

ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. Jessica Gibson, Sabiplug
Case No. D2024-0784

1. The Parties

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

The Respondent is Jessica Gibson, Sabiplug, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <pulteorg.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 21, 2024. On February 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 Complainant on February 23, 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 February 27, 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 February 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2024.

The Center appointed Mladen Vukmir as the sole panelist in this matter on March 27, 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 the United States corporation, a wholly-owned subsidiary of PulteGroup, Inc. which is one of the largest homebuilding companies in the United States, and currently operates in approximately 50 markets. The Complainant is specialized in home building, real estate, mortgage lending, and related services.

The Complainant is the owner of registered PULTE trademarks in the United States, more precisely, PULTE word trademark registered in the United States on September 1, 2009, under the registration number 3676026 for services in class 36 of International Classification, and PULTE word trademark registered in the United States on December 19, 1995, under the registration number 1942747 for services in classes 36 and 37 of International Classification (“PULTE trademark”).

The Complainant is the registrant of several domain names incorporating the Complainant’s PULTE trademark, like <pulte.com>, <pultegroup.com>, and <pultegroupinc.com>.

The disputed domain name was registered on December 2, 2023, and it resolved to a website displaying the Complainant’s trademarks, and soliciting donations for an organization named the “Pulte Foundation”. The disputed domain name has active MX records.

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:

(i) PulteGroup, Inc., the parent company of the Complainant, offers various services under PULTE trademarks, including home building, real estate, and mortgage lending, and is one of the largest homebuilding companies in the United States. The Complainant asserts ownership of the registered trademarks PULTE and PULTEGROUP, which have been in use since 1969 and 2010, respectively,

(ii) the disputed domain name is identical or confusingly similar to the Complainant’s PULTE trademark, while it wholly incorporates the PULTE trademark, and the addition of the generic abbreviation “org” does not dispel the confusing similarity of the disputed domain name,

(iii) there is no evidence the Respondent has rights or legitimate interests in respect of the disputed domain name. The Respondent has never been a licensee or a franchisee of the Complainant. The Respondent has never been authorized by the Complainant to register or use the Complainant’s PULTE trademark or to apply for use the Complainant’s PULTE trademark or to apply for use any domain name incorporating the mark. The Respondent has never been authorized to use the Complainant’s PULTE trademark for any purpose. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods and services, or in a legitimate noncommercial or fair manner. The Complainant maintains that the Respondent is not commonly known as “PulteOrg”. The Complainant contends that the Respondent is not utilizing the disputed domain name in a legitimate manner. The Respondent is using the disputed domain name in furtherance of a scheme to defraud visitors of the website into providing sensitive personal information, including copies of social security and identification cards. The MX records indicates that the

Respondent may also be using the disputed domain name for sending fraudulent emails. PULTE trademarks were famous at the time of registration of the disputed domain name, due to the Complainant's long-term and extensive use of these trademarks,

(iv) the disputed domain name was registered and is being used in bad faith. The Complainant argue that given the PULTE trademark registrations, their fame, international reputation, high distinctiveness, and the Complainant's numerous domain names incorporating the PULTE trademarks, it's implausible that the Respondent could have been unaware of the Complainant at the time of registration. The Respondent's use of the Complainant's logo on the website further indicates its knowledge of the Complainant. Additionally, the Complainant alleges that the Respondent's intention to fraudulently acquire personal information of website visitors demonstrates clear bad faith.

B. Respondent

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

6. Discussion and Findings

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 Panel finds that 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 entirety of the mark is reproduced 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.

Although the addition of other terms, here "org", 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8

After performing the side-by-side comparison of the disputed domain name and PULTE trademarks, it is evident to the Panel that the disputed domain name incorporates the Complainant's PULTE trademarks in their entirety, with the mere addition of word "org" which does not prevent a finding of confusing similarity. The generic Top-Level Domain ".com" is a standard registration requirement and as such may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 Respondent is not authorized by the Complainant to use the PULTE trademarks, and there is no indication that the Respondent is commonly known under the disputed domain name. There is no apparent relation from the record between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its PULTE trademarks, or to apply for or use any domain name incorporating the same trademark.

There is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a bona fide offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name. The Respondent has failed to provide any reply to the Complaint, and accordingly failed to rebut the Complainant's showing that the Respondent has no rights or legitimate interests in the disputed domain name.

The nature of the disputed domain name, comprising the Complainant's trademark and an additional related term "org", as well as the unauthorized use of the Complainant's PULTEGROUP trademark and logo on the content of the website indicates an awareness of the Complainant and its PULTE trademark and creates a risk of implied affiliation or association with the Complainant, which does not support a finding of any rights or legitimate interests in this case. [WIPO Overview 3.0](#), section 2.5.1.

Panels have held that the use of a domain name for illegal activity (here passing off and potential phishing) 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 determines that the Respondent has registered and used the disputed domain name to create a website containing the Complainant's PULTEGROUP trademark to defraud visitors of the website into providing sensitive personal information, including copies of social security and identification cards. The MX records, although not a per se indication of bad faith, in the present case indicates that the Respondent may also be using the disputed domain name for sending emails passing off as the Complainant or an associated entity.

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.

This Panel accepts that the Complainant's PULTE trademark is distinctive, well-known, and that it is highly unlikely that the Respondent was unaware of the Complainant and its PULTE trademark when it registered the disputed domain name, particularly when considering the use to which the disputed domain name was put (namely, a website displaying the Complainant's PULTEGROUP trademark and logo).

Incorporation of a well-known trademark in a domain name having no plausible explanation for doing so is in itself an indication of bad faith (see *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)). Moreover, in earlier UDPR decisions panels have found that the respondents who fail to search and/or screen registrations against available databases would be responsible for any resulting abusive registrations under the concept of wilful blindness. [WIPO Overview 3.0.](#), section 3.2.3.

In this Panel's view, by registering the disputed domain name that contains the Complainant's PULTE trademark, the Respondent is attempting to take advantage of the Complainant's reputation, and well-known trademark.

The Panel further notes that it appears that the Respondent has used a privacy service for the registration of the disputed domain name, likely in an attempt to conceal its contact details. Even after the disclosure of the Respondent's contact details by the Registrar, the courier was unable to deliver the Center's written communication due to the faulty nature of the details disclosed, illustrating that the Respondent provided false or incomplete information, reinforcing the notion of the Respondent's bad faith conduct.

Moreover, Panels have held that the use of a domain name for illegal activity, here passing off and potential phishing, constitutes bad faith. [WIPO Overview 3.0.](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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 <pulteorg.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: April 10, 2024