

ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. Name Redacted

Case No. D2024-0478

1. The Parties

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

Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <pultegroupusa.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on February 3, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 6, 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”).

¹Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the apparent identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated that Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 27, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on March 13, 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

Complainant (including its commonly controlled affiliated parent) is a large homebuilding company based in the United States that currently operates in approximately 50 markets.² It offers home building, real estate, mortgage lending, and related services under the PULTE and PULTEGROUP trademarks, and it advertises its services through various websites, including at the domain names <pulte.com> and <pultegroupinc.com>, as well as through print media and other advertising and promotional campaigns. Complainant's parent entity is a publicly traded company with securities listed on the NYSE (ticker symbol PHM). Complainant has used its PULTE trademark in commerce in the United States since at least as early as 1969.

Complainant is owner of registration of the word service mark PULTE on the Principal Register of the United States Patent and Trademark Office (USPTO), registration number 1,942,747, registration dated December 19, 1995, in international classes (ICs) 36 and 37, covering mortgage lending and administrative services, and residential home construction services. Complainant also is owner of registration of the word service mark PULTEGROUP at the USPTO, registration number 4,077,463, registration dated December 27, 2011, in IC 37, covering planning and construction services, as further specified.

According to the Registrar's verification, Respondent (whose name is redacted from this decision) is listed as registrant of the disputed domain name. A whois.internic.net report indicates that the creation date of the record of registration of the disputed domain name is November 1, 2023. Information furnished by Complainant is sufficient to establish that the individual employee of Complainant named as registrant on the record of registration of the disputed domain name is not responsible for undertaking that registration.

The unidentified real party-in-interest responsible for registering the disputed domain name has it as the sender's domain in an email incorporating a username that corresponds to an employee of Complainant with responsibilities involving procurement of business supplies. Complainant has provided an email purportedly transmitted by the aforesaid employee requesting a third-party supplier to confirm its availability to provide identified supplies to Complainant. The third-party supplier that received the fraudulent email request forwarded that email to Complainant. There is no indication on the record of this proceeding as to whether the unidentified party responsible for registering the disputed domain name secured fraudulently procured products through its deceptive email scheme.

The unidentified party responsible for registering the disputed domain name (i.e. the real party-in-interest) also directed the disputed domain name to one of Complainant's commercial websites.

²Complainant is a wholly-owned subsidiary of PulteGroup, Inc. Reference to Complainant in this decision incorporates Complainant's parent entity, except as may otherwise be expressly noted.

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.

Complainant contends that owns rights in trademarks and that the disputed domain name is identical or confusingly similar to those trademarks.

Complainant argues that Respondent (i.e. the unidentified party responsible for registering the disputed domain name) lacks rights or legitimate interests in the disputed domain name because: (1) Respondent is not known by the disputed domain name; (2) Respondent has not been authorized by Complainant to use its trademark in the disputed domain name or otherwise; (3) Respondent is impersonating an employee of Complainant; (4) Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or in a legitimate noncommercial or fair manner, and; (5) there is no actual or contemplated bona fide or legitimate use of the disputed domain name that could reasonably be undertaken by Respondent.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) it is not plausible that Respondent was unaware of Complainant or its trademarks when it registered and used the disputed domain name, and; (2) Respondent is using the disputed domain name to impersonate Complainant's employee in a scheme to defraud.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent could not be completed because of an inaccurate physical address in Respondent's record of registration. There is no indication of difficulty in transmission of email notification to Respondent (although delivery to one email address that originated the fraudulent email procurement scheme could not be completed). The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;

(ii) respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the marks is reproduced 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.

Although the addition of other terms, here "usa", may bear on assessment of the second and third elements, 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.

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 Complainant has established a prima facie case that Respondent (i.e., the unidentified registrant of the dispute domain name) 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.

Panels have held that the use of a domain name for illegal activity, here impersonating an employee of Complainant for purposes of attempting to defraud a third-party supplier in connection with a procurement scheme, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent was manifestly aware of Complainant and its trademarks when it registered and used the disputed domain name in that it specifically identified an employee of Complainant and the business title of that individual, as well as directing the disputed domain name to one of Complainant's commercial websites. Respondent targeted Complainant for purposes of carrying out its fraudulent procurement scheme.

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.

Panels have held that the use of a domain name for illegal activity, here impersonating an employee of Complainant for purposes of attempting to defraud a third-party supplier in connection with a procurement scheme, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. This constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy in that Respondent has intentionally used the disputed domain name to attract for commercial gain Internet users to its online location by creating a likelihood of confusion regarding Complainant's association with Respondent's online (email) location. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <pultegroupusa.com> be transferred to Complainant.

For purposes of properly executing this order, the Panel also directs the Registrar's attention to Annex 1 hereto that identifies the individual listed as registrant of the disputed domain name in the formal record of registration, and orders that the disputed domain name <pultegroupusa.com> be transferred from that individual to Complainant.

The Panel directs the Center that Annex 1 shall not be published along with this Decision.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: April 1, 2024