

ADMINISTRATIVE PANEL DECISION

Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. Arnold Kraft
Case No. D2024-0138

1. The Parties

The Complainants are Taylor Wimpey PLC and Taylor Wimpey Holdings Limited, United Kingdom, represented by Marks and Clerk LLP, United Kingdom.

The Respondent is Arnold Kraft, Germany.

2. The Domain Name and Registrar

The disputed domain name <taylorwimpey.com> is registered with Cronon GmbH (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 12, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 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 (Name Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 18, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on January 19, 2024.

On January 18, 2024, the Center informed the Parties in German and English, that the language of the Registration Agreement for the disputed domain name is German. On January 19, 2024, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainants' submission.

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 in German and English of the Complaint, and the proceedings commenced on January 24, 2024. In accordance with

the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 15, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on February 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

Taylor Wimpey Holdings Limited (the "First Complainant"), is a subsidiary of the Taylor Wimpey PLC (the "Second Complainant").

The Complainants are housebuilding companies based in the United Kingdom.

Among other registrations, the first Complainant owns the United Kingdom trademark registration No. UK00905787271 for TAYLOR WIMPEY, registered on January 31, 2008, in classes 19, 36, 37, 42, and 44.

The Complainants' group of companies operate a website at the domain name <taylorwimpey.co.uk>.

The disputed domain name was registered on October 6, 2023.

At the time of filing of the Complaint, the disputed domain name resolved to an inactive website.

The Complainants sent a cease and desist letter to the Respondent on November 21, 2023. This letter remained unanswered.

The mail exchange ("MX") records (i.e., the mail exchanger records specifying the mail server responsible for accepting email messages) for the disputed domain name suggest that it can be used for email communication.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is confusingly similar to their trademark TAYLOR WIMPEY and that the repetition of the letter "i" constitutes typosquatting.

The Complainants further contend that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent has no trademark applications or registrations for "taylorwiimpey"; (iii) the Respondent has not used the disputed domain name in connection with any bona fide offering of goods or services, nor is the Respondent making any legitimate noncommercial use of the disputed domain name. Instead, the disputed domain name resolves to an inactive website and has been set up to send and receive emails which suggests that the disputed domain name could have been used for a phishing scam.

Finally, according to the Complainants, the disputed domain name was registered in bad faith as the Respondent could not ignore the Complainants' mark given the fact that TAYLOR WIMPEY is a distinctive name and must have been aware of the risk of deception and confusion that would arise from the registration of the disputed domain name. In such circumstances, the passive holding of the disputed domain name amounts to use in bad faith.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is German. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainants requested that the language of the proceeding be English for several reasons, including the fact that (i) the Registration Agreement is available in English and does not contain any provisions concerning the language of the proceeding; (ii) the language of the proceeding has been held to be English for other domain name complaints with the same Registrar; (iii) the disputed domain name includes a minor misspelling of the Complainants' company name "Taylor Wimpey" made up of an English forename and surname and whose headquarters and primary operations are in the United Kingdom; (iv) given the fact that the disputed domain name is configured with MX records, the target audience for misleading communication and phishing scams would most likely be English-speaking people based in the United Kingdom as the Complainants do not operate or own subsidiaries in Germany thus further indicating that the Respondent can understand the English language; and (v) the Complainants submit that as the Complainants are primarily United Kingdom based, the choice of German as the language of the present proceeding would be unfairly prejudicial to the Complainants in their ability to articulate arguments for this case.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

The Panel considers the following circumstances as relevant: (i) the Center notified the Respondent in both English and German of the proceeding, but the Respondent failed to respond to such notice and invitation to file a response in either English or German in the proceeding; (ii) the Complainants, based in the United Kingdom, are not conversant with the German language and would have to incur significant additional costs in the proceeding, if they were required to proceed in the German language; (iii) the Respondent is likely to understand English because the disputed domain name includes the name and trademark of companies based in the United Kingdom. Therefore, the Panel finds that conducting the proceeding in English will not be unfair to either of the Parties.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Consolidation of Complaints

The Complaint was filed by two Complainants against a single Respondent. Neither the Policy nor the Rules expressly provides for or prohibits the consolidation of multiple complainants. In this regard, [WIPO Overview 3.0](#), section 4.11.1, states that:

"In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the

respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.”

Both Complainants form part of the same corporate group. The First Complainant is the subsidiary of the Second Complainant and is the registered owner of the above-mentioned TAYLOR WIMPEY trademark.

The Panel finds that the Complainants have a specific common grievance against the Respondent as they have a common legal interest in the trademark rights on which this Complaint is based, and it is equitable and procedurally efficient to permit the consolidation of their complaints. The Complainants shall be referred to from now on as the “Complainant”.

6.3 Substantive Issues

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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.

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 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 Panel finds the 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.

Furthermore, the Panel considers that the repetition of the letter “i” of the trademark is a typical case of a deliberate misspelling of a mark (so-called “typosquatting”) (see for instance *Humana Inc. v. Cayman Trademark Trust*, WIPO Case No. [D2006-0073](#), concerning the domain name <humanna.com> and *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#), concerning the domain name <edmundss.com>).

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.

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 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, given the distinctive nature of the trademark TAYLOR WIMPEY, the Panel considers it likely that the Respondent knew of the existence of the Complainant and of its TAYLOR WIMPEY trademark at the time of the registration of the disputed domain name. As a consequence, the Panel finds it unlikely that the disputed domain name was chosen independently without reference to the Complainant's trademark. The Panel accepts that the disputed domain name was registered in bad faith. The Panel also notes that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos) 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.

As to the requirement of use in bad faith, the Panel notes that the Respondent has not made an active use of the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Indeed, the Respondent failed to submit a response or provide any evidence of actual or contemplated good-faith use. Also, the Respondent did not appear to have provided accurate contact details because the Written Notice could not be delivered to the Respondent's address confirmed by the Registrar. In any case, it is difficult to imagine what legitimate use the Respondent could make of the disputed domain name, given the fact that there is no relationship between the Respondent and the Complainant. If the disputed domain name were connected to an active website, consumers would be likely to mistakenly assume that such website is operated or endorsed by the Complainant, when such is not the case.

Finally, the MX records relating to the disputed domain name suggest that can be used for email communication, possibly for phishing purposes. UDRP panels have found the activation of MX servers, which can be used to create email addresses for phishing purposes, may be further evidence of bad faith (see *Kingfisher Investissements v. Brico Depot, Brico Depot*, WIPO Case No. [D2020-2702](#) and *Robertet SA v. Marie Claude Holler*, WIPO Case No. [D2018-1878](#)).

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 <taylorwiimpey.com> be transferred to the First Complainant Taylor Wimpey Holdings Limited.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: March 7, 2024