

ADMINISTRATIVE PANEL DECISION

Magna International Inc. v. Privacy Service Provided by Withheld for Privacy ehf / Trumplerwey land
Case No. D2022-1838

1. The Parties

The Complainant is Magna International Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Trumplerwey land, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <magna-investment.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 20, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 25, 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 and an amended Complaint on May 28, 2022.

The Center verified that the Complaint together with the amendment to the Complaint and 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 May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 21, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 29, 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

Founded in 1957, the Complainant is a global automotive leader providing content for virtually every major automobile brand in the world.

The Complainant's business includes design, engineering, testing, and manufacture of automotive seating systems, closure systems, metal body and chassis systems, mirror systems, exterior systems, roof systems, electronic systems, and powertrain systems through facilities in North America, Europe, Asia, Africa and, South America.

In total, the Complainant employs over 158,000 people in 343 manufacturing operations and 91 product development, engineering and sale centers in 28 countries.

Among others the Complainant owns the following trademark registrations for the word mark MAGNA:

- Canadian Trademark Registration No. TMA303870 registered since June 21, 1985, for goods and services of classes 7, 9, 12, 40, and 42 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks ("Nice Agreement"),

- United States of America ("US") Trademark Registration No. 1837713 registered since May 31, 1994, for goods and services of classes 7, 9, 40, and 42 of the Nice Agreement and

- European Union Trade Mark Registration ("EUTM") no. 011330529 registered since April 12, 2013, for goods and services of classes 12, 40, and 42 of the Nice Agreement.

Since February 1, 1991 the Complainant owns the domain name <magna.com>, which links to its principal website.

The disputed domain name was created on January 15, 2022, and has been used in relation to an apparently fake finance related website listing the actual physical address of the Complainant as the Respondent's own address.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name, which incorporates its MAGNA trademark is confusingly similar to it since the other element of the disputed domain name is the term "investment".

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant claims that the Respondent appears to be making fraudulent use of the website associated with the disputed domain name to "phish" for personal information and defraud Internet users by falsely suggesting some legitimate connection with the Complainant.

The Complainant requests that the disputed domain name <magna-investment.com> be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the MAGNA trademark and for the purpose of this proceeding, the Panel establishes that the Canadian Trademark Registration No. TMA303870, the US Trademark Registration No. 1837713, and the EUTM No. 011330529 satisfy the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights in the MAGNA mark, the Panel next assesses whether the disputed domain name is identical or confusingly similar to it.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain in a domain name (".com" in this case) is viewed as a standard registration requirement and as such is generally disregarded

under the first element confusingly similar test.

The disputed domain name incorporates the Complainant's MAGNA trademark in its entirety and is clearly recognizable within the disputed domain name. Inclusion of the term "investment" does nothing to alleviate confusing similarity, which stems from the evident use of the Complainant's MAGNA trademark in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name <magna-investment.com> is confusingly similar to the Complainant's MAGNA trademark and that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the MAGNA trademark.

The Complainant has never authorized the Respondent to use its trademark in any way, and its prior rights in the MAGNA trademark long precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant's *prima facie* case.

The disputed domain name has been used in relation to a fake finance related website impersonating the Complainant by listing its physical address as that of the Respondent.

UDRP panels have categorically held that use of a domain name for illegal activity (*e.g.*, phishing, impersonation, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13.1. of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

The Complainant has provided strong and unchallenged evidence that the Respondent is using the disputed domain name in a fraudulent scheme.

On the "About Us" page of the website under the disputed domain name, the Respondent among others states that it is based at an address in Ontario, Canada, and legally licensed by the Financial Industry Regulatory Authority ("FINRA") and the Security Investor Protection Corporation ("SICP"), both based in the United States.

These statements of the Respondent are all false. The address is the actual physical address of the Complainant, while databases of FINRA and SICP do not show any registration associated with the Respondent.

The Respondent's impersonation of the Complainant through use of its head office address in view of the Panel clearly demonstrates that the Respondent knew of the Complainant, its trademark and business at the time of registration and has deliberately targeted the Complainant.

The Complainant has already received reports from Internet users affected by the Respondent's fraudulent activities, advising that they had "purchased" cryptocurrencies or other "investments" through the Respondent's website under the disputed domain name, but were no longer able to access the funds that they had "invested". These individuals also advised that they were unable to contact the Respondent, but because of the Respondent's reference to the MAGNA trademark and listing of the Complainant's head office address found on the Respondent's website under the disputed domain name they contacted the Complainant to report and address their concerns.

It is the well-established view of the UDRP panels that the use of a disputed domain name for fraudulent, illegitimate purposes is clear evidence of registration and use of a domain name in bad faith (see *e.g.*, WIPO Overview section 3.1.4) and the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

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 <magna-investment.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: July 13, 2022