

## **ADMINISTRATIVE PANEL DECISION**

Lennar Pacific Properties Management, LLC, and Lennar Corporation v.  
Privacy Service Provided by Withheld for Privacy ehf / Sahir, Sahir; Abodun  
Oluwaseun, Nestec Nig Plc  
Case No. D2022-2206

### **1. The Parties**

The Complainants are Lennar Pacific Properties Management, LLC, and Lennar Corporation, United States of America (“United States”), represented by Slaters Harwell LLP, United States (hereinafter collectively referred as the “Complainants”).

The Respondents are Privacy Service Provided by Withheld for Privacy ehf, Iceland / Sahir, Sahir, Indonesia / Abodun Oluwaseun, Nestec Nig Plc, Indonesia.

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

The disputed domain names <lennar.online> and <lennar-us.com> are registered with NameCheap, Inc. NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainants on July 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on July 7, 2022.

The Center received on July 8, 2022, an informal communication from the named Respondent of the disputed domain name <lennar.online>. On July 11, 2022, the Center sent a possible settlement email communication, to which the Complainants responded and requested suspension of the proceeding. The Center sent the Notification of Suspension on July 12, 2022. The Complainants requested the reinstatement of proceedings on August 15, 2022, and the Center reinstated the proceeding on August 16, 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 Respondents of the Complaint, and the proceedings commenced on August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Respondents did not submit any formal response. Accordingly, the Center proceeded to the Panel appointment on September 9, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 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 by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainants are related companies, offering real estate management, brokerage, development, construction, mortgage, and financial services under the LENNAR trademark.

Lennar Pacific Properties Management, LLC (the “First Complainant”) is the owner of the following trademark registrations:

- United States trademark registration No. 3,108,401 for LENNAR, registered on June 27, 2006, claiming first use in commerce on May 1973, for services in Classes 35, 36 and 37; and
- United States trademark registration No. 3,477.143 for LENNAR, registered on July 29, 2008, claiming first use in commerce on March 2006, for services in Classes 36 and 37.

Lennar Corporation (the “Second Complainant”), active in the homebuilding business since 1954, is the authorized licensee of the LENNAR trademark as well as the operator of the website resolving from the domain name <lennar.com> (registered on September 4, 1996).

The disputed domain names <lennar.online> and <lennar-us.com> were registered on January 11, 2022, and February 6, 2022, respectively, and at the time of the filing of the Complaint the disputed domain names were used in connection with parked webpages displaying pay-per-click (“PPC”) links.

#### **5. Parties’ Contentions**

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

According to the Complainants, the disputed domain names are under common control given that both disputed domain names: (i) were registered under the same privacy shield; (ii) within a relatively short period of time; (iii) through the same Registrar; (iv) resolving to similar webpages, and (v) with a similar naming pattern.

The Complainant assert to have offered real estate management, brokerage, development, construction, mortgage, and financial services under the LENNAR trademark since at least as early as 1973; being the Second Complainant one of the leading homebuilder in the United States since 1954.

According to the Complainants, the disputed domain names comprise the registered trademark LENNAR, the addition of the geographical term “-us” not detracting the second disputed domain name the overall impression, thus being the disputed domain names confusingly similar to the Complainants’ trademark.

As to the absence of rights or legitimate interests, the Complainants argue that:

- (i) the Complainants have not located any evidence of the Respondents' use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services;
- (ii) the Respondents have not been commonly known by the disputed domain names, nor have they acquired trademark rights in the Complainant's LENNAR mark; and
- (iii) the Respondents are not making any legitimate non-commercial or fair use of the disputed domain names.

Moreover, the Complainants have attempted to solve the matter amicably by sending cease-and-desist letters to the Respondents on January 31, 2022, and April 18, 2022, respectively, advising the Respondents of the unauthorized use of the LENNAR trademark. No reply was received to these letters.

Furthermore, the Complainants point out that given that the LENNAR trademark is distinctive and well-established, the Respondents registered the disputed domain names to attract visitors to websites that seek to disrupt the Complainants' businesses and/or for the purpose of selling the disputed domain names to the Complainants. Other indicatives of the Respondents' bad faith are the choice to retain a privacy protection service and the lack of reply to the cease-and-desist letters sent. Lastly, the Complainants contend that there is no conceivable good faith use to which the disputed domain names could be put by the Respondents.

## **B. Respondents**

On July 8, 2022, the Center received an e-mail message from the Respondent for the <lennar.online> disputed domain name stating the following: "I m approve to transfer domain to owner of trade mark"..

No further communication or formal reply was further submitted by the Respondents.

## **6. Discussion and Findings**

Firstly, the Panel has to address the named Respondent of the <lennar.online> disputed domain name's acceptance as to the voluntary transfer of that disputed domain name without findings of fact or conclusions as to the merits of the case under the UDRP.

A Panel may at its discretion order the transfer of the domain name if the respondent has given its unambiguous consent to transfer without findings under the Policy, paragraph 4(a). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.10. Some panels have declined to grant a remedy solely on the basis of respondent's consent where the complainant objects or because the panel finds a broader interest in reaching a substantive determination.

