

ADMINISTRATIVE PANEL DECISION

UAB Planner5D v. Denis Robster

Case No. D2023-2153

1. The Parties

The Complainant is UAB Planner5D, Lithuania, internally represented.

The Respondent is Denis Robster, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <planner5d.net> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2023. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 19, 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 (Domain Admin, Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 23, 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 June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on July 7, 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 the creator and owner of an online interior design tool known as Planner 5D.

Planner 5D is an advanced 2D/3D home design platform that allows users all around the world to create floor plans and interior designs. Planner 5D is available to users on a variety of platforms, including web, iOS, Android, macOS, and Windows. Currently, Planner 5D has more than 80 million users worldwide, who have created over 200 million designs for their homes.

Founded in 2011, the Planner 5D project has evolved into an international company, employing a team of approximately 100 people, and achieving a turnover of EUR 5.7 million by 2023.

Since 2014, the headquarters of the Planner 5D project is located in Vilnius, Lithuania.

The Complainant is the owner of several trademark registrations for PLANNER 5D, including the following, as per trademark certificates submitted as annexes 6 through 9 to the Complaint:

- European Union trademark registration No. 017137043 for PLANNER 5D (figurative mark), filed on August 22, 2017 and registered on December 7, 2017, in international classes 9 and 42;
- United Kingdom trademark registration No. UK00917137043 for PLANNER 5D (figurative mark), filed on August 22, 2017 and registered on December 7, 2017 in classes 9 and 42;
- United States trademark registration No. 5490455 for PLANNER 5D (word mark), filed on September 21, 2017 and registered on June 12, 2018, in international classes 9 and 42;
- International trademark registration No. 1646478 for PLANNER 5D (figurative mark), registered on December 9, 2021, in classes 9 and 42.

The Complainant promotes and markets its products and services under the trademark PLANNER 5D through its primary website at <planner5d.com>, registered on September 20, 2010.

The disputed domain name <planner5d.net> was registered on January 10, 2019 and is pointed to a website providing information about the PLANNER 5D home design and interior design software and displaying a screenshot from the Complainant's website as well as a link to the Complainant's main website "www.planner5d.com".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name <planner5d.net> is identical and confusingly similar to the trademark PLANNER 5D in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the generic Top-Level Domain (gTLD) ".net".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services since the disputed domain name is pointed to a website containing only a screenshot from the Complainant's website and a link to the Complainant's primary website.

The Complainant also contends that the Respondent is not commonly known by the disputed domain name, is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its trademark in any way.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent registered and used the disputed domain name in bad faith presumably to sell, rent or otherwise transfer it to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name.

The Complainant emphasizes that, considering its worldwide reputation and goodwill, the nature of the disputed domain name identical to its registered trademark and the content of the corresponding website, the Respondent could not have been unaware of the Complainant at the time of registering the disputed domain name.

The Complainant also submits that the Respondent intentionally attempted to confuse Internet users who were looking for the well-known PLANNER 5D products and services, by attracting them to its website for commercial gain.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark PLANNER 5D based on the trademark registrations cited under section 4 above and the related trademark certificates submitted as annexes 6 through 9 to the Complaint.

As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically 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.

In the case at hand, the Complainant's trademark PLANNER 5D is entirely reproduced in the disputed domain name, with the mere addition of the gTLD ".net", which is commonly disregarded under the first element confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is identical to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- “(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.”

In the case at hand, the Panel finds that the Complainant has made a *prima facie* case and that, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

According to the evidence on record, there is no relationship between the Complainant and the Respondent, and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name. Moreover, there is no element from which the Panel could infer a Respondent’s right or legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel notes that the disputed domain name is pointed to a webpage publishing a screenshot taken from the Complainant’s website, information about the Complainant’s PLANNER 5D software and a link to the Complainant’s main website “www.planner5d.com”. In view of the Respondent’s use of the disputed domain name, it is likely that Internet users could be confused as to the source, sponsorship, affiliation, or endorsement of the corresponding website. Therefore, the Panel finds that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

Moreover, the disputed domain name, being identical to the Complainant’s trademark, is inherently misleading. See section 2.5.1 of the [WIPO Overview 3.0](#): “UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation.”

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to bad faith at the time of registration, the Panel finds that, in light of the prior registration and use of the Complainant’s trademark PLANNER 5D in connection with the Complainant’s home design platform at <planner5d.com>, the notoriety acquired by the PLANNER 5D trademark in its field and the identity of the disputed domain name with the Complainant’s trademark, the Respondent was likely aware of the Complainant’s trademark PLANNER 5D when it registered the disputed domain name.

Furthermore, the circumstance that the disputed domain name has been pointed to a website providing a screenshot taken from the Complainants' website, information on the Complainant's PLANNER 5D software and a link to the Complainant's main website, demonstrates that the Respondent was indeed well aware of the Complainant and its trademark.

In view of the circumstances of the case, particularly the identity of the disputed domain name with the Complainant's trademark and its main domain name <planner5d.com>, the Respondent's lack of any rights or legitimate interests and its redirection of the disputed domain name to a website providing information on the PLANNER 5D software and a link to the Complainant's website without displaying a disclaimer of non-affiliation with the Complainant, the Panel finds that the Respondent, on balance of probabilities, intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

As stated in section 3.1.4 of the [WIPO Overview 3.0](#), "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos 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. Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use. [...] panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant".

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to 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 <planner5d.net> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: July 21, 2023