

ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. See PrivacyGuardian.org, Domain Administrator
Case No. D2023-5021

1. The Parties

The Complainant is PN II, Inc., United States of America, represented by Adams and Reese LLP, United States of America.

The Respondent is See PrivacyGuardian.org, Domain Administrator, United States of America.

2. The Domain Name and Registrar

The disputed domain name <pultegrouppcareers.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2023. On December 4, 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 7, 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 December 8, 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 December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2024.

The Center appointed Ezgi Baklacı Gülkökar as the sole panelist in this matter on January 17, 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 Complainant is PN II, Inc., a U.S. corporation incorporated in the state of Nevada, United States. The Complainant is a subsidiary of PulteGroup, Inc. which is one of the largest homebuilding companies in the United States and currently operates in approximately fifty markets.

The Complainant is the owner of the PULTE and PULTE GROUP trademark registrations before United States Patent and Trademark Office (“USPTO”) and different jurisdictions. The relevant PULTE-derivative trademarks are United States trademark No. 3676026 registered on September 1, 2009, United States trademark No. 1942747 registered on December 19, 1995, United States trademark No. 4077463 registered on December 27, 2011, and United States trademark No. 1942626, registered on December 19, 1995, as evidenced in Annex 6 of the Complaint.

PulteGroup, Inc. and its subsidiaries offer home building, real estate, mortgage lending, and related services under the Pulte marks, and advertise these services through various websites, including <pulte.com> and <pultegroup.com>, as well as through print media and other advertising and promotional campaigns.

The disputed domain name <pultegrouppcareers.com> was registered on November 19, 2023, as evidenced with the Annex 1 of the Complaint. At the time of filing of the Complaint, the disputed domain name resolved to a parking page which directed visitors to job advertisement third-party websites as evidenced in Annex 2. The Respondent in this matter is currently masked by a privacy service.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

Identical or confusingly similar

The Complainant argues that the disputed domain name fully incorporates and is confusingly similar to PULTE and PULTE GROUP trademarks, the sole difference being the addition of the term “careers” and fails to distinguish the disputed domain name from the Complainant’s trademark. The Complainant also refers to earlier UDRP decisions as evidenced in Annex 7 of the Complaint.

The Complainant also indicates that it owns valid and subsisting Canadian and United States registrations for various PULTE trademarks and has promoted the marks continuously and extensively.

The Complainant also indicates that it owns many domain names incorporating the PULTE marks, operates its principal websites at the domain names <pulte.com>, <pultegroup.com>, <pultegroupinc.com>, and uses its domain name <pultegroup.com> for its employees’ email addresses.

Rights or legitimate interests

The Complainant argues that the Respondent has no rights and legitimate interests in the disputed domain name, has no affiliation with the Complainant, and the Complainant has not given the Respondent permission to register and/or use the Complainant's trademarks in any manner.

In addition, the Complainant argues that the Respondent is not known by the disputed domain name and the Complainant submits that the Respondent is not authorized to use the Complainant's trademark, nor the Respondent is the licensee of the mark.

Furthermore, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, instead the Respondent is using the disputed domain name to redirect Internet users to a pay-per-click ("PPC") links and commercial parking page that includes a number of job advertising links as evidenced with the Annex 5 of the Complaint. The Complainant also argues that the Respondent schemed to defraud potential job applicants into sending personal information, specifically by using an email address at the disputed domain name to impersonate the Complainant's employee which constitutes phishing.

The Complainant iterates that the Respondent's activities create a likelihood of confusion regarding source, and the Complainant further argues that such uses cannot be accepted within the scope of noncommercial or fair use. The Complainant further argues that no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed by the Respondent, as the Complainant's PULTE marks were famous at the time of registration, due to the Complainant's long-term and extensive use.

The disputed domain name was registered and used in bad faith.

The Complainant initially argues that PULTE GROUP trademark registrations predate the creation date of the disputed domain name, it owns numerous domain names incorporating PULTE GROUP marks and that the Respondent should be presumed to have known or should have known the Complainant's trademarks given the fame and international reputation of the PULTE GROUP marks.

