

ADMINISTRATIVE PANEL DECISION

Westgate Resorts, L.L.C. v. Josh Shampo
Case No. D2024-1620

1. The Parties

Complainant is Westgate Resorts, L.L.C., United States of America, represented by Greenspoon Marder, LLP, United States of America.

Respondent is Josh Shampo, United States of America.

2. The Domain Name and Registrar

The disputed domain name <westgatevegas.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 17, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 (John Doe, c/o Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on April 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an Amended Complaint. Complainant filed an Amended Complaint on April 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 Respondent of the Complaint, and the proceedings commenced on May 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2024. Respondent sent an email communication to the Center on April 22, 2024. The Center notified the Parties of the Commencement of Panel Appointment Process on May 29, 2024.

The Center appointed Michael A. Albert as the sole panelist in this matter on June 6, 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

Since as early as 1982, Complainant has used its WESTGATE marks discussed below (the “Marks”) continuously in commerce in connection with its services (the “Services”), thus establishing common law trademark rights. Since 1997, Complainant has continuously owned and operated the domain <westgateresorts.com>, which hosts the website that provides Complainant’s existing and potential customers an online platform to perform a variety of actions related to the Services. Complainant purposefully and prominently displays the Marks throughout this website.

According to historical WHOIS data, the disputed domain name was originally registered on June 4, 2004 by Complainant. Complainant owned the disputed domain name for nineteen years. On or about May 5, 2023, the domain registration inadvertently lapsed. Respondent registered the disputed domain name on or about June 11, 2023.

Complainant has not ceased to use the Marks or its other registered domains.

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 has rights in the WESTGATE, WESTGATE RESORTS, WGRESORTS.COM, and WG RESORTS trademarks and design trademark under common law through its continuous and exclusive use of each in commerce.

Complainant further contends that there is no relationship between Complainant and Respondent; that Complainant has not authorized or otherwise given permission to Respondent to use the Marks; that Complainant’s Marks are well-known; that Respondent is not known by the disputed domain name; that Respondent’s use of the disputed domain name is not a bona fide use; and that the disputed domain name is primarily descriptive of Complainant’s services and does so by incorporating the use of Complainant’s Mark(s).

B. Respondent

Respondent contends that Complainant has not satisfied the three elements required under the Policy for a transfer of the disputed domain name. Respondent contends it has legitimate business interests in the disputed domain name and that it was not registered in bad faith. In its Reply, Respondent states that its standard business practice includes acquiring domains through reputable auction platforms for potential future use or resale. Respondent claims to engage in strategic portfolio building, acquiring domains that align with business interests and objectives in good faith and in compliance with industry standards and legal requirements.

As an example of Respondent’s legitimate business practices, Respondent provides an instance where a previous domain owner had Repurchased a domain from Respondent. The previous owner forgot to renew the domain and subsequently repurchased it from Respondent.

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

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 Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

Complainant has demonstrated that Respondent registered the disputed domain name 37 days after Complainant inadvertently let it lapse.

The entirety of Complainant's WESTGATE 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.

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 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 lacks rights or legitimate interests in the disputed domain name. Respondent does not have any substantive website at the disputed domain name and merely redirects visitors to a domain advertising wedding services in Las Vegas, Nevada where Complainant also offers various services related to weddings at its resort property. Respondent cannot properly have built goodwill in a domain name that uses Complainant's mark to direct Internet uses to services that compete with Complainant's.

Nothing in the record reflects Respondent's use of the disputed domain name in connection with any bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

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 seized the opportunity to register the disputed domain name shortly after Complainant's registration expired on May 5, 2023. Complainant provided evidence that the sole purpose of the disputed domain name is to advertise services that compete with Complainant's in the same location in which Complainant is located. It is implausible that Respondent selected a strikingly similar if not identical mark to advertise overlapping services with those of Complainant, in the same location as Complainant, unless it did so deliberately and with a bad-faith intent to trade on Complainant's goodwill and name recognition.

Respondent's conduct in this case demonstrates bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of 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 <westgatevegas.com> be transferred to Complainant.

/Michael A. Albert/

Michael A. Albert

Sole Panelist

Date: June 24, 2024