

ADMINISTRATIVE PANEL DECISION

Tower Research Capital LLC v. Domain Administrator, See
PrivacyGuardian.org / Ebuka Victor
Case No. D2022-2555

1. The Parties

The Complainant is Tower Research Capital LLC, United States of America (“United States”), represented by Edward Kim, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Ebuka Victor, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <latourtrades.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2022. On July 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 14, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 15, 2022, 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 July 15, 2022.

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 July 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022. The Respondent sent an informal communication to the Center on August 10, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 16, 2022. 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 financial services corporation headquartered in New York City specializing in algorithmic and high-frequency trading. The Complainant, through its wholly owned subsidiary Latour Trading LLC and under the trade mark LATOUR TRADING (the "LATOUR TRADING Mark"), has provided a variety of financial services including trading in financial products such as securities, commodities, equities and futures. The Complainant has used the LATOUR TRADING Mark since December 2010.

The Complainant holds a registered trade mark in the United States for the LATOUR TRADING Mark (registration number 6,778,187) for various financial services in class 36, registered on July 5, 2022 and first used on December 22, 2010.

The Domain Name was registered on February 20, 2021. It is used for a website (the "Respondent's Website") that purports to offer investment services in competition with the Complainant under the LATOUR TRADES Mark including cryptocurrency and Forex trading services. The Respondent's Website lists, as its business address, the physical location of one of the Complainant's offices, and displays the same Taxpayer ID number as used by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's LATOUR TRADING Mark;
- (ii) that the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the LATOUR TRADING Mark, having registered the LATOUR TRADING Mark in the United States. The Domain Name is confusingly similar to the LATOUR TRADING Mark, merely changing the word "trading" to "trades" and adding the generic Top-Level Domain ("gTLD") ".com" which could easily cause confusion with the LATOUR TRADING Mark.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known as the Domain Name nor has the Complainant provided a licence or authorization to register the Domain Name or any domain name incorporating the LATOUR TRADING Mark. There is no evidence, since the Respondent registered the Domain Name, of 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 for a legitimate noncommercial purpose. The Domain Name resolves to a website that offers financial services under the "Latour Trades" mark in direct competition with the Complainant and contains information clearly indicating that the Respondent is seeking to impersonate the Complainant. This does not provide the Respondent with rights or legitimate interests.

The Domain Name was registered and is being used in bad faith. Given the reputation of the Complainant and the use of the Respondent's Website (including the reproduction of the Complainant's business address and Taxpayer ID), the Respondent must have had knowledge of the LATOUR TRADING Mark at the time of registration of the Domain Name. Such knowledge is an indication of bad faith registration. The Respondent

is using the Domain Name for a website that offers financial trading services in direct competition with the Complainant. This amounts to bad faith use under paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent's August 10, 2022 email simply claims that the Respondent does not understand the information sent to it by the Center.

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the LATOUR TRADING Mark, having registrations for the LATOUR TRADING Mark as a trade mark in the United States.

The Domain Name incorporates the "latour" element of the LATOUR TRADING Mark in its entirety and changes the second element "trading" to "trades". UDRP panels have repeatedly held that where the relevant trade mark is recognizable within the domain name, that is sufficient to reach a conclusion that the domain name is similar to the trade mark; see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Complainant's LATOUR TRADING Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. The Respondent has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the LATOUR TRADING Mark or a mark similar to the LATOUR TRADING Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services. Rather, the use of the confusingly similar Domain Name for a website that, under a mark almost identical to the Complainant's LATOUR TRADING trade mark, offers trading services in direct competition with the Complainant, does not absent further explanation, amount to use for a *bona fide* offering of goods or services. This conclusion is further strengthened by the fact that the Respondent's Website contains false information that indicates that the Respondent is seeking to pass itself off as the Complainant, namely the use of the Complainant's office address and its Taxpayer ID number.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has failed to rebut that *prima facie* case and establish that it has rights or legitimate interests in the Domain Name under the Policy. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location. (Policy, paragraph 4(b)).

While the Domain Name was registered prior to the registration of the LATOUR TRADING Mark, it was registered over 10 years after the Complainant commenced its usage of the LATOUR TRADING Mark for services that are identical to those the Respondent purports to offer from the Respondent's Website. The Panel finds especially noting the use of the Complainant's information on the Respondent's Website that the Respondent was aware of the Complainant and its reputation in the LATOUR TRADING Mark at the time the Domain Name was registered. The Complainant's LATOUR TRADING Mark is used for identical services to those the Respondent purports to offer and the Respondent's Website reproduces the Complainant's address and Taxpayer ID. The Respondent has provided no explanation, and none is immediately obvious, why an entity would register the Domain Name that consists of a minor variation of the LATOUR TRADING Mark and redirect it to the Respondent's Website, unless there was an awareness of and an intention to create a likelihood of confusion with and the Complainant and its LATOUR TRADING Mark. In these circumstances, the Respondent's conduct in registering the Domain Name when it was aware of the Complainant's rights and lacked rights or legitimate interests of its own amounts to registration in bad faith.

The Respondent's Website purports to offer investment services, which if "real" would be services in direct competition with the Complainant, under a very similar trade mark as the LATOUR TRADING Mark used by the Complainant. In these circumstances, the Panel finds that the Respondent is using the Domain Name to

intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the LATOUR TRADING Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. As such the Panel finds that the Domain Name is being used in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name, <latourtrades.com>, be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: August 30, 2022