The Complainant also argues that the Respondent's knowledge of the Complainant is further evidenced by the inclusion of the word "careers" in the disputed domain name, and the fact that the Respondent has used an email address at the disputed domain name to send a false job offering to a potential job applicant.

The Complainant contends that the Respondent is using the disputed domain name to impersonate the Complainant's employee by sending emails purporting to be from the Complainant, with the intention of fraudulently acquiring personal information of potential job applicants. In doing so, the Respondent clearly registered the disputed domain name to trade on the Complainant's goodwill and reputation and may have violated criminal laws in the process.

The Complainant emphasizes the Respondent's exploitation of the disputed domain name, to redirect Internet traffic to other websites and to attract and divert Internet users, for commercial gain, through its use of PPC links to various related or unrelated sites and services as demonstrative of bad faith registration and use under the Policy. The Complainant cites in support of its claims various previous UDRP decisions. The Complainant also refers to a number of UDRP panel decisions.

Further the Complainant claims that the use of the disputed domain name to divert Internet users to a commercial parking page with links related to job placement, is a view to commercial gain and the Complainant contends that such use cannot be considered in good faith.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

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 the Complainant's trademarks and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the 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.

The Panel finds the marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. "The applicable Top-Level Domain ('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 confusing similarity test." [WIPO Overview 3.0](#), section 1.11. Here, the TLD ".com" may be disregarded.

Although the addition of the term "career" may bear on assessment of the second element, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds that the "career" word element does not prevent the finding of confusing similarity, as the Complainant's trademarks PULTE and PULTE GROUP remain recognizable within the disputed domain name.

Based on the available record, 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 the 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.

The Panel notes that there is no evidence showing that the Respondent holds any rights for the trademark or name PULTE or PULTE GROUP. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's trademarks.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

The case file also does not contain any evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization. Further, the Panel notes that there is no evidence that the Respondent is making a legitimate noncommercial or fair use under the disputed domain name.

On the contrary, what the evidence submitted by the Complainant establishes, is that the disputed domain name redirects Internet users to websites that contain commercials for third-party job applications links for the Respondent's presumed financial gain. Also, it is noted that in some cases, the disputed domain name resolves to a parking page which directs visitors to advertisements and third-party websites. Previous UDRP panels have categorically held that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Additionally, the evidence submitted by the Complainant indicates that the disputed domain is used for fraudulent solicitations while representing the sender as being the Complainant ([WIPO Overview 3.0](#), section 2.13.1). See also *Beiersdorf AG v. PrivacyGuardian.org / Edward Peter Inc.*, WIPO Case No. [D2019-0149](#) (domain name used in attempted fraudulent email scheme designed to be deceptive and confusing, and an impersonation of the complainant by the respondent, cannot amount to bona fide offering of goods and services or a legitimate noncommercial or fair use). The Panel finds that such use of the disputed domain name cannot amount to a bona fide offering of goods and services or a legitimate noncommercial or fair use.

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

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.

In the present case, the Panel notes that the Respondent more likely than not was aware of the Complainant's trademarks, as the Complainant's trademark registrations predate the registration date of the disputed domain name. According to the evidence submitted by the Complainant, the Panel finds that the Respondent knew or should have known about the Complainant's rights (and such information could readily have been reached by a quick online search; see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

In addition, previous UDRP panels have held that the mere registration of a domain name that is 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. [WIPO Overview 3.0](#), section 3.1.4.

In addition, the Panel finds the fact that the Respondent intentionally diverted Internet traffic to third-party websites for financial gain shows clear bad faith.

As discussed above, the disputed domain name was also used for fraudulent solicitations, further evidence of the Respondent's bad faith.

The Panel finds that the Complainant has established the third element 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 <pultegrouppcareers.com> be transferred to the Complainant.

/Ezgi Baklacı Gülkökar/

Ezgi Baklacı Gülkökar

Sole Panelist

Date: January 31, 2024