

ADMINISTRATIVE PANEL DECISION

Automobili Lamborghini S.p.A. v. Registration Private, Domains By Proxy, LLC / Cyrus Klaesi
Case No. D2022-1246

1. The Parties

The Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America ("USA") / Cyrus Klaesi, USA.

2. The Domain Name and Registrar

The disputed domain name <lamborghinicharlotte.com> (the "Domain Name") is 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 7, 2022. On April 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 8 and 11, 2022, the Registrar transmitted by email to the Center its verification responses 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 April 11, 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 amendment to the Complaint on April 14, 2022.

The Center verified that the Complaint together with the amendment to 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 April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent sent an email communication to the Center on April 11, 2022, but did not submit any formal response. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on May 10, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on May 20, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is an Italian manufacturer of high-performance sports cars. The company was founded in 1963 by Ferruccio Lamborghini as Automobili Ferruccio Lamborghini.

The Complainant owns trademark registrations for LAMBORGHINI worldwide, e.g., European Union Trademark No. 001098383 registered on June 21, 2000, and USA Trademark Registration No. 1622382 registered on November 13, 1990.

The Complainant promotes Lamborghini cars in different languages at “www.lamborghini.com”, and cars are distributed worldwide, also in the area of Charlotte through its official Lamborghini dealership located in Charlotte, North Carolina.

The Domain Name was registered on December 3, 2012. Before filing the Complaint, the Domain Name resolved to a pay-per-click parking page. At the time of filing the Complaint, and at the time of drafting the Decision, the Domain Name resolved to a blank page.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations. The Complainant argues that the Domain Name is confusingly similar to the Complainant's trademark. The Domain Name consists of the Complainant's well-known trademark, and “Charlotte”, the name of a city in North Carolina, USA. The suffix “charlotte” does not distinguish the Domain Name from the Complainant's trademark.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark. The Respondent is not commonly known by the Domain Name. The Respondent cannot establish rights in the Domain Name, as it has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Domain Name has resolved to a pay-per-click webpage. This use, or the later non-use of the Domain Name, does not constitute a right or legitimate interest in the Domain Name. Where a domain name consists of a trademark plus an additional term, such use cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

The Complainant argues that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous trademark by an unaffiliated entity can by itself create presumption of bad faith. Moreover, the Domain Name has resolved to a website containing keywords that lead to sponsored links. The Respondent generated revenues by pay-per-click advertising on the website and therefore used the Domain Name to exploit the Complainant's trademarks for commercial gain. The Complainant argues that the Respondent obviously had actual knowledge of the Complainant's trademark when acquiring the Domain Name, as the Complainant's trademark is distinctive and famous. The Respondent's failure to respond to the Complainant's cease and desist letter, and the lack of conceivable legitimate use on the Respondent's side, both point to bad faith. Finally, the later non-use of the Domain Name does not prevent a finding of bad faith under the doctrine of passive holding.

B. Respondent

Apart from his email communication to the Center dated April 11, 2022 asking “what this is about”, the Respondent did not submit any formal response.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark LAMBORGHINI. The test for confusing similarity typically involves a side-by-side comparison between the textual components of the relevant trademark and the domain name to assess whether the mark is recognizable within the domain name. In this case, the Domain Name incorporates the Complainant’s trademark in its entirety with the addition “Charlotte”. The addition does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.7 and 1.8.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain (“gTLD”); see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant’s trademark or otherwise make use of its mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights related to the Domain Name. The Respondent cannot establish rights or legitimate interests in the Domain Name, as he has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The previous use for a pay-per-click webpage or the later non-use of the Domain Name does not constitute a right or legitimate interest in the Domain Name under the circumstances of this case.

Moreover, the nature of the Domain Name carries a risk of implied affiliation with the Complainant; see [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the Complainant has made out an unrebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Domain Name is confusingly similar to the Complainant’s well-known trademark. The Respondent must have been aware of the Complainant when the Respondent registered the Domain Name. The Domain Name is intentionally misleading Internet users. The previous use of the Domain Name for a pay-per-click webpage is further evidence of bad faith. The later non-use of the Domain Name does not prevent a finding of bad faith under the doctrine of passive holding in this case; see [WIPO Overview 3.0](#), section 3.3. The Respondent has not provided any evidence of actual or contemplated good faith use of the Domain Name. The mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith; see [WIPO Overview 3.0](#), section 3.1.4. The Respondent’s failure to respond to the Complainant’s contentions is under the circumstances further evidence of bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 <lamborghinicharlotte.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: June 2, 2022