

## **ADMINISTRATIVE PANEL DECISION**

Automobili Lamborghini S.p.A. v. xuxu  
Case No. D2023-4998

### **1. The Parties**

Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

Respondent is xuxu, Hong Kong, China.

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

The disputed domain name <xinlanbo-mall.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 30, 2023. On December 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 4, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on December 5, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 5, 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 Respondent of the Complaint, and the proceedings commenced on December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 4, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on January 22, 2024. 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 following facts appear from the Complaint (as amended) and its annexes, which have not been contested by Respondent.

Founded in 1963 by Ferruccio Lamborghini as Automobili Ferruccio Lamborghini and commonly referred to as “Lamborghini”, Complainant is an Italian manufacturer of high-performance sports cars under the trademarks LAMBORGHINI and its well-known and common abbreviation LAMBO (collectively the “LAMBORGHINI Marks”). Complainant official website is accessed at “www.lamborghini.com” (the “Official LAMBORGHINI Marks” Website through Complainant’s official domain name <lamborghini.com> which incorporates the LAMBORGHINI Marks and which Complainant uses to promote Lamborghini cars in different languages worldwide on the Internet.

Complainant owns a number of registrations in the United States of America (“United States”) and around the world for the LAMBORGHINI Marks for a range of products and services, including the following:

European Union Trademark No. 006113451, LAMBO, registered on April 28, 2008, in International Classes 7, 9 and 12;

Switzerland Trademark No. 582110, LAMBO, registered on January 16, 2009, in International Classes 7, 9 and 12;

United States Trademark Registration No. 74019105, LAMBORGHINI, registered on November 13, 1990, in International Class 12.

International Trademark Registration No. 460178, LAMBORGHINI, registered on March 28, 1981, in International Classes 3, 4, 9, 12, 14, 16, 18, 25, 28, 34.

Complainant also asserts and provides a number of prior decisions under the Policy to support that the foregoing registered LAMBORGHINI and LAMBO Marks are well-known and of strong reputation worldwide.

Respondent registered the disputed domain name on October 30, 2023, and it used to resolve to a website featuring Respondent’s unauthorized use of the LAMBORGHINI Marks as well as unauthorized images of automobiles bearing the LAMBORGHINI Marks and offering (presumably non-existent) investment opportunities. The website later became inactive.

#### **5. Parties’ Contentions**

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

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

Respondent did not reply to Complainant’s contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Ownership of a nationally registered trademark constitutes prima facie evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Complainant claims trademark rights in the LAMBORGHINI Marks for its luxury automobile products in its registrations for the LAMBORGHINI Marks dating back to 1981. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the LAMBORGHINI Marks. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant’s rights in the LAMBORGHINI Marks established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s LAMBORGHINI Marks. Prior UDRP panels have held “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. See, *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

The disputed domain name incorporates Complainant’s LAMBO Mark in its entirety, albeit misspelled as “lanbo”, and bookended by the additional terms, “xin” and “mall”, and the Top-Level Domain (“TLD”) “.com”. Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the LAMBORGHINI Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8; see also *Eurochannel Inc. v. Sarah Staar*, WIPO Case No. [D2007-0165](#); see also *Rakuten, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Matthew Connor, No Company*, WIPO Case No. [D2019-2983](#).

Complainant also contends that “lanbo” is an obvious and intentional misspelling of Complainant’s LAMBO Mark and that the exchange of the “m” to the “n” is a clear act of typosquatting. Respondent uses this intentional misspelling to target Internet users who search for Complainant using the popular abbreviation

“Lambo” and misspell the domain name unintentionally by typing an “n” instead of an “m” since both letters lie next to each other on a QWERTY computer keyboard. Prior UDRP panels have consistently found typosquatting as a basis for finding confusingly similarity with the concerned trademark. See [WIPO Overview 3.0](#), section 1.9; see also *ACCOR v. Brigit Klostermann*, WIPO Case No. [D2005-0627](#); *New Dream Network, LLC v. Yuanjin Wu*, WIPO Case No. [DCO2010-0013](#).

The Panel finds Complainant’s LAMBO Mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

First, Complainant contends that Respondent is not and has never been a representative or licensee of Complainant nor is Respondent authorized by Complainant to register or use the LAMBORGHINI Marks in any manner in a domain name or otherwise. Prior UDRP panels have found the fact that a respondent is not authorized to register or use a complainant’s mark, “on its own, can be sufficient to prove the second criterion [of the Policy]”. *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#); see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (finding no rights or legitimate interests where domain name incorporated complainant’s registered mark and respondent was not a licensee of complainant).

Second, it is clear from the record submitted that Respondent is using the disputed domain name to impersonate Complainant and intentionally misdirect and divert, for commercial gain, Internet users to Respondent’s unauthorized website, by creating a likelihood of confusion with Complainant and Complainant’s well-known LAMBORGHINI Marks. Prior UDRP panels have consistently held that use of a disputed domain name to misdirect Internet users seeking a complainant to a competitive or unrelated site is not a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. See *Kosmea Pty Ltd. v. Krpan*, WIPO Case No. [D2000-0948](#). Accordingly, Respondent is not making a bona fide offering of goods and services and, therefore, Respondent has no legitimate interest in the subject domain name under the circumstances described in (4)(c)(i) of the Policy.

