

## ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. Joseph Isah

Case No. D2024-4467

### 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 Joseph Isah, Nigeria.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2024. On October 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 November 5, 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 November 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 27, 2024.

The Center appointed Zineb Naciri Bennani as the sole panelist in this matter on November 29, 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 a United States company operating together with its predecessors since 1969 under the PULTE mark, offering home building, real estate, mortgage lending and related services.

The Complainant is the owner of numerous trademarks including:

- United States trademark registration number 3676026 for PULTE registered on September 01, 2009, for real estate agency services.

- United States trademark registration number 4077463 for PULTEGROUP registered on December 27, 2011, for planning and construction services.

- United States trademark registration number 7219932 for PULTEGROUP (figurative) registered on November 14, 2023 for land development and planning and construction services.

The Complainant owns various domain names including: <pulte.com> and <pultegroupinc.com>.

The Complainant provided evidence of the above.

According to the Whois records, the disputed domain name was registered on May 11, 2024.

The disputed domain name previously resolved to a website displaying the Complainant's figurative trademark and soliciting donations for humanitarian causes. The Complainant has also provided evidence showing that the website contained a form for users to provide personal details for purportedly requesting financial assistance.

The disputed domain name is currently inactive.

#### **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 the disputed domain name is identical or confusingly similar to Complainant's PULTE trademark marks as it reproduces the PULTE mark in its entirety.

According to the Complainant, the addition of the term "grp" to the PULTE mark does not prevent the disputed domain name from being confusingly similar to the Complainant's mark nor does the addition of the generic Top-Level-Domain ("gTLD") ".info".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as the Respondent is not and has never been commonly known as "pultegrp" and has never been authorized in any way by the Complainant to use the PULTE mark.

The Complainant asserts that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services or in a legitimate noncommercial fair manner as the disputed domain name directed to a website posing as the "Pulte Group" and collecting sensitive information from its visitors.

The Complainant contends that no actual or contemplated bona fide or legitimate use of the disputed domain name could be reasonably claimed by the Respondent without authorization from the Complainant.

The Complainant also argues that the disputed domain name was registered and is being used in bad faith given the fame and reputation of the Complainant.

According to the Complainant, it is not plausible that the Respondent could have been unaware of the Complainant at the time of the disputed domain name registration keeping in mind the use of the Complainant's logo on the website at the disputed domain name.

The Complainant asserts that the disputed domain name is used with the intention of fraudulently acquiring personal information of website visitors and soliciting cryptocurrency donations under the guise of humanitarian causes and suspects the Respondent of having violated criminal law in process.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

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

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences therefrom as it considers appropriate".

This dispute resolution procedure is accepted by the Respondent as a condition of registration.

### **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 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.

A side-by-side comparison of the disputed domain name and the relevant trademark PULTE shows that the disputed domain name incorporates the entirety of the trademark and that therefore the mark is recognizable 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, “grp” 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.

Moreover, the addition of the gTLD “.info” should be disregarded since it is a technical requirement of registration of the disputed domain name.

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. This includes the following:

(i) before any notice of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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.

In the present case, it has been proved that the Complainant is the owner of the trademark PULTE.

The Respondent did not respond to the Complainant’s contentions and did not show any rights or legitimate interests in the disputed domain name.

The Panel notes that the Respondent is not commonly known by the name “Pulte” and that the Complainant declares that it didn’t authorize the use of its trademark by the Respondent.

There are no elements asserting that the Respondent uses the disputed domain name in connection with a bona fide offering or makes a legitimate noncommercial or fair use of the disputed domain name.

In this case, the disputed domain name was resolving to a website using the Pulte Group logo and a copyright notice presenting the website operator as “Pulte Group”, and collecting sensitive information from its visitors. The website is currently inactive. The Panel notes that the composition of the disputed domain name carries a risk of implied affiliation, further reinforced by the impersonating nature of the content previously exhibited at the disputed domain name, and as such cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

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.

Panels have held that the use of a domain name for illegal activity, here claimed 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.

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, the Panel notes that the Respondent used the disputed domain name for intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Panels have held that the use of a domain name for illegal activity, here, claimed 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 <pultegrp.info> be transferred to the Complainant.

*/Zineb Naciri Bennani/*

**Zineb Naciri Bennani**

Sole Panelist

Date: December 11, 2024