

## **ADMINISTRATIVE PANEL DECISION**

### **Crystal Lagoons B.V. and Crystal Lagoons Technologies Inc. v. banny banny Case No. D2023-2299**

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

The Complainant is Crystal Lagoons B.V., Netherlands, and Crystal Lagoons Technologies Inc., United States of America (“United States”), internally represented.

The Respondent is banny banny, United States.

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

The disputed domain name <crystalslagoons.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 May 26, 2023. On May 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 26, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 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 June 9, 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 13, 2023.

The Center appointed Kathryn Lee as the sole panelist in this matter on July 31, 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 develops technology that allows the construction and operation of environmentally sustainable lagoons for swimming and water sports. It has completed more than 60 projects in various countries around the world, such as the United States, Chile, Egypt, Spain, Thailand, and South Africa. The Complainant has trademark registrations for CRYSTAL LAGOONS in more than 135 countries, including in the United States (United States trademark registration number 3881936, registered on November 30, 2010) and the Europe Union (European Union trademark registration number 6326391, registered on September 17, 2008), and has used Crystal Lagoons as a trade name for more than 15 years.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on April 26, 2023, and it does not resolve to any website with content.

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

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

The Complainant contends that the disputed domain name consists of "crystals" and "lagoons" which only differs from the Complainant's CRYSTAL LAGOONS trademark in one single letter ("s") in the middle of the disputed domain name and is therefore virtually identical and highly confusingly similar to it.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant further contends 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.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant contends that the disputed domain name was used for illegitimate activity which is considered manifest evidence of bad faith. Specifically, the Complainant states that the Respondent sent an email to one of the Complainant's clients from an email address generated by the disputed domain name and impersonated the Complainant's employee, asking for transfer of payments to a new bank account. The Complainant asserts that as a result, the client was defrauded of more than USD 1 million.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

The Complainant has demonstrated with supporting evidence that it has rights to the trademark CRYSTAL LAGOONS. As for the disputed domain name, it consists of "crystalslagoons". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a disputed domain name is considered confusingly similar to a trademark if it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name". In this regard, the Complaint's mark is readily recognizable within the disputed domain name, and therefore, the disputed domain name is confusingly similar to the Complainant trademark. Not only that, the disputed domain name should be considered a case of typosquatting. Previous UDRP panels have concluded that a domain name that consists of an intentional misspelling of a trademark is considered similar to the relevant

trademark for the purpose of the first element, and an example of such a misspelling is the “addition or interspersation of other terms or numbers.” Here, the disputed domain name has the addition of one extra letter “s”. See [WIPO Overview 3.0](#), section 1.9.

For the reasons mentioned above, the Panel finds that the first element has been established.

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

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been established, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. However, the Respondent in this case has chosen to file no Response to these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

Further, the Respondent used the disputed domain name in a phishing scheme in which the Respondent passed itself off as an employee of the Complainant in order to divert payment owed to the Complainant to a different bank account. The use of a domain name for illegal activity can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

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

The Panel finds that there is strong and clear evidence to find bad faith in this case.

First and foremost, the Respondent perpetuated fraud by sending an email from the disputed domain name to the Complainant’s client requesting payment owed to the Complainant to be sent to a different bank account. As a result, the client was defrauded of a significant amount of money. Using a domain name in a fraudulent activity is manifestly evidence of bad faith registration and use. See [WIPO Overview 3.0](#), section 3.1.4 and section 3.4.

Further, considering such fraudulent use of the disputed domain name, it is quite clear that the Respondent registered the disputed domain name with knowledge of the Complainant and the Complainant’s trademark specifically for use in furtherance of the above-mentioned illegal activity.

## **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 <crystalsagoons.com> be transferred to the Complainant.

/Kathryn Lee/

**Kathryn Lee**

Sole Panelist

Date: August 14, 2023