

ADMINISTRATIVE PANEL DECISION

Lennar Pacific Properties Management, LLC and Lennar Corporation v.
Registration Private, Domains By Proxy, LLC / Josh Zozosky
Case No. D2022-2205

1. The Parties

The Complainants are Lennar Pacific Properties Management, LLC, United States of America (“United States” or “US”), and Lennar Corporation, United States, represented by Slates Harwell LLP, United States.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Josh Zozosky, United States.

2. The Domain Name and Registrar

The disputed domain name <lennarmeta.com> 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 June 16, 2022. The original Complaint concerned two domain names: <lennarmeta.com>, the subject of the current decision, and <metalennar.com>. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with these two domain names. On June 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the two domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on June 22, 2022, providing the registrant and contact information for multiple underlying registrants disclosed by the Registrar, and inviting the Complainants to either amend the Complaint adding the Registrar-disclosed registrants as the formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and that all domain names are under common control, or indicate which of the two domain names will no longer be included in the current Complaint. The Complainants filed an amendment to the Complaint on June 24, 2022.

On June 24, 2022, the Complainants filed a request for partial withdrawal regarding the domain name <metalennar.com>, which would then become a proceeding separate from the proceeding at issue in this case. Thereafter, on June 29, 2022, the Center sent its Notification of Requested Partial Withdrawal respecting the domain name <metalennar.com>, which resulted in the present case continuing only in connection with the disputed domain name <lennarmeta.com>. The Center then verified that the Complainants 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 Complaints, and the proceedings commenced on June 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on July 27, 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

The Complainants in this proceeding are Lennar Pacific Properties Management LLC (“Lennar Pacific”) and Lennar Corporation (“Lennar”), with headquarters in the United States in Delaware. Lennar Pacific is a foreign limited liability company, founded on June 4, 2021. Lennar Pacific and Lennar (collectively “the Complainants”) have provided real estate management, brokerage, development, construction, and financial services under the LENNAR mark since as early as 1973. The Complainants are the owners and holders of several LENNAR trademarks registered with the United States Patent and Trademark Office (“USPTO”), the earliest on June 27, 2006, US Reg. No. 3,108,401, and the latter on July 29, 2008, US Reg. No. 3,477,143.

The Respondent registered the disputed domain name <lennarmeta.com> on January 10, 2022, according to the concerned Registrar’s Whois records. The Respondent shortly thereafter appears to have parked the disputed domain name with a website prominently promoting the banner “courtesy of GoDaddy.com”. The Respondent’s website also appears to have featured pay-per-click (“PPC”) advertisements at that time.

The Complainants, after learning of the Respondent’s registration of the disputed domain name dispatched a cease and desist notice to the Respondent on or about January 31, 2022, to which the Respondent replied, “if you’d like to have a non-threatening discussion about this domain feel free to respond”. The Respondent however did not offer any further response, and the Complaint subsequently was filed by the Complainants on June 16, 2022.

5. Parties’ Contentions

A. Complainant

The Complainants submit that the disputed domain name is virtually identical and confusingly similar to the Complainants’ registered LENNAR mark, in which the Complainants assert rights. The Complainants explain they have offered real estate management, brokerage, development, construction, and other financial services since as early as 1973, and strongly emphasize they have been leading homebuilders in the United States since 1954. The Complainants further remark that the Respondent’s inclusion of the term “meta” in the disputed domain name does not change the overall impression of the disputed domain name, which the Complainants find to be confusingly similar to the LENNAR mark.

The Complainants assert that the Respondent lacks rights or legitimate interests in the disputed domain name. According to the Complainants, there is no probative evidence of the Respondent’s use or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainants aver that the Respondent is not commonly known by the disputed domain name and has not acquired trademark or service mark rights in the Complainants’ LENNAR mark. The Complainants further maintain that the Respondent registered and is using the disputed domain name in bad

faith, seeking to disrupt the Complainants' business and sell the disputed domain name in an amount greatly in excess of any documented out-of-pocket expenses related to the disputed domain name.

According to the Complainants, the Respondent has used the disputed domain name with pay-per-click links, with terms such as "home warranty" and "property listings for sale by owner". The Complainants maintain all of this has been created by the Respondent with the sole intent to attract Internet users and create a likelihood of confusion with the Complainants' LENNAR mark.

B. Respondent

The Complainants issued a cease and desist notice to the Respondent on January 31, 2022, to which the Respondent replied, "if you'd like to have a non-threatening discussion about this domain feel free to respond". The Respondent notwithstanding did not reply to the Complainants' contentions.

6. Preliminary Issue: Consolidation of Multiple Complainants

The Complainants in this administrative proceeding appear to have been jointly filed by Lennar Pacific Properties Management, LLC, and Lennar Corporation. As described in WIPO Overview of WIPO Panel Views On Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1, when assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look to see whether the complainants have a specific common grievance against the respondent, and whether in view of the attendant circumstances consolidation would be equitable and procedurally efficient.

