

ADMINISTRATIVE PANEL DECISION

Waypoint Residential v. Francisco Perez
Case No. D2024-0079

1. The Parties

The Complainant is Waypoint Residential, United States of America (“United States”), represented by Soteria LLC, United States.

The Respondent is Francisco Perez, United States.

2. The Domain Name and Registrar

The disputed domain name <waypointresidential.net> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2024. On January 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2024, 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 (Data Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2024, 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 January 17, 2024.

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 January 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on February 16, 2024.

The Center appointed Kariņa-Bērziņa, Ingrīda as the sole panelist in this matter on February 20, 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 a Delaware corporation operating in the field of real estate development and real estate management in the Southeastern region of the United States under the WAYPOINT RESIDENTIAL mark. It is the proprietor of United States Trademark No. 5797906 for WAYPOINT RESIDENTIAL (word mark), registered on July 9, 2019, for services in classes 36 and 37, claiming a date of first use of January 2011, and disclaiming exclusive rights to use the term “RESIDENTIAL” apart from the mark as shown.

The Complainant operates its primary business website at the domain name <waypointresidential.com>.

The disputed domain name was registered on December 1, 2023. It does not resolve to an active website.

There is no information available about the Respondent.

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 it is a vertically-integrated developer, owner and operator of apartment properties throughout the Sunbelt region of the United States. The disputed domain name is identical to the Complainant's mark. The Complainant has not authorized the Respondent to register such a domain name and there is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name, which is harmful to the Complainant's brand. The WAYPOINT RESIDENTIAL mark is an uncommon dictionary keyword and it is highly unlikely that the registration of the disputed domain name was coincidental. The WAYPOINT RESIDENTIAL mark and associated services are well-known, indicating opportunistic bad faith on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed 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 disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name 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

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 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.

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 entirety of the WAYPOINT RESIDENTIAL mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

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 Panel notes that there is no evidence that the disputed domain name is being used in connection with a bona fide offering of goods or services, or that the Respondent is commonly known by the disputed domain name or is making legitimate noncommercial or fair use thereof. The disputed domain name is identical to the Complainant’s WAYPOINT RESIDENTIAL mark, which is inherently misleading. Under the circumstances, the non-use of the disputed domain name cannot support a finding of rights or legitimate interests.

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 disputed domain name is identical to the Complainant’s mark, which was first registered in 2019. The Complainant’s claim that it has used its mark in commerce since 2011 has not been challenged by the Respondent. The disputed domain name does not resolve to an active website. There is no evidence to support the Respondent’s own rights or legitimate interests in the disputed domain name. Under the circumstances, the Panel finds that the Respondent registered the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any

evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark within the relevant industry, and the composition of the disputed domain name being identical to the Complainant's trademark and, aside from the Top-Level Domain, also identical to the domain name <waypointresidential.com> at which the Complainant operates its primary business website. The Panel finds that, under these circumstances, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 <waypointresidential.net> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: March 4, 2024