

## **ADMINISTRATIVE PANEL DECISION**

Hemlock Farms Community Association v. Emma Djiya, 1STCLASSREALTY-PA / Emma Djiya, Poconos real estate / Emagine Doing, Emagine Doing  
Case No. D2023-1347

### **1. The Parties**

Complainant is Hemlock Farms Community Association, United States of America (“U.S.”), represented by Design IP, P.C., U.S.

Respondents are Emma Djiya, 1STCLASSREALTY-PA, U.S.; Emma Djiya, Poconos real estate, U.S.; and Emagine Doing, Emagine Doing, represented by The Rapacke Law Group, U.S.

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

The disputed domain names <hemlockfarms.com>, <hemlockfarms.net> and <hemlockfarmspa.com> (the “Domain Names”) are 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 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On March 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint.

The Center sent an email to Complainant on April 6, 2023 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 April 13, 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 Respondents of the Complaint, and the proceedings commenced on April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. The Response was filed with the Center on May 10, 2023.

Complainant submitted a supplemental filing on May 17, 2023. In its discretion, the Panel considered this submission, largely because it addressed issues raised in the Response that Complainant could not reasonably have been expected to anticipate in its Complaint.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 13, 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

According to Complainant:

"Hemlock Farms is the name of a large, well-known, private, gated residential community in Lords Valley, Pennsylvania, [U.S.] that was created from a historic estate in the early 1960's. The name Hemlock Farms has been in continuous use as a trademark (first at common law and later federally registered) from at least 1963 until the present."

Complainant holds a registered trademark for HEMLOCK FARMS (and design), United States Patent and Trademark Office ("USPTO") Reg. No. 4,231,318, registered on October 23, 2012, in connection with "real estate management services", with a February 23, 2012, date of first use in commerce. Complainant also owns a registration for the word mark HEMLOCK FARMS, USPTO Reg. No. 6,828,258, registered on August 23, 2022, in connection with, *inter alia*, "homeowner association services" and "real estate management services", with an October 15, 1963, date of first use in commerce.

Complainant has owned the domain name <hemlockfarms.org> since April 19, 2000, and has used that domain name to host its commercial website.

Respondent Emma Djiya is a real estate professional, based in Lords Valley, Pennsylvania, whose services include buying and selling homes in the Hemlock Farms community. Emma Djiya owns the real estate firms 1<sup>st</sup> Class Realty-PA and Poconos Real Estate, and a web marketing firm Emagine Doing.

The original registration dates for the Domain Names are: <hemlockfarms.com> on November 29, 1998; <hemlockfarms.net> on September 12, 2017; and <hemlockfarmspa.com> on September 9, 2011.

According to Respondents, they acquired the Domain Names as part of a transaction in which Respondent Emma Djiya bought the real estate agency ARE Hemlock. The date of this transaction (and hence the transfer of ownership of the Domain names to Respondents) is unclear from the Response. At one point, the Response states that the transaction occurred in 2010. At another point, the Response indicates a 2013 date. And twice, a 2018 date is indicated. As is discussed below, it appears that the 2010 date is correct. (For the reasons set forth in the "bad faith" discussion, the Panel does not believe the exact date of Respondents' acquisition of the Domain Names is crucial to the outcome here.)

Respondent states that the prior owner of the Domain Names used them since 2000 without, to Respondent's knowledge, any pushback from Complainant. Annexed to the Response are screenshots of the website accessible via the Domain Name <hemlockfarms.com> going back as far as June 18, 2000. For a decade (according to several screenshots including an April 2, 2010, screenshot of the site), the website did not refer to Respondent Emma Djiya or any of her companies. According to a July 5, 2012, screenshot of the site at that Domain Name, Respondent Emma Djiya and her (apparently former) company RE/MAX ONE are featured, and thereafter, Respondent Emma Djiya and her current companies are featured.

According to a December 7, 2021, screenshot annexed to the Complaint, the Domain Name <hemlockfarms.com> was redirected for a time to a website at <allaroundthepoconos.com>, at which site Respondents advertised real estate services for 1<sup>st</sup> Class Realty-PA. That Domain Name currently does not resolve to an active website.

According to a December 8, 2022 screenshot annexed to the Complaint, the Domain Name <hemlockfarms.net> was redirected to a website at <pikepahomes.com>, at which site Respondents advertised real estate services for 1<sup>st</sup> Class Realty-PA.

It does not appear that the Domain Name <hemlockfarmspa.com> has ever resolved to an active website.