The Panel, after further review and consideration, concludes that the Complainants have demonstrated a specific common grievance against the Respondent and have met their burden of demonstrating a "common legal and business interest" in connection with the Complainants' LENNAR mark. The Panel further notes that previous decisions under the Policy have allowed consolidation of multiple complainants in similar proceedings. See, e.g., *Dareos LTD. and Dareos INC. v. Pavel Balabanov et al.*, WIPO Case No. [D2020-0133](#). Accordingly, the Panel finds that consolidation of multiple Complainants is procedurally efficient and would be fair and equitable to all parties.

7. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169 -177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules, and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the 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 with respect to the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets out four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations. Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See [WIPO Overview 3.0](#), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainants' registered LENNAR trademarks, in which the Complainants have demonstrated rights through registration and extensive use. In considering confusing similarity, the first element of the Policy serves essentially as a standing requirement,¹ which involves a relatively straightforward comparison between the complainant's trademark and the disputed domain name.

The Complainants' LENNAR mark is clearly recognizable in the disputed domain name.² The first element test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.³ Applying this comparison, the Complainants' mark is recognizable.⁴ When as here the relevant LENNAR trademark is recognizable in the disputed domain name, the inclusion of other terms in the disputed domain name such as "meta" does not preclude a finding of confusing similarity under paragraph 4(a)(i) of the Policy.⁵

Further, the inclusion in the disputed domain name of geographical, meaningless or other descriptive words does not preclude a finding of confusing similarity as to the disputed domain name or the Complainants' LENNAR mark. When at least a dominant feature of the relevant trademark is recognizable in the disputed domain name, the domain name normally will be considered confusingly similar to that mark for purposes of UDRP standing.⁶ See *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#) (addition in disputed domain names <autocadcloud.com> and <hostedautocad.com> of descriptive words "cloud" and "hosted" does not prevent confusing similarity). See, e.g., *National Association for Stock Car Auto Racing, Inc. v. Racing Connection / The Racin' Connection, Inc.*, WIPO Case No. [D2007-1524](#). Top-Level Domains ("TLDs"), in this case ".com", generally are disregarded in determining identity or confusing similarity under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.⁷

Accordingly, the Panel finds the Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy.

¹ See [WIPO Overview 3.0](#), section 1.7.

² *Id.* When the relevant trademark is recognizable in the disputed domain name, the domain name normally will be considered confusingly similar to the mark for purposes of paragraph 4(a)(i) of the Policy.

³ *Id.*

⁴ See [WIPO Overview 3.0](#), section 1.8 and cases cited therein.

⁵ *Id.* See also [WIPO Overview 3.0](#), section 1.8 and cases cited therein. The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy.

⁶ See [WIPO Overview 3.0](#), section 1.7 and cases cited therein.

⁷ See [WIPO Overview 3.0](#), section 1.11 and cases cited therein.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainants' LENNAR mark. Regardless, the Respondent intentionally has registered the disputed domain name, misappropriating the Complainants' well-known LENNAR mark, and it has been documented by the Complainants that the Respondent has parked the disputed domain name with a website displaying the statement "courtesy of GoDaddy.com".

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not submitted any response to the Complaints, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaints as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and has found nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

It is apparent to the Panel that the Respondent knew of and had the Complainants' distinctive LENNAR mark in mind when registering the disputed domain name, which as previously noted is confusingly similar to the Complainants' well-known mark. To the extent the Respondent might claim even remotely to be making a fair use of the disputed domain name, the Panel considers that any reliance by the Respondent on decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (hereinafter "*Oki Data*") would be misplaced.

Having regard to the relevant circumstances in this case, and absent any explanation by the Respondent, the Panel finds the Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services within the contemplation of paragraph 4(c)(i) of the Policy. See *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#). Further, for the reasons discussed above, the Panel finds the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name.

As previously noted, the Respondent has not been authorized to use the Complainants' LENNAR mark. The Panel finds no indication in the record that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy, and nothing in the record before the Panel to support a claim by the Respondent of rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the Respondents' documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#). Further, UDRP panels have consistently held that the mere registration of a domain name confusingly similar to a widely recognized trademark, by an unaffiliated entity, may create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons discussed under this and the preceding heading, the Panel concludes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy. The record is convincing that the Respondent was aware of and had the Complainants' LENNAR mark firmly in mind when registering the disputed domain name. The Respondent's registration and use of the disputed domain name and misappropriation of the Complainants' LENNAR mark is clearly demonstrative of bad faith; and moreover, the Respondent has not come forward with any explanation or evidence to the contrary.

The Panel thus finds that the Complainants have satisfied the requirements of paragraph 4(a)(iii) of the Policy.

8. 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 <lennarmeta.com> be transferred to the Complainant, Lennar Pacific Properties Management, LLC.

/William R. Towns/

William R. Towns

Sole Panelist

Date: August 10, 2022