

ADMINISTRATIVE PANEL DECISION

Lennar Pacific Properties Management, LLC, Lennar Corporation v. Henry Frost III, Omni3rd
Case No. D2022-2346

1. The Parties

Complainants are Lennar Pacific Properties Management (“LPPM”), United States of America (“United States”), and LLC Lennar Corporation, United States, represented by Slates Harwell LLP, United States.¹

Respondent is Henry Frost III, Omni3rd, United States of America.

2. The Domain Name and Registrar

The disputed domain name <metalennar.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 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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”).

¹ The Complaint states that Complainant LLC Lennar Corporation, a company allegedly related to LPPM, is an authorized licensee of LPPM’s registered “Lennar” marks. For purposes of this Decision, it is unnecessary to review LLC Lennar Corporation’s rights and its relation to LPPM. “Complainant” is used hereinafter to refer solely to Complainant LPPM.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on July 25, 2022.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on August 11, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant owns various registered trademarks for its LENNAR marks including, for example, United States Trademark Registration No. 3,108,401, registered June 27, 2006 in international classes 36 and 37, with a first use in commerce of May 1973.

The disputed domain name was registered December 19, 2021 and routes to the Registrar's parking page. The page displays a link labeled "This domain may be for sale." The page also contains advertising links to third-party websites, under captions that apparently change over time. Some of the captions relate to homes, mortgages and home building, according to the page's current appearance and a sampling of older screen captures.

5. Parties' Contentions

A. Complainants

Complainants contend that they have offered real estate management, brokerage, development, construction, mortgage, and financial services under the LENNAR Marks since 1973. Complainants aver that Complainant and its related companies have been leading homebuilders in the United States since 1954, currently constructing and selling homes in twenty-one states.

Complainants sent a cease and desist letter on January 31, 2022 to which, Complainants aver, Respondent failed to respond.

Summarizing their legal contentions, Complainants allege that (1) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On this basis, the Complaint requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

The Panel renders its Decision on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainants must establish each element of paragraph 4(a) of the Policy, namely:

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

Complainants must establish these elements even if Respondent does not submit a Response. *E.g.*, The Vanguard Group, Inc. v. Lorna Kang, WIPO Case No. [D2002-1064](#).

A. Identical or Confusingly Similar

The Panel agrees with Complainants that the disputed domain name is confusingly similar to Complainant's trademarks.

UDRP panels generally disregard the domain name suffix in evaluating identity or confusing similarity. *E.g.*, *VAT Holding AG v. VAT.com*, WIPO Case No. [D2000-0607](#); *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Removing the suffix ".com", the <metalenar.com> disputed domain name wholly incorporates Complainant's LENNAR trademark. The Panel concludes that the addition of the term "meta" does not negate the confusing similarity created by Respondent's complete inclusion of Complainant's mark in the disputed domain name. *E.g.*, *Sanofi-aventis, Sanofi-Aventis Deutschland GmbH v. Andrey Mitrofanov*, WIPO Case No. [D2007-1772](#); *Giata Gesellschaft für die Entwicklung und Vermarktung interaktiver Tourismusanwendungen mbH v. Keyword Marketing, Inc.*, WIPO Case No. [D2006-1137](#); *Hoffmann-La Roche Inc. v. Aneko Bohner*, WIPO Case No. [D2006-0629](#).

The Panel holds, therefore, that the Complaint fulfills the requirements of Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel also agrees that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (1) the use of the domain name in connection with a *bona fide* offering of goods and services;
- (2) being commonly known by the domain name; or
- (3) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Complainants must establish a *prima facie* case that Respondent lacks rights or legitimate interests. See *e.g.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#) (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)). The absence of rights or legitimate interests is established if a *prima facie* case is established and Respondent does not rebut that *prima facie* case.

The Complaint makes cursory allegations on information and belief that Complainants have not located any evidence that would demonstrate Respondent's rights or legitimate interests in the use of the disputed domain name, reciting language of Policy Paragraph 4(c) in the tabulated list above.²

² For Complainants to provide some analysis or discussion of the scant evidence that is available would have been helpful. The Panel's viewing of the parking page to which the disputed domain name routes provides factual support for some of the Complaint's summary allegations.

The Panel's examination of the website to which the disputed domain name routes establishes that Respondent is not making a *bona fide* offering of goods or services connected to the disputed domain name. The fact that third-party advertising links appear on the page to which the disputed domain name routes supports Complainants' allegation that "Respondent is not making any legitimate noncommercial or fair use of the Domain," since it is commonly understood that Respondents earn pay-per-click revenue from such links.

In addition, Complainants aver that "Respondent has acquired no trademark or service mark rights in the famous and strong LENNAR Marks." The record provides little evidence to support the conclusion that the marks are famous, and the Panel refrains to rule on this point. However, the Panel construes the quoted allegation as a factual representation by Complainants that Respondent is not authorized or licensed by Complainant to use Complainant's marks. The Panel so finds. The Panel also accepts the Complaint's uncontroverted allegation that Respondent is not commonly known by the disputed domain name.

A *prima facie* case has been established. Refraining from submitting a response, Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that Respondent has rights or legitimate interests in respect of the disputed domain name.

Therefore, the Panel concludes that the second element of paragraph 4(a) of the Policy is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith registration and bad faith use. Policy, paragraph 4(b)(iv). See, e.g., *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#).

Examining the circumstances, the Panel infers that Respondent was undoubtedly aware of Complainant's LENNAR mark, which was registered and used broadly for many years. The Panel finds that Respondent deliberately included the mark in the disputed domain name to create confusion and attract Internet users to its website for commercial gain. Therefore, the Panel concludes that Respondent registered the disputed domain name in bad faith.

The links on the parking page to which the disputed domain name routes promote and commercialize products and services similar to some of Complainants' offerings. The Panel concludes that this activity evidences bad faith use by Respondent. *Pfizer Inc. v. jg a/k/a Josh Green*, WIPO Case No. [D2004-0784](#) (citing *Google, Inc. v. wwwgoogle.com and Jimmy Siavesh Behain*, WIPO Case No. [D2000-1240](#); *Casio Keisanki Kabushiki (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#); *Downstream Technologies, LLC v. Bartels System GmbH*, WIPO Case No. [D2003-0088](#)); *DaimlerChrysler Corporation and DaimlerChrysler Service North America LLC v. LaPorte Holdings, Inc.*, WIPO Case No. [D2005-0070](#), (citing *Royal Bank of Canada v. Henry Chan*, WIPO Case No. [D2003-0031](#)).

The Panel further finds that Respondent's failure to reply both to the Complaint and to Complainants' cease and desist letter are cumulative evidence of use in bad faith.

Consequently, the Panel concludes that the requirements of the third element of Policy, paragraph 4(a) are fulfilled.³

³ The Go-Daddy parking page to which the disputed domain name routes also displays a link offering brokerage services to the public to potentially negotiate purchase of the disputed domain name. Without further evidence, the Panel declines to embrace Complainants' contention that this sole fact proves bad faith as "an offer to sell the disputed domain name to Complainants or a competitor for more than the documented out-of-pocket expenses related to the name" