

## **ADMINISTRATIVE PANEL DECISION**

Madison Realty Capital v. Privacy service provided by Withheld for Privacy ehf / Roger William / delilah hawkins / Blondine Fulks  
Case No. D2022-1226

### **1. The Parties**

Complainant is Madison Realty Capital, United States of America (“United States”), represented by Gibson Dunn & Crutcher, LLP, United States.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Roger William, United States / delilah hawkins, United States / Blondine Fulks, United Kingdom.

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

The disputed domain names <madisonrealtycapital.info> and <madisonrealtycapital.org> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”). The disputed domain names <madisonrealtycapital.net> and <madisonrealtycapital.online> are registered with NameCheap, Inc. (the “Registrar”). The disputed domain names may be referred to herein collectively as the “Domain Names.”

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2022. On April 7, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On April 7, 2022 and April 8, 2022, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on April 12, 2022 providing the registrant and contact information disclosed by the Registrars, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 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 Respondent of the Complaint, and the proceedings commenced on April 20, 2022. In accordance with the Rules, paragraph 5, the due

date for Response was May 10, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on May 16, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 9, 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**

Complainant describes itself as a real estate private equity firm focused on real estate equity and debt investment strategies located in New York, that has been in operation since 2004. Complainant registered the domain name <madisonrealtycapital.com> on August 4, 2004, and has been using that domain name since that time to host a commercial website. The website makes reference to a few industry articles discussing Complainant's activities under the name MADISON REALTY CAPITAL. Complainant makes no reference however to any registered trademark.

The Domain Names were registered on various dates between December 14, 2021 and January 26, 2022. Complainant appears to allege that at some point Respondent used the Domain Names to create websites mimicking Complainant's commercial website ("the fraudulent domain names and copied webpages"), but provides no evidence of this use of the Domain Names.

Complainant also alleges that Respondent has used the Domain Names to attempt fraudulent phishing scams upon actual or prospective customers of Complainant, by means of bogus emails impersonating actual employees of Complainant. Examples of such use are annexed to the Complaint.

Complainant further asserts that, although two of the Domain Names are registered under the name Roger William and the other two are registered under the names Delilah Hawkins and Blondine Fulks, these persons are probably fictitious and the Domain Names are probably registered by the same person or are at least under common control. Complainant states that each Domain Name has been used for the same illicit purpose, all four were registered within a few weeks of each other, and that the Whois records for one "Roger William" Domain Name was updated on the same date as the "Delilah Hawkins" Domain Name, and the Whois records for the other "Roger William" Domain Name was updated on the same date as the "Blondine Fulks" Domain Name. In addition, the street address for Roger William appears to be fake (the ZIP code corresponds to a town in another state), and the street address for Blondine Fulks is a McDonald's restaurant in Baker Street in London.

None of the named Respondents (if in fact they be more than one person) has denied that the Respondents are the same person or under common control. Nor has any Respondent denied the factual allegations about the phishing scam alleged in the Complaint.

#### **5. Parties' Contentions**

##### **A. Complainant**

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

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### Consolidation of Dispute

As noted above, none of the three purported Respondents (if indeed there be multiple different persons here) has come forward in this proceeding to assert that he/she is not the same person as the other Respondents, or to assert that the Domain Names are not under common control by the Respondents. In these circumstances, the Panel finds it appropriate to credit Complainant's plausible assertion that the Domain Names are probably registered by the same person or are at least under common control, and therefore disposing of the Domain Names in a single consolidated proceeding is warranted here. The Panel will refer to "Respondent" in the singular for this reason.

### Merits of Dispute

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;
- (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, despite the thin record presented here, that Complainant has common law trademark rights in MADISON REALTY CAPITAL for purposes of the Policy. Above all, because the Panel finds that Respondent unquestionably targeted Complainant via "the fraudulent domain names and copied webpages", it follows logically that Respondent himself/herself believes that MADISON REALTY CAPITAL serves as a source identifier for Complainant's services. As such, Respondent would be in no position to question Complainant's trademark rights.

The Panel also concludes that the Domain Names are identical to that mark.

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 Respondent lacks rights or legitimate interests in respect of the Domain Names. Respondent has not come forward in this proceeding to dispute the serious and plausible allegations raised in the Complaint, or question the documentary evidence to support those allegations. The Panel would

normally expect anyone in a UDRP proceeding accused of such fraudulent conduct as has been alleged here would, if innocent, step up and declare his/her innocence.

The Panel concludes that 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.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" Section.

The Panel finds plausible Complainant's assertion that Respondent registered the Domain Names with Complainant's mark MADISON REALTY CAPITAL in mind, and that Respondent's motive was to carry out one or more phishing scams through the fraudulent impersonation of Complainant's employees. Such misconduct, as laid out in this undisputed record, clearly constitutes bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv).

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

## **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 Names <madisonrealtycapital.info>, <madisonrealtycapital.net>, <madisonrealtycapital.online>, and <madisonrealtycapital.org> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: June 23, 2022