

## **ADMINISTRATIVE PANEL DECISION**

LifeWave, Inc. v. Tom Rockefeller  
Case No. D2023-2088

### **1. The Parties**

The Complainant is LifeWave, Inc., United States of America (“United States”), represented by ARC IP Law, P.C., United States.

The Respondent is Tom Rockefeller of the United Kingdom.

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

The disputed domain names <lifewavepatches.store> and <lifewavepatch.store> 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 May 11, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (GoDaddy, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 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 May 17, 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 May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Respondent’s informal communications were received on May 17, 2023 by the Center. The Center notified the Commencement of Panel Appointment Process to the Parties on June 19, 2023.

The Center appointed Cherise Valles as the sole panelist in this matter on June 26, 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 in this administrative proceeding is LifeWave, Inc., a corporation organized under the laws of the State of Georgia in the United States.

The disputed domain names <lifewavepatch.store> and <lifewavepatches.store> were registered on October 9, 2022 (the “disputed domain names”).

The Complainant is the owner of the registered LIFEWAVE word and design marks (collectively the “LIFEWAVE marks”) in the following jurisdictions:

- European Union (Registration Number 1279038, registered on September 9, 2015)
- Japan (Registration Number 5881550, registered on September 16, 2016)
- Malaysia (Registration Number 2010017730, registered on July 9, 2013)
- Mexico (Registration Number 1224218, registered on June 24, 2011)
- Philippines (Registration Number 1279038, registered on February 21, 2021)
- Singapore (Application Number T1012381I, registered on December 27, 2021)
- Republic of Korea (Registration Number 40-1147767-0000, registered on December 8, 2015)
- Taiwan province of China (Registration Numbers 01467957, registered on August 16, 2011; and 01766317, registered on April 16, 2016)
- Thailand (Registration Number 171102751, registered on July 27, 2017)
- United Kingdom (Registration Numbers UK00909366972, registered on February 21, 2011; and UK00801279038, registered on October 19, 2016)
- United States (Registration Numbers 5,285,572, registered on September 12, 2017; and 4,841,450, registered on October 27, 2015)

At the time of the decision, the disputed domain names resolve to inactive websites, but they used to resolve to websites displaying Pay-Per-Click (“PPC”) links.

#### **5. Parties’ Contentions**

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

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules has been satisfied. In particular, the Complainant asserts that:

The disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain names are confusingly similar to the Complainant’s registered LIFEWAVE marks, in light of the fact that they wholly incorporate the Complainant’s mark.

The Respondent lacks rights or legitimate interests in the disputed domain names.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain names. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain names and it is evident that it intends to misleadingly divert consumers and devalue the LIFEWAVE Marks for its personal gain.

The disputed domain names have been registered and are being used in bad faith.

- The Complainant asserts that the disputed domain names were registered and are being used in bad faith. The Respondent by registering the disputed domain names 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 LIFEWAVE Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location of a product or service on the Respondent's web site or location.

The Complainant requests the Panel to issue a decision finding that the disputed domain names be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions, but indicated in an email to the Center on May 17, 2023, that "I don't even use this domain anymore, so what is the best thing to do in this case?".

## **6. Discussion and Findings**

In terms of paragraph 4(a) of the Policy, for a Complaint to succeed, the Complainant must prove each of the following elements:

- (i) the disputed domain names are 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 names; and,
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Respondent has failed to reply to the Complainant's contentions. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

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

To prove this element, the Complainant must have relevant UDRP rights in a trademark and the disputed domain names must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain names are confusingly similar to the trademark in which it has rights. The disputed domain names incorporate the LIFEWAVE marks in its entirety with the addition of the terms "patch" and "patches". Given the Complainant's trademark registrations as detailed above, the Panel finds that the Complainant has established its trademark rights in LIFEWAVE for the purposes of paragraph 4(a)(i) of the Policy.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)): "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Thus, the inclusion of the terms "patch" and "patches" in the disputed domain names does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's LIFEWAVE marks.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top-Level Domain ("TLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test". In the present case, the TLD "store" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (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 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 Respondent did not submit a formal Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy that the respondent has no rights or legitimate interests in the domain name concerned (see, for example, *Paris Saint-Germain Football v. Daniel Macias Barajas, International Camps Network*, WIPO Case No. [D2021-0019](#); *Spinrite Inc. v. WhoisGuard, Inc. / Gabriella Garlo*, WIPO Case No. [D2021-0012](#); and section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's LIFEWAVE marks in any manner, including in, or as part of, the disputed domain names. The Complainant argues that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

Furthermore, the nature of the disputed domain names, consisting of the Complainant's trademark with the addition of the terms "patch" and "patches", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

In light of the foregoing, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

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

For this element, the Complainant is required to prove that the disputed domain names were registered and are being used in bad faith. The term "bad faith" is "broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant's mark". See section 3.1 of the [WIPO Overview 3.0](#). Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (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 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 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.

In the present case, the Complainant's submissions relate to paragraph 4(b)(iv) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain names used to resolve to websites displaying PPC links. The Complainant contends by using the disputed domain names, the Respondent has intentionally attempted to attract Internet users to the Respondent's websites or other online locations, by creating a likelihood of confusion with the Complainant's mark for commercial gain.

The disputed domain names currently resolve to inactive pages. Prior UDRP panels have held that the incorporation of a famous mark in a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *CBS Broadcasting, Inc. v. Dennis Toeppen*, WIPO Case No. [D2000-0400](#).

The Respondent has not answered the Complainant's contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good faith motivation in respect of the registration or use of the disputed domain names in the face of the Complainant's contentions can be regarded as an indicator of registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain names under 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 names <lifewavepatches.store> and <lifewavepatch.store> be transferred to the Complainant.

/Cherise Valles/

**Cherise Valles**

Sole Panelist

Date: July 5, 2023