

## **ADMINISTRATIVE PANEL DECISION**

Crystal Lagoons U.S. Corp., Crystal Lagoons Technologies, Inc. v. Glen Bilbo, Epic Venue Development, LLC, Glen Bilbo  
Case No. D2023-1535

### **1. The Parties**

Complainant is Crystal Lagoons U.S. Corp., United States of America ("United States"), and Crystal Lagoons Technologies, Inc., United States, represented by Enenstein Pham & Glass LLP, United States.

Respondent is Glen Bilbo, Epic Venue Development, LLC, United States, and Glen Bilbo, United States.

### **2. The Domain Names and Registrar**

The disputed domain names, <crystallagoonsislandresort.com> (the "First Domain Name"), and <crystallagoonislandresort.com> (the "Second Domain Name"), (together the "Domain Names"), are 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 6, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On April 11, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email to Complainant on April 12, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting that Complainant either file separate complaints for the Domain Names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. Complainant filed an amended Complaint on April 13, 2023.

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 April 21, 2023. In accordance with the Rules, paragraph 5, the due

date for Response was May 11, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on May 25, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 6, 2023. 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

Because the two named Complainants are related entities and their interests are fully aligned in this proceeding, the Panel will refer to them as "Complainant" unless context requires otherwise. According to the Complaint, Complainant is "a world-renowned developer of large, man-made lagoons with turquoise clear water". Complainant alleges that its technology "has allowed developers to create real estate projects providing residents with access to beach life near the doorsteps of their homes". Complainant contends that there are 70 such projects under construction or in operation around the world.

Complainant holds various trademark registrations for the mark CRYSTAL LAGOONS, including United States Patent and Trademark Office Reg. No. 3,881,936, registered on November 30, 2010, in connection with, *inter alia*, "civil engineering for the design of structures for [...] artificial lakes and lagoons".

Complainant's CRYSTAL LAGOONS mark has been the subject of unsolicited media coverage over the years. For instance, an October 23, 2007, article in Wired refers to "Crystal Lagoons" as the provider of the technology for "the largest pool in the world", located in Chile. Similarly, according to a May 28, 2012, CNN online article, "Crystal Lagoons created a system to maintain unlimited bodies of clear water at low cost anywhere in the world".

Complainant operates a commercial website at the domain name <crystal-lagoons.com>.

According to Complainant:

"In 2019, Complainant was approached by a United States company called Epic Resort Destinations, LLC ('ERD'), who owned [a 40-acre parcel in Glendale, Arizona], about transforming the area into a paid access resort with restaurants, hotels, and live entertainment, all surrounding a lagoon powered with Complainant's technology and using Complainant's proprietary business methods for its Public Access Lagoons ('PAL')."

"The parties entered into a series of agreements related to developing the project, including a February 2020 Development Agreement and later a November 2021 Technology Agreement, the latter being between Complainant and ERD's affiliate, ECL Glendale, LLC ("ECL"). [...] The parties named and branded the Glendale project as 'Crystal Lagoons Island Resort'."

"Importantly, section 5.4 of the Development Agreement prohibited ERD from using the Mark 'in connection with the establishment of a URL, domain name . . . without Crystal Lagoons prior written approval.'"

"Complainant thereafter registered the [First Domain Name] <crystallagoonsislandresort.com> [...] on March 13, 2020, for use with the project."

"On the same day, [Complainant] CLT also filed with the United States Patent and Trademark Office a section 1(b) application for "Crystal Lagoons Island Resort" Serial No. 88/833,772. The United States Patent and Trademark Office thereafter issued a Notice of Allowance on October 12, 2021, and has granted two extensions to file a statement of use."

On August 26, 2020, Respondent Glen Bilbo, president of ERD and ECL, asked Complainant to transfer the First Domain Name <crystallagoonsislandresort.com> to his company, Epic Venue Development, LLC, so Respondent could set up a website associated with the Glendale development. According to Complainant, it

agreed to do so, but with the understanding that the Domain Name would be transferred back to Complainant in the event the Parties' contracts were terminated.

