

ADMINISTRATIVE PANEL DECISION

PN II, Inc. v. simon magosi
Case No. D2023-2467

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 simon magosi, South Africa.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 7, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 5, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on July 21, 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

The Complainant is a wholly owned subsidiary of PulteGroup, Inc., one of the largest house building companies in the United States, which operates in approximately 50 markets and offers home building, real estate, mortgage lending, and related services. The Complainant, or its predecessors, have been using the PULTE and PULTEGROUP marks since approximately 1969 and they advertise their services through various websites, including at <pulte.com> and <pultegroupinc.com>.

- The Complainant is the owner of trade mark registration for PULTEGROUP, namely the United States trade mark registration No. 4077463 for PULTEGROUP, registered on December 27, 2011.

The disputed domain name was registered on July 15, 2022, and formerly redirected to the Complainant's website at "www.pultegroupinc.com" but now resolves to a place keeper page with no content other than a series of generic headings. The Complainant has submitted copies of emails sent from an email address associated with the disputed domain name in which it appears that the Respondent sought to correspond as if it was the Chief Operating Officer of the Complainant's group using the Complainant's trade mark, logo, and corporate details in order to place an order for goods from a third party which was apparently fulfilled but never paid for by the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name incorporates its PULTEGROUP mark in its entirety and is therefore confusingly similar to its registered trade mark rights and that the addition of the letter "s" or of the abbreviation for a United States incorporated company "inc" is insufficient to prevent a finding of confusing similarity.

As far as rights or legitimate interests are concerned, the Complainant says that "PulteGroupsInc" is not the Respondent's name, the Respondent is not and has never been commonly known as "PulteGroupsInc" and neither has the Respondent ever been a licensee or franchisee of the Complainant. Furthermore, says the Complainant, the Respondent has never been authorised by the Complainant to register or to use the Complainant's PULTEGROUP mark, or to apply for or to use any domain name incorporating that mark and considering the degree of renown attaching to the PULTE and PULTEGROUP marks, no actual or contemplated *bona fide* or legitimate noncommercial or fair use of the disputed domain name could reasonably be claimed by the Respondent.

According to the Complainant, 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, or fair manner. It says that the Respondent registered and used the disputed domain name in furtherance of the Respondent's scheme to order a large quantity of goods from a third-party supplier for which it never paid, specifically by using an email address at the disputed domain name to impersonate the Complainant's Chief Operating Officer. As of the date of this Complaint, the Complainant asserts that the Respondent is using the disputed domain name to re-direct to the Complainant's official website, presumably it says to lend the Respondent an air of legitimacy in furtherance of the Respondent's fraudulent scheme. The Complainant says that these activities constitute identity fraud, wire fraud, and theft, and as such, cannot be considered legitimate noncommercial or fair use of the disputed domain name.

Further, says the Complainant, it is not plausible that the Respondent could have been unaware of the Complainant at the time of registration based upon the degree of reputation attaching to the Complainant's PULTE and PULTEGROUP trade marks, the fact that the disputed domain name originally resolved to the Complainant's official website, and also the Respondent's attempt to impersonate the Complainant's employee in its emails and its use of the Complainant's logo in that correspondence.

The Complainant submits that the Respondent is using the disputed domain name to impersonate the Complainant's employee by sending emails purporting to be from the Complainant, with the intention of fraudulently obtaining goods from a supplier as described above and in section 4. In doing so, says the Complainant, the Respondent clearly registered the disputed domain name for commercial gain and to trade off on the Complainant's goodwill and reputation, and such fraudulent use of the disputed domain name demonstrates clear bad faith use of the disputed domain name on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it has trade mark rights in the PULTEGROUP mark. The disputed domain name wholly incorporates its PULTEGROUP mark and is therefore confusingly similar to its registered trade mark. The addition of the letter "s" or of the abbreviation for a United States incorporated company "inc" is insufficient to prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that "PulteGroupsInc" is not the Respondent's name, that the Respondent is not and has never been commonly known by the disputed domain name, and neither has the Respondent ever been a licensee or franchisee of the Complainant. The Complainant has also submitted that the Respondent has never been authorised by the Complainant to register or to use the Complainant's PULTEGROUP mark, or to apply for or to use any domain name incorporating that mark. In addition, the Complainant has asserted that considering the degree of renown attaching to the PULTE and PULTEGROUP marks, no actual or contemplated *bona fide* or legitimate noncommercial or fair use of the disputed domain name could reasonably be claimed by the Respondent.

The Complainant has submitted 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 or fair manner but rather for fraudulent purposes. The Complainant has submitted email evidence in support of its case that the Respondent registered and used the disputed domain name in furtherance of the Respondent's scheme to order a very large quantity of goods from a third-party supplier for which it never paid by using an email address based upon the disputed domain name in order to impersonate the Complainant's Chief Operating Officer. As of the date of this Complaint, the Complainant has also submitted evidence that the Respondent is using the disputed domain name to re-direct to the Complainant's official website. The Complainant has suggested that this is to lend the Respondent an air of legitimacy in furtherance of the Respondent's fraudulent scheme and that these activities constitute, in the United States at least, identity fraud, wire fraud, and theft, and such illegal activities under the Policy, cannot be considered legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Complainant's case has not been rebutted by the Respondent, the Panel finds for these reasons that the Complainant has successfully made out its case and that the Complainant also succeeds under the second element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered in July 2022, many years after the registration of the Complainant's PULTEGROUP mark as noted above. Based upon the degree of reputation that appears to attach to the Complainant's PULTE and PULTEGROUP trade marks, the fact that the disputed domain name originally redirected to the Complainant's official website and also considering the Respondent's attempt to impersonate the Complainant's employee in its emails and its use of the Complainant's logo in that correspondence, it is more likely than not that the Respondent, although based in South Africa, was well aware of the Complainant's business and marks at the date of registration of the disputed domain name.

It appears to the Panel that the Respondent registered the disputed domain name in order to make use of an associated email address for the purpose of carrying out an elaborate scheme to fraudulently acquire a very substantial amount of goods from a third party while masquerading as if it was a very senior executive member of the Complainant's group company. The Complainant has submitted in evidence the email chain that led up to this fraud and in the Panel's view, the Respondent's conduct is very clearly a blatant bad faith use of the disputed domain name for its own commercial gain.

This is the sort of conduct that the Policy was designed to remedy and in all the circumstances, including that the Respondent has in no way attempted to explain its conduct, the Panel has no hesitation in making a finding that the disputed domain name has both been registered and used in bad faith and that the Complainant therefore succeeds under this 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 <pultegroupsinc.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: August 4, 2023