Complainant has also shown that Respondent is not commonly known by the disputed domain name. The Registrar disclosed the underlying registrant/registrant organization as, “xuxu”, which Complainant amended its Complaint to name as Respondent. Respondent bears no resemblance to the disputed domain

name whatsoever. These facts combined with the well-known status of the LAMBORGHINI Marks and the lack of evidence in the record to suggest otherwise allows this Panel to find that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy paragraph 4(c)(ii). See *Six Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel*, WIPO Case No. [D2004-0246](#) (“given Complainant’s established use of its... marks, it is unlikely that the Respondents are commonly known by any of these marks”).

It is generally regarded as prima facie evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant’s trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

Most importantly, Complainant contends Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services because, as Complainant’s Annex evidence of the web page connected to the disputed domain name shows, the disputed domain name resolved to a website where Respondent misused Complainant’s LAMBORGHINI Marks and images, attempting to create a false association with Complainant. The Panel notes that evidence submitted in the Annexes to the Complaint persuasively supports Complainant’s argument because it shows Respondent’s website prominently features unauthorized use of Complainant’s LAMBORGHINI Marks in both standard and stylized logo forms, over photos of Complainant’s luxury automobiles bearing the LAMBORGHINI Marks and logo for the illegitimate purpose of offering “investments” opportunities. Respondent, therefore, is using the disputed domain name to confuse Internet users and suggest an affiliation with or sponsorship by Complainant if not a direct impersonation to resolve Internet users to its copycat website for its commercial gain. Based on these facts the Panel finds Respondent’s actions are clearly not legitimate and clearly are misleading. Respondent, therefore, cannot establish rights or legitimate interests pursuant to paragraph 4(c)(iii) of the Policy. See *Six Continents Hotels v. “m on”*, WIPO Case No. [D2012-2525](#).

In view of the above, the Panel finds that Complainant has made out a prima facie case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not submitted any arguments or evidence to rebut Complainant’s prima facie case. The Panel determines, therefore, that Respondent does not have rights or legitimate interests in the disputed domain name and Complainant has successfully met its burden under Policy paragraph 4(a)(ii).

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, given the circumstances described in the Complaint and the documentary evidence submitted by Complainant, the Panel finds that the disputed domain name was registered in bad faith. First, a number of prior UDRP panels have recognized Complainant’s LAMBORGHINI Marks as well known amongst the relevant public such that Respondent in this proceeding as well as those in prior proceedings either knew or ought to have known of Complainant’s Marks and likely registered the domains to target Complainant’s LAMBORGHINI Marks. See e.g., *Automobili Lamborghini S.p.A. v. Johan Schepers*, WIPO Case No. [D2021-1154](#); *Automobili Lamborghini S.p.A. v. CoCo (黄登通)*, WIPO Case No. [D2020-1371](#); *Automobili Lamborghini S.p.A. v. Domain Administrator*, see *PrivacyGuardian.org / Richard Blair*, WIPO Case No. [D2022-1570](#).

Second, as prior UDRP panels have noted, “[t]he overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trademark of another” see *Rockstar Games v. Tex. International Property Associates*, WIPO Case No. [D2007-0501](#). Panels have also consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names 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 pursuant to paragraph 4(b)(iv). See [WIPO Overview 3.0](#), Section 3.1.4.

Complainant’s evidence shows that Respondent clearly registered the disputed domain name to divert Internet traffic from Complainant’s site to a website offering investments opportunities, but could also be nothing less than a phishing scheme to obtain Internet users personal and financial data. Respondent’s conduct, therefore, clearly falls within the example of bad faith registration and use under Policy paragraph 4(b) (iv) because Respondent intentionally attempted to attract, Internet users for commercial gain, by creating a likelihood of confusion with Complainant’s Marks. See *Michelin Recherche Et Technique S.A v. Milen Radumilo, White & Case*, WIPO Case No. [D2018-1527](#).

Indeed, considering the conduct of Respondent using Complainant’s LAMBORGHINI Marks and business recognition as a world-famous car manufacturer, a reputation that predates the registration of the disputed domain name by decades, Respondent obviously had actual knowledge of Complainant and its Marks when acquiring the disputed domain name, using the logo of Complainant and displaying its vehicles as described above. The Panel finds, therefore, that Respondent registered the disputed domain name in a deliberate effort to target Complainant and redirect traffic to Respondent’s purported investment company website in bad faith.

Given the overall circumstances of the present case, the Panel finds that Respondent is seeking to attract customers by creating a likelihood of confusion with Complainant’s LAMBORGHINI Marks and as found above, this clearly falls within the example of bad faith registration and use under Policy paragraph 4(b) (iv) because by using the disputed domain name to create a likelihood of confusion with Complainant’s LAMBORGHINI Marks, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website featuring an investment phishing scheme. See *Intercontinental Great Brands LLC v. Abubakar Mirza, Wish Technologies*, WIPO Case No. [D2018-2375](#). Furthermore, given the totality of the circumstances, the current non-use of the disputed domain name does not prevent a finding of bad faith under the passive holding doctrine. [WIPO Overview 3.0](#), section 3.3.

Given the circumstances described in the Complaint and the documentary evidence provided by Complainant, the Panel finds that the disputed domain name registered and used in bad faith, and the third element of the Policy has been established.

## 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 <xinlanbo-mall.com> be transferred to Complainant.

/Scott R. Austin/

**Scott R. Austin**

Sole Panelist

Date: February 9, 2024