINANCIAL.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this. Furthermore, the way the Respondent has used the confusingly similar disputed domain name for a website that clearly impersonated the Complainant, supports a finding that the Respondent lacks rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of a domain

name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the well-known status of the Complainant's trademarks LPL and LPL FINANCIAL and the way that the disputed domain name has been used, it is obvious to the Panel in the current circumstances that the Respondent registered the disputed domain name in bad faith.

The disputed domain name has been used for a website, which clearly gave the Internet users the impression that the website is a website of the Complainant or a website that was somehow connected to the Complainant, which is not the case. The Panel therefore finds that there can be no doubt that the disputed domain name has been used in bad faith to intentionally attempt "to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website".

This use of the disputed domain name ceased immediately after the Complainant's lawyer sent a cease and desist letter to the Respondent. However, as first stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and repeated in many subsequent decisions under the UDRP: "the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by Respondent to amount to the domain name being used in bad faith." See section 3.3 of the [WIPO Overview 3.0](#).

Noting that the disputed domain name incorporates the Complainant's well-known trademarks LPL and LPL FINANCIAL, that the Respondent has not replied to the Complainant's contentions; and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case

## 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 <lplfinancialfx.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: May 4, 2023