

ADMINISTRATIVE PANEL DECISION

Blomquist Builder's Group, Inc v. Denise L Chapman
Case No. D2023-3502

1. The Parties

The Complainant is Blomquist Builder's Group, Inc, United States of America ("United States"), represented by Lee & Hayes, PC, United States.

The Respondent is Denise L Chapman, United States.

2. The Domain Name and Registrar

The disputed domain name <thesummitatlostmountain.org> 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 August 17, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 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 August 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 August 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 15, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on September 18, 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 Blomquist Builder's Group, Inc. ("BBG") is a Georgia corporation established in September 2003 and headquartered in Acworth, Georgia, United States. The Complainant constructs and sells luxury custom homes in Georgia. The Complainant's "owner and primary builder" is Jennifer Blomquist, whose declaration (the "Blomquist Declaration") is attached to the Complaint.

In May 2016, the Complainant began developing a subdivision marketed and advertised under the name "Summit at Lost Mountain". The first property was sold in February 2017. The Complainant does not have a trademark registration for SUMMIT AT LOST MOUNTAIN but claims common law rights in the name as an unregistered mark. The record includes evidence of advertising of the development, with a figurative logo in which the words "The Summit at Lost Mountain" are prominently featured, beginning in 2016, as well as mentions on third-party websites and in social media.

According to the Blomquist Declaration, Ms. Blomquist met the Respondent Ms. Chapman and her husband Alan Mushegan in March 2016 and discussed the upcoming development of Summit at Lost Mountain. The women became friends and in 2016 reached an agreement, not reduced to writing, under which the Respondent would develop websites for the Complainant in exchange for USD 20,000 worth of bricks for the Respondent's new home to be built in the new subdivision. According to the Complainant, the Respondent ultimately "coerced" the Complainant into furnishing "additional discounts and free upgrades on her home" in exchange for maintaining websites about the development, while gaining access to the Complainant's sales and contact lists and other information about the company and the development.

The Registrar reports that the disputed domain name was created on July 29, 2017, and was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Ms. Chapman, showing no organization and listing a postal address in the State of Georgia, United States, with a contact email at [***]@aol.com.

On the same day, the Respondent registered a similar domain name, <thesummitatlostmountain.com>, which is the subject of an earlier UDRP proceeding, *Blomquist Builder's Group, Inc. v. Domains By Proxy, LLC / Denise L Chapman*, WIPO Case No. [D2022-0307](#) ("BBG I"), recounting the same factual background summarized above. That decision resulted in the transfer of the domain name <thesummitatlostmountain.com> and another domain name to the Complainant, based on the name of a different development by the same Complainant. The Respondent filed a Response in *BBG I* but has not replied to communications from the Center or submitted a Response in the current proceeding.

The Internet Archive's Wayback Machine does not include archived screenshots of any website to which the disputed domain name resolved in July or August 2017, and none are attached to the Complaint. The Complainant states that the Respondent did not give the Complainant access to the websites that the Respondent worked on for the Complainant. Absent a Response from the Respondent, the Panel must accept the Complainant's sworn and plausible version of events, to the effect that the disputed domain name was one of those that the Respondent obtained and initially maintained on the Complainant's behalf, and for which the Respondent was compensated in the form of materials and services provided for her home in the Complainant's new development. The Panel in *BBG I* reached the same conclusion.

Documents attached to the record show that after the Respondent moved into her new home around August 2017, she requested that the Complainant turn the development into a gated community. The Complainant declined, as other members of the homeowners' association opposed the idea because of the cost. The relationship between the Parties deteriorated, and the Respondent began to complain about

“alleged structural and cosmetic defects” on the property but refused the Complainant access to inspect or repair the issues. The Respondent stopped maintaining websites for the Complainant but declined to give the Complainant access to them.

Later in August 2017, the Respondent registered a new domain name, <beforeyoubuyhere.com>, and used it for a new website on which she posted content disparaging the Complainant and the Summit at Lost Mountain development. Another homeowner asked the Respondent to “shut down” this website as it negatively affected all the neighbors’ property values. The Respondent obliged but replied that she would “direct [her] frustration to creating a new website.” This email exchange is included in the record.

It appears from screenshots at the Wayback Machine that the Respondent subsequently developed a “gripe site” (the “Respondent’s website”) to post critical commentary about her issues with the Complainant and redirected the disputed domain name to it at <thesummitatlostmountain.com>. At some point in 2018 the Respondent started publishing the Respondent’s website at the disputed domain name, where it resides at the date of this Decision.