The Second Domain Name <crystallagoonislandresort.com> was registered, by Respondent, on September 1, 2020. Complainant states that this was done without its knowledge or consent, and hence in violation of the Development Agreement.

Complainant alleges that, in March 2022, ERD and ECL entered into a "sham 'change in ownership'" of the Glendale project with a third party who had been holding itself out to the public as the owner of the development. Complainant also learned that the project was to be called "Mattel Adventure Park," not "Crystal Lagoons Island Resort". Thereafter, Respondents informed Complainant that the contracts between them and Complainant were terminated.

At or around this time, the website associated with the First Domain Name <crystallagoonsislandresort.com> was taken down. Later in 2022, the First Domain Name was redirected to a website at the domain name <matteladventurepark.com>, which website promotes the Glendale project. Today, both Domain Names resolve to that website.

Respondents have not denied any of the foregoing allegations, nor disputed the authenticity of the correspondence and contractual documentation annexed to the Complaint. Further, Respondents do not deny that the two Domain Names are under common control.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Names.

### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel concludes that Complainant has rights in the trademark CRYSTAL LAGOONS through registration and use demonstrated in the record. The Panel also concludes that the Domain Names are confusingly similar to that mark. The omission of the final "s" in the trademark in the Second Domain Name is an inconsequential difference. The addition of the words "island resorts" does not prevent a finding of confusing similarity, as the trademark remains clearly recognizable within the Domain Names.

Complainant has established Policy paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] 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 trademark or service mark at issue.

The Panel concludes that Respondents lack rights or legitimate interests in respect of the Domain Names.

Respondent clearly violated its express contractual duties when it registered the Second Domain Name without Complainant's knowledge or approval. As respects the First Domain Name that Complainant agreed to transfer to Respondent, Complainant's undisputed assertions state that Complainant made that transfer only with the understanding that Respondent would return the First Domain Name to Complainant if the Parties' contracts were terminated. The Respondent has to this date not returned the First Domain Name, while the Parties' contracts have been terminated since March 2022.

Complainant has established Policy paragraph 4(a)(ii).

## **C. Registered and Used in Bad Faith**

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

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

As to registration of the Second Domain Name, the Panel concludes, on this record, that Respondents have registered and used the Second Domain Name in bad faith under the Policy. As discussed above,

Respondents breached their express contractual duties when they registered the Second Domain Name.

As to registration of the First Domain Name, Complainant contends that it agreed to transfer the First Domain Name to Respondent with the understanding that Respondent would return the First Domain Name to Complainant if the Parties' contracts were terminated. The circumstances of this case, namely, that Complainant consented for Respondent to acquire the First Domain Name, and that there is no evidence supporting Respondents' bad faith registration at the moment Complainant transferred the First Domain Name to Respondents, do not establish that Respondents registered the First Domain Name in bad faith. Furthermore, the Panel notes that there is no evidence on the record, explicitly demonstrating an agreement between the Parties, that Respondents would return the First Domain Name in case the Parties' contracts were terminated.

Respondents' use of the Second Domain Name to resolve to a website promoting the Glendale project after terminating the contracts with Complainant is violative of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii) concerning the Second Domain Name.

In relation to the First Domain Name, Complainant has not established Policy paragraph 4(a)(iii). The Panel notes, that the Parties' dispute concerning the First Domain Name, exceeds the relatively limited "cybersquatting" scope of the UDRP, and that such dispute would be more appropriately addressed by a court of competent jurisdiction (see section 4.14.6 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#)).

## **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 Second Domain Name, <crystallagoonislandresort.com>, be transferred to Complainant. In relation to the First Domain Name, <crystallagoonsislandresort.com>, the Complaint is denied.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: June 20, 2023