

ADMINISTRATIVE PANEL DECISION

Lennar Pacific Properties Management, LLC and Lennar Corporation v.
Olaf Biz

Case No. D2024-0268

1. The Parties

The Complainants are Lennar Pacific Properties Management, LLC and Lennar Corporation, United States of America, represented by Slates Harwell LLP, United States of America.

The Respondent is Olaf Biz, United States of America.

2. The Domain Name and Registrar

The disputed domain name <lennar.org> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 23, 2024. On January 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 24, 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 amendment to the Complaint on January 31, 2024.

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 February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 26, 2024.

The Center appointed Dennis A. Foster as the sole panelist in this matter on March 4, 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.

As noted above (see “The Parties”), the Complainants are two companies, closely related to each other, and the registered owner and licensee of the service mark at issue. Given this close relationship and service mark association, the Panel will collectively hereafter refer to both companies as “the Complainant”, unless specifically mentioned separately.

4. Factual Background

The Complainant has been building and selling homes in the United States of America since 1954, currently conducting its operations in twenty-one states. In 1973, the Complainant began offering its services under its LENNAR service mark, which is registered with the United States Patent and Trademark Office (“USPTO”) (e.g., Registration No. 3,108,401; registered on June 27, 2006).

The Respondent owns the disputed domain name, <lennar.org>, which was registered on December 26, 2023. The disputed domain name does not resolve to an active website. According to the evidence submitted by the Complainant, the disputed domain name has been used to send an email impersonating the Complainant.

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 offers real estate, construction, mortgage, financial and brokerage services in connection with the construction and sale of homes. Those services have been offered under the LENNAR service mark and also in association with the Complainant’s domain name, <lennar.com>.

--The disputed domain name, <lennar.org>, is confusingly similar to the Complainant’s LENNAR mark. The minor differences between the two are merely the deletion of an “n” and the addition of the “.org” generic Top-Level Domain (“gTLD”).

--The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is using the disputed domain name neither in connection with a bona fide offering of goods or services nor for legitimate noncommercial or fair use. Moreover, there is no evidence that the Respondent has ever been commonly known as the disputed domain name.

--The disputed domain name was registered and is being used in bad faith. Specifically, the disputed domain name is being used to facilitate the impersonation the Complainant’s employees through an email address, as a method to fraudulently redirect the Complainant’s vendors and their funds. Furthermore, in bad faith the Respondent has failed to respond to the Complainant’s cease-and-desist letter regarding the disputed domain name.

--The disputed domain name should be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Pursuant to Policy paragraphs 4(a)(i) - (iii), the Panel may issue a decision for the Complainant and grant a transfer of the disputed domain name, if the Complainant establishes that:

- The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 comparison between the Complainant's trademark and/or service mark and the disputed domain name. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

As the Complainant has presented sufficient evidence of its registration with the USPTO for the LENNAR service mark, the Panel determines that the Complainant has established the necessary rights in that mark for the purposes of the Policy. See, [WIPO Overview 3.0](#), section 1.2.1; *Bryn Mawr Communications, LLC v. Linkz Internet Services*, WIPO Case No. [D2016-0286](#) ("Panels have consistently held that a Complainant's trademark registrations with the USPTO demonstrate rights in those marks."); and *The SANS Institute v. WhoisGuard*, WIPO Case No. [D2007-0426](#) ("Complainant has established rights in the SANS mark through registration with the USPTO.").

The Panel finds that the LENNAR mark is recognizable within the disputed domain name <lenar.org> as its first element is identical to that mark except for the elimination of the second "n". Moreover, it has been well established in prior Policy decisions that the inclusion of a gTLD within a domain name is not relevant in considering the similarity between a valid mark and a disputed domain name. As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's service mark. See, *ZB, N.A., A National Banking Association, dba Zions First National Bank v. Pan Simon*, WIPO Case No. [D2016-0754](#) (in ruling that <zionsbank.com> is confusingly similar to the ZIONS BANK mark, the panel wrote "Neither the deletion of one letter from another's trademark, nor the addition of a generic Top-Level Domain suffix is typically sufficient to create a distinct domain name capable of overcoming a proper claim of confusing similarity."); and *BML Group Limited v. Proxy My Whois AB*, WIPO Case No. [D2015-1923](#) (finding <betsso.com> to be confusingly similar to the BETSSON mark).

The Panel finds the Complainant has satisfied its burden of proof for the first element of the Policy.

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 Policy's second element. See [WIPO Overview 3.0](#), section 2.1; and *Accor v. Eren Atesmen*, WIPO Case No. [D2009-0701](#) ("A complainant must show a prima facie case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent.")

The Complainant asserts the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. Thus, the Panel finds that 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 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.

Although the Respondent has not filed a Response containing a written rebuttal, the Panel will examine the record to determine whether there is a reasonable rebuttal to be made against the Complainant's prima facie case. See, [WIPO Overview 3.0](#), section 2.1 ("The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed.").

The evidence submitted by the Complainant suggests that the disputed domain name has been used to send an email that impersonated one of the Complainant's employees. The Panel believes that such fraudulent usage does not conform to "a bona fide offering of goods or services" per Policy paragraph 4(c)(i). See, [WIPO Overview 3.0](#) section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., impersonation / passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."). Moreover, the Panel finds no reason to conclude that the Respondent, Olaf Biz, is commonly known as the disputed domain name, making Policy paragraph 4(c)(ii) inapplicable as well. Finally, the Panel determines that the deceptive disputed domain name usage as described above also fails to fall within "the legitimate noncommercial or fair use" parameters set forth in Policy paragraph 4(c)(iii). Therefore, the Panel concludes that paragraph 4(c) of the Policy cannot be used by the Respondent and there are no other circumstances establishing rights or legitimate interests in the disputed domain name.

The Panel finds the Complainant has met its burden of proof under the second element of the Policy.

C. Registered and Used 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. See, [WIPO Overview 3.0](#), section 3.2.1; and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("...it must be recalled that the circumstances identified in paragraph 4(b) are 'without limitation' - that is, paragraph 4(b) expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith.").

Policy panels have found that the use of a domain name for illegal activity such as impersonation/passing off, as claimed in this case by the Complainant, constitutes bad faith. See, [WIPO Overview 3.0](#), section 3.4. Since the Respondent has not filed a Response in rebuttal to this claim, the Panel accepts the validity of the Complainant's contention and concludes that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. See, *Lennar Pacific Properties Management, Inc., Lennar Corporation v. Registration Private, Domains By Proxy, LLC / IAutomation Contractors*, WIPO Case No. [D2022-1768](#) ("Complainants have also shown that Respondent has used the disputed domain name as part of fraud, impersonating an employee of Complainants and using unauthorized email addresses associated with the disputed domain name to attempt to purchase goods on Lennar's account. This is quintessential bad faith.").

Per the above, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under 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, <lenar.org>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: March 18, 2024