The Respondent’s website is headed “Nightmare by Blomquist Builders Group”. It displays at the top of the single, scrolling page the Complainant’s figurative logo for the SUMMIT AT LOST MOUNTAIN development. The Respondent’s website is organized as a blog describing defects on the Respondent’s property, illustrated with photos and videos, and complaints about the Complainant’s conduct. There are tabs for readers to jump to the sections on the page labelled “Superior Quality”, “Stairs”, “Walkway”, “Slope Failure”, “Paint and Trim”, “Clean Up”, “Videos”, and “Jennifer Blomquist Sues Clients”. The footer does not identify the website operator but reads,

“Developed and Powered by a Homeowner within The Summit at Lost Mountain whose house was built by Blomquist Builders Group, Inc.”

The most recent update entry, dated May 2022, explains the website as follows:

“This purpose of this website is to share my experience, illustrated with photos and videos, for anyone who might be considering building a home with Blomquist Builders Group (BBG).”

This entry goes on to furnish contact information for BBG and names Ms. Blomquist as the Complainant’s “registered agent, CEO, CFO, and Secretary”. The text also links to “my new website”, which is the previously disabled “www.beforeyoubuyhere.com”.

At the time of this Decision, the Respondent’s “Before You Buy Here” website publishes stories and posts critical of the Complainant and a law firm and consulting firm employed by the Complainant. The site also calls on Georgia authorities to better regulate builders such as the Complainant. The “Homeowner’s Stories” section of the site includes accounts from contributors and news sources about homeowners elsewhere in the country who have experienced similar problems with real estate developers.

Both websites can be fairly characterized as noncommercial criticism sites. Neither the Respondent’s website associated with the disputed domain name nor the Respondent’s linked Before You Buy Here website advertise any goods or services offered by the Respondent or a third party.

In 2018 the Complainant brought a civil lawsuit against the Respondent for defamation, *Blomquist Builders Group Inc., v. Mushegan Denise Chapman*, Civil Case No. 18101346 (Cobb County, GA 2018). The complaint in this ongoing legal action refers to some of the content published on the Respondent’s website but does not address the transfer of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to its unregistered SUMMIT AT LOST MOUNTAIN mark.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name because, as the panel concluded with respect to the similar domain name <thesummitatlostmountain.com>: the Respondent is not commonly known by a corresponding name, uses the disputed domain name to disparage the Complainant rather than to make a *bona fide* offering of goods or services, and misleads Internet users with a domain name that so closely approximates the trademark that it appears to originate with the trademark owner. The Complainant also relies on the finding in *BBG I* that the Respondent registered the domain names relating to the Summit Mountain development on the Complainant's behalf, acting as the Complainant's agent and for compensation, and only later turned against the Complainant and began using the disputed domain name for a criticism site, and thus had no rights or legitimate interests in the domain names.

The Complainant then argues that the "Respondent(s) registered the Domain Names in bad faith, in particular, for the purpose of misleading Internet users as to the 'source, sponsorship, affiliation, or endorsement' of Respondent(s)' website, by means of the initial confusion discussed above." The Complainant states that the Respondent had prior actual awareness of the Complainant's mark, and the Complainant then makes the following assertions to establish the Respondent's bad faith, quoting the *BBG I* decision in part:

"Upon information and belief, Ms. Chapman registered the Summit Domain Name, out of spite, after tensions escalated between herself and Complainant. Ms. Chapman's purpose of registering the Summit Domain Name was to lure and trick consumers into visiting her website under the belief that consumers would be visiting a legitimate website pertaining to Complainant's goods and services. ...

Ms. Chapman's bad faith is 'even more acute in the context of the [Summit] Domain Name, which was registered pursuant to Respondent's agreement with Complainant -- in exchange for financial consideration - - to set up and maintain a website that would help Complainant's business, not harm it.' ...

"The same facts and evidence submitted in the above sections readily demonstrate Respondent(s) bad faith. Ms. Chapman registered the Summit Domain Name for the primary purpose of: (1) harassing and disparaging Complainant and Ms. Blomquist, (2) diverting Complainant's consumers to a website that disparages and defames Complainant's business and Ms. Blomquist personally, and (3) interfering with Complainant's business. ...

Finally, Ms. Chapman's pattern of abusive domain name registrations constitutes additional evidence of bad faith use and registration of the Summit Domain Name under the policy."

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith. Under 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”.

A. Identical or Confusingly Similar

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

As discussed in the Factual Background section above, there is sufficient evidence to find that the Complainant has common law rights in SUMMIT AT LOST MOUNTAIN as an unregistered mark. It appears with and without the article “the”, and the addition of this dictionary word in the disputed domain name does not avoid a finding of confusing similarity, as the mark is readily recognizable in the disputed domain name (see *id.*). As usual, the addition of the Top-Level Domain “.org” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark for purposes of the first Policy element.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1. The Complainant has demonstrated (common law) trademark rights and declared that the Respondent, not commonly known by a corresponding name or doing business through the disputed domain name, was engaged to develop and maintain websites for the Complainant but has used the disputed domain name to disparage the Complainant. This suffices to establish a *prima facie* case. Hence, the burden of production passes to the Respondent on this Policy element.

