

ADMINISTRATIVE PANEL DECISION

LifeWave, Inc. v. Domain Admin
Case No. D2024-1894

1. The Parties

The Complainant is LifeWave, Inc., United States of America (“United States”), represented by ARC IP Law, P.C, United States.

The Respondent is Domain Admin, British Virgin Islands, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <lifewave39.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 May 4, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (GoDaddy, Inc., a Delaware Corporation) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 9, 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 amendment to the Complaint on May 16, 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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on June 14, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), “to employ reasonably available means calculated to achieve actual notice to [the] Respondent”. Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is LifeWave, Inc., a United States company operating in the health technology field, and owning several trademark registrations for LIFEWAVE, among which:

- United States Trademark Registration No. 5,285,572 for LIFEWAVE, registered on September 12, 2017;
- United States Trademark Registration No. 4,841,450 for LIFEWAVE and design, registered on October 27, 2015;
- United Kingdom Trademark Registration No. UK00909366972 for LIFEWAVE, registered on February 21, 2011.

The Complainant is also the owner of several trademark registrations for X39, in connection with non-transdermal adhesive patches, among which:

- United States Trademark Registration No. 6,038,473 for X39, registered on April 21, 2020;
- International Trademark Registration No. 1496294 for X39, registered on September 19, 2019.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on September 12, 2022, and it currently resolves to a parking page with pay-per-click (“PPC”) links for the promotion and offer for sale of the same products as the Complainant.

On September 1, 2023, the Complainant’s legal representatives sent a cease-and-desist letter by email to the Respondent, without receiving any reply.

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 states that the disputed domain name is confusingly similar to its trademarks.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is not making legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that, by use of the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name 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 disputed domain name; and
- (iii) 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 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 entirety of the Complainant's trademarks LIFEWAVE and X39 is reproduced within the disputed domain name, in which only the letter "x" of the Complainant's trademark X39 is missing. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. [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.

While 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 often impossible 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. 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 present 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 disputed domain name currently resolves to a parking page with PPC links. The use of a disputed domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's trademarks. [WIPO Overview 3.0](#), section 2.9.

Moreover, the Panel finds that the composition of the disputed domain name – combining the Complainant's trademarks LIFEWAVE and X39 and deleting the letter "x" from the latter – carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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.

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.

In the present case, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark LIFEWAVE in the health technology field is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the disputed domain name consists of the combination of the Complainant's trademark LIFEWAVE with a part of another of Complainant's trademark, namely X39, and because of the content of the parking page to which the disputed domain name currently resolves, which consists of PPC links for the promotion and offer for sale of the same products as the Complainant.

In fact, the Panel finds that the disputed domain name is also used in bad faith since in the relevant parking page there are PPC links, even in the case where they were automatically generated, for the promotion and offer for sale of the same products as the Complainant, and the Respondent cannot disclaim responsibility for the parking page content. See [WIPO Overview 3.0](#), section 3.5. The Panel therefore notes that the disputed domain name is being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademarks as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order both to disrupt the Complainant's business, and to attract Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith, also taking into consideration that the Respondent did not participate in this proceeding.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademarks LIFEWAVE and X39 in their entirety (just deleting the letter "x" from the Complainant's trademark X39) further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <lifewave39.com> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: June 19, 2024