Complainant asserts that it has never authorized or licensed Respondents to use the HEMLOCK FARMS trademark in a domain name or otherwise. Annexed to the Complaint is a sworn declaration of Michael J. Sibio, a consultant to Complainant, in which he states:

“On or about October 20, 2020, during an oral conversation, Serge Djiya [husband of Emma Djiya] made an offer to Michael J. Sibio to transfer the Disputed Domain Names to [Complainant] HFCA, if HFCA would agree to purchase the 1<sup>st</sup> Class Realty headquarters property adjacent to Hemlock Farms for \$380,000 and lease the property back to 1st Class Realty. HFCA declined Serge Djiya’s offer.”

The foregoing discussion occurred in response to Complainant approaching Respondents about a possible acquisition of the Domain Names.

According to the Sibio declaration:

“A second attempt to negotiate a fair transfer of the Disputed Domain Names to HFCA was attempted in on March 5, 2021 by a demand letter issued by HFCA’s outside counsel, Design IP, P.C. The letter offered to reimburse Respondent up to \$500 for actual expenses associated with transfer of the Disputed Domain Names. A response dated March 23, 2021 was received from Emma Djiya on behalf of Respondent 1<sup>st</sup> Class Realty, declining HFCA’s offer.”

The March 5, 2021, letter also threatened litigation if Respondents did not agree to transfer the Domain Names for USD 500.

On March 23, 2021, Respondent Emma Djiya wrote to Complainant’s counsel, stating:

“I have never spoken to the community Manager, Michael J. Sibio as you indicated in your last letter. I have also never personally offered to sell my domains to HFCA for financial gain. A private conversation occurred between my husband and Michael J Sibio without my knowledge. My husband, as always, was trying to help as a good neighbor.”

“I realized that you have not done any research on the history of those domains. Your client filed a Trademark in May of 2020. My domains have been registered and active longer than that. I never bought those domains in Bad Faith as you mentioned. The domains were previously owned by 2 Real Estate Brokers: Lemp and Falcone. They enjoyed them for many years and were never approached or attacked by you, HFCA, or the Community Manager.”

“Surprisingly, I am pressured today by all of you when the two others were not. Is it because my last name is DJIYA that you are discriminating against my company and me?”

“You and your client demand that I transfer my domains without any say and without an open discussion. I have no problem meeting all of you in court with my attorney if that is the way that you would like to pursue this. It’s not my preference.”

More than two years after the foregoing letter, the Complaint in this proceeding was initiated.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Names.

### B. Respondent

Respondents' account of how they acquired the Domain Names is set forth above. Respondents dispute virtually every aspect of the Complaint, and raise several legal arguments about trademark law which the Panel will not address because they are not necessarily germane to this UDRP proceeding and do not hold water.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) the Domain Name have been registered and are being used in bad faith.

### A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark HEMLOCK FARMS through registration and use demonstrated in the record. The Panel also concludes that two of the Domain Names are identical to that mark. The third Domain Name, <hemlockfarmspa.com>, is confusingly similar to the mark, since it wholly incorporates the mark and adds the term "pa" (Complainant's mark is recognizable in the Domain Name).

Complainant has established Policy paragraph 4(a)(i).

### B. Rights or Legitimate Interests

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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.

The Panel need not address this issue, given its conclusion below on the "bad faith" element.

### C. Registered and Used in Bad Faith

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the 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.

The Panel concludes, on this record, that Complainant has not met its burden of proving that Respondent has registered and used the Domain Names in bad faith under the Policy.

This is an unusual case, inasmuch as Respondent Emma Djiya acquired the Domain Names as part of her purchase of an existing real estate agency – called ERA Hemlock – that specialized in selling homes in the Hemlock Farms community. On the record presented here, ERA Hemlock (and any predecessor agency from 2000 forward) had been using at least one of the Domain Names for a full decade to feature homes for sale in Complainant’s community, and apparently with no pushback whatever from Complainant. (Complainant does not dispute this allegation in its supplemental filing.) Under these circumstances, it appears that Respondent’s claim that her acquisition and use of the Domain Names, for the same purpose as had been made of them for a full decade with no objection, was free of any bad faith. Her quietude vis-à-vis the Domain Names was not disturbed for another decade after their acquisition, at which point Complainant approached her in 2020 about a possible sale of the Domain Names. These facts do not bespeak a strong UDRP claim of bad faith registration and use.

The Panel cannot say, and in any event it is beyond the Panel’s remit to say, whether this situation presents a trademark infringement scenario. It is a commonplace that a trademark infringement claim (which can be successfully pursued even where the defendant is entirely free of any ill intent) is not the same as a UDRP claim (which requires respondent bad faith in some form). On the record here, the Panel finds no bad faith registration.

Complainant has not established Policy paragraph 4(a)(iii).

### 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Robert A. Badgley/*  
**Robert A. Badgley**  
Sole Panelist  
Date: June 26, 2023