The Respondent did not come forward in this proceeding. However, the Respondent did make an appearance in *BBG I*, which dealt with a similar domain name registered and ultimately used for what appears to be the same “gripe sites” at issue here. From the decision in *BBG I*, it seems that the Respondent argued in that proceeding that she has constitutionally protected free speech rights to use domain names based on the names of the Complainant’s developments to criticize the Complainant’s conduct regarding those developments. The panel in *BBG I* rejected that argument, finding that it was “undisputed” that the Respondent had originally agreed to set up and maintain a website for the Complainant’s SUMMIT AT LOST MOUNTAIN subdivision in exchange for compensation. The Respondent did not reply to this allegation, and so the panel considered her “free speech” argument “pretextual rather

than genuine". Moreover, the *BBG I* panel agreed with the view of other WIPO panelists that even a general right to legitimate criticism does not extend to impersonation of a trademark holder, for example by registering or using a domain name that is identical to a trademark or very likely to engender confusion, citing decisions such as *The First Baptist Church of Glenarden v. Melvin Jones*, WIPO Case No. [D2009-0022](#). See [WIPO Overview 3.0](#), section 2.6.2.

A respondent's rights or legitimate interests are generally assessed in the present, at the time of the filing of the UDRP complaint (see *id.*, section 2.11). Although the Respondent initially agreed to create one or more websites promoting the Complainant's SUMMIT AT LOST MOUNTAIN development, the Respondent's website and the Respondent's "Before You Buy Here" website to which it currently links seem to be genuinely noncommercial criticism sites. (The Panel sets aside the question of the truthfulness of their content, which is better addressed elsewhere, as in the pending civil action for defamation.) This "free speech" use of the disputed domain name, in which the Respondent has been engaged for several years now, does not appear to be a "pretext" for holding the disputed domain name for some other purpose such as commercial gain; while there is a dispute about money between the parties, there also seems to be a genuine grievance on the part of the Respondent.

More to the point here is the other ground cited in *BBG I*: impersonation. The disputed domain name entails an inherently high risk of confusion because it is identical or nearly identical to the Complainant's (common law) mark. The Complainant reports that this has resulted in actual confusion among consumers. This is a logical result of the fact that the disputed domain name was registered to promote the Complainant's development and then turned to critical use. The Respondent is, of course, free to exercise her free speech rights on websites with domain names, such as her own <beforeyoubuyhere.com>, that do not misleadingly impersonate a trademark holder.

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", but these are expressly non-exhaustive. The Complainant does not cite any of these instances of bad faith. Instead, the Complainant relies heavily on the 2022 decision in *BBG I* to argue that the Respondent evinced bad faith both in the registration and use of the disputed domain name by accepting compensation to develop a website to promote the Complainant's SUMMIT AT LOST MOUNTAIN development and then using the disputed domain name to disparage and defame the Complainant and interfere with its business. Because the Respondent registered and used two "Summit Mountain" domain names in this fashion, the Complainant argues that this demonstrates a "pattern of abusive domain name registrations".

The Complainant seems to misapprehend the sequence of events and criticizes the Respondent for registering the disputed domain name "undeterred" by the 2022 UDRP decision in *BBG I*. In fact, the Respondent registered the disputed domain name in 2017 alongside the domain name that was at issue in *BBG I*.

Under the second element, the Complainant indicates that the Respondent made the registration on the Complainant's behalf and as its agent, although there is no evidence in the record detailing an agency relationship or instructions for registering the disputed domain name as part of the Respondent's work on the Complainant's websites. But under the third element, the Complainant asserts that the Respondent registered the disputed domain name "out of spite, after tensions escalated between herself and Complainant".

The Complainant has the burden of establishing bad faith at the time of registration. The available evidence indicates that when the Respondent registered the disputed domain name, the Respondent was likely doing so in connection with the Respondent's ongoing efforts to promote the SUMMIT AT LOST MOUNTAIN development, which were compensated somehow with extra building materials or services. Moreover, given the undocumented and irregular nature of the parties' relationship, and the Complainant's burden of persuasion, the Panel is unwilling simply to assume that the parties' expectation was that the Respondent would ultimately transfer ownership of the disputed domain name to the Complainant (or that this was the expectation at the time) and that it is bad faith for the Respondent to decline to do so; as stated above, the parties have done little to assist in bringing clarity to this matter.

The Panel concludes, therefore, that the Complainant has not established that the Respondent registered the disputed domain name in bad faith, and the Complaint fails on the third element.

7. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: October 27, 2023