In the present case, considering the Complainants' request for the consolidation of multiple Respondents this Panel finds a broader interest in reaching a substantive determination on the merits.

Therefore, considering all the circumstances of the present case, the Panel will proceed to a decision on the merits, and analyze the three requisite elements under paragraph 4(a) of the Policy which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain names to the Complainants:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainants must prove in this administrative proceeding that each of the aforesaid three elements is present so as to have the disputed domain names transferred to them, according to paragraph 4(a) of the Policy.

In accordance with paragraph 14(b) of the Rules, if the Respondents do not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Before turning to these questions, however, the Panel needs to address the issue of the consolidation of multiple Respondents.

#### **A. Consolidation of Multiple Respondents**

The Complainant requests that this Panel accept multiple Respondents in a single proceeding in view of the facts enumerated at the section 5.A. above.

Section 4.11.2 of the [WIPO Overview 3.0](#) establishes that “[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”.

All of the aforementioned criteria are present in this case and therefore this Panel accepts such request considering that it would be more procedurally efficient to have the disputed domain names dealt with at the same procedure, given that both disputed domain names: (a) were registered under the same privacy shield; (ii) within a relatively short period of time; (iii) through the same Registrar; (iv) resolving to similar webpages; (v) sharing a similar naming pattern; and (vi) no objection was made by the Respondents regarding consolidation.

This Panel is satisfied, in view of the evidence submitted and on balance that the disputed domain names are indeed subject to a common control and that consolidation would be fair and equitable to all Parties.

#### **B. Identical or Confusingly Similar**

The Complainants have established rights in the LENNAR trademark.

It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. ([WIPO Overview 3.0](#), section 1.7). The Complainants’ mark is entirely reproduced in the disputed domain name <lennar.online> and is thus identical for purposes of the first element. In the disputed domain name <lennar-us.com>, the Complainant’s trademark is reflected with the addition of the hyphen (“-”) and of the geographical abbreviation for the United States “US”, which in this Panel’s point of view, does not prevent a finding of confusing similarity between the disputed domain name and the Complainants’ trademark.

For the reasons above, the Panel finds that the disputed domain names are identical and confusingly similar to the Complainants’ trademark.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate the Respondents' rights to or legitimate interests in the disputed domain names. These circumstances are:

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

The Respondents, in not formally responding to the Complaint, have failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainants to make a *prima facie* case against the Respondents.

In that sense, the lack of evidence as to whether the Respondents are commonly known by the disputed domain names or the absence of any trademarks registered by the Respondents corresponding to the disputed domain names, indicates that the Respondents do not hold rights or legitimate interests in the disputed domain names.

In addition to that, the use of the disputed domain names in connection with parked webpages displaying PPC links cannot characterize a *bona fide* offering of goods or services or a legitimate noncommercial use of the disputed domain names. Furthermore, as regards the composition of the disputed domain names, where a domain name consists of only the trademark or a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use since the nature of the domain names effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Here, the disputed domain name <lennar.online> carries a high risk of implied affiliation, since it is identical to the Complainant's trademark. Similarly, considering the geographic acronym that is descriptive of the Complainant's origin in the United States, the disputed domain name <lennar-us.com> carries a risk of implied affiliation that cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondents do not have rights or legitimate interests with respect to the disputed domain names.

### **D. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondents have registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring them to the Complainants who are the owner of a trademark relating to the disputed domain names or to a competitor of the Complainants, for valuable consideration in excess of the Respondents' documented out-of-pocket costs directly related to the disputed domain names; or
- (ii) the Respondents have registered the disputed domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondents have engaged in a pattern of such conduct; or

(iii) the Respondents have registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to the Respondents' website or other location, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondents' website or location or of a product or service on the Respondents' website or location.

The registration and use of the disputed domain names in bad faith can be found in the present case in view of the following circumstances:

(i) the Respondents have provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain names;

(ii) the distinctiveness and long-standing use of the Complainants' trademark and the nature of the disputed domain names, being composed of the Complainant's trademark in its entirety;

(iii) the use in connection with PPC links that capitalize on the Complainants' services suggests a rather clear indication that the Respondents were aware of the Complainant's trademark at the moment of registration of the disputed domain names and that the use of the disputed domain names amounts to bad faith, with the implausibility of any good faith use to which the disputed domain names may be put;

(iv) the choice to retain a privacy protection service to conceal the Respondents' true identity;

(v) the absence of any reply to the cease-and-desist letters sent prior to this proceeding; and

(vi) the indication of a false address in the Whois data and, consequently, the Center not being able to have communications fully delivered to the Respondents.

For the reasons stated above, the Panel finds that the disputed domain names were registered and are being used in bad faith.

The third element of the Policy has therefore been established.

## **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 names <lennar.online> and <lennar-us.com> be transferred to the First Complainant, Lennar Pacific Properties Management, LLC.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: September 27, 2022