

## **ADMINISTRATIVE PANEL DECISION**

Landis+Gyr AG v. Paul McNeary  
Case No. D2023-1772

### **1. The Parties**

The Complainant is Landis+Gyr AG, Switzerland, represented by SafeNames Ltd., United Kingdom.

The Respondent is Paul McNeary, United States of America.

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

The disputed domain name <landisgyrservice.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 April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 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 April 27, 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 May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on May 30, 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 a Swiss publicly traded multinational corporation which provides energy management solutions to customers across the Americas, Europe and Asia Pacific.

The Complainant is the owner of numerous trademark registrations worldwide, including the following:

- Trademark LANDIS & GYR, International registration 253936, registered March 27, 1962
- Trademark LANDIS & GYR, Canada TMA208092, registered July 11, 1975
- Trademark LANDIS & GYR, Switzerland 2P-31782, registered August 26, 1982
- Trademark LANDIS & GYR, European Union 000921072, registered November 23, 2000
- Trademark LANDIS & GYR, International registration 713229, registered November 04, 1998
- Trademark LANDIS+GYR, International registration 803815, registered January 9, 2003
- Trademark LANDIS+GYR, United States of America ("United States") registration 3395350, registered March 11, 2008
- Trademark LANDIS+GYR, United States registration 3576576, registered February 17, 2009
- Trademark LANDIS+GYR (LOGO), International registration 1264270, registered March 18, 2015

The disputed domain name was registered on January 5, 2017 and resolves to a parked page.

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

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

The Complainant offers a broad portfolio of energy management solutions products and services to over 3,500 utility companies worldwide. It provides a wide range of devices including that of communications units, electricity meters, and heating & cooling meters. Since its founding in 1896, the Complainant has become well-known for its offering of goods and services within the fields of metering infrastructure and smart grid technologies.

The Complainant's 125-year-old history began with its manufacturing of state-of-the-art electricity meters for European utility companies in 1896. This reach expanded internationally in 1924, and growth continued with the advent of digital meters in the 1980s. In the early 2000s, the Complainant expanded into wireless networking services. Today, the Complainant focuses on improving energy efficiency and increasing sustainability for both utility companies and end-users.

The Complainant has a widespread global presence, operating in more than 30 countries. It has over 6,800 employees and made a revenue of USD 1,464 billion in Financial Year 2021.

The Complainant submits that the disputed domain name is identical, and if not, confusingly similar to the Complainant's LANDIS+GYR trademark. The disputed domain name contains in its entirety the LANDIS+GYR trademark and the additional expression "service".

The Complainant submits that the Respondent lacks a right or a legitimate interest in the disputed domain name.

The Respondent does not have any trademark rights to the term "landis+gyr".

The Respondent has not received any license from the Complainant to use domain names featuring the LANDIS+GYR trademark.

The disputed domain name currently does not resolve to an active website or webpage. As such, it is passively held.

The Complainant argues that the disputed domain name was registered and is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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. Considering these requirements, the Panel rules as follows:

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the LANDIS+GYR and LANDIS & GYR trademarks on the basis of its multiple trademark registrations including its international trademark registrations, and those in the United States, the European Union, Canada and Switzerland. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP page 4 Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#).

The Respondent's incorporation of the Complainant's mark LANDIS+GYR in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's marks. Mere fact of the removal of the symbol "+" as well as the addition of the expression "service" to the Complainant's trademark do not prevent a finding of confusing similarity with the Complainant's marks. Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

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

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth. Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks LANDIS+GYR in a domain name or in any other manner.. There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. In fact, the website resolved by the disputed domain name is currently parked. The Panel also finds that the nature of the disputed domain name carries

a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1). The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

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

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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) circumstances indicating that the respondent 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) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

With regard to the bad faith at the time of registration, the Panel notes that "landis" and "gyr" are not a common or descriptive term, but a renowned trademark in and to which the Complainant has demonstrated has rights.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered trademarks, and this is the only distinctive component of the disputed domain name. Moreover, the disputed domain name is inherently misleading as it reproduces the Complainant's trademark LANDIS+GYR together with the expression "service" as well as the removal of the symbol "+".

In addition, owing to the substantial presence established worldwide, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering a domain name that entirely reproduces the Complainant's trademark together with the expression "service".

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the LANDIS+GYR trademark.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

Furthermore, the Panel finds that the lack of active use of the disputed domain name in the circumstances of the case does not prevent a finding of bad faith. On the contrary, this Panel agrees with the Complainant's assertion that in the case of domain names containing well-known earlier marks, passive holding can

constitute an indication of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)). In the circumstances, the Panel finds that the passive holding of the disputed domain name disrupts the Complainant's business.

Furthermore, the Complainant has presented evidence that the disputed domain name has been configured with MX records in the DNS enabling use for email. In the circumstances, there would appear to be no conceivable benefit to the Respondent to be gained by registration and use of the domain name in this way other than through some bad faith activity such as phishing (*W.W. Grainger, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Daniel Thomas*, WIPO Case No. [D2020-1740](#)).

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, 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 <landisgyrservice.com> be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: June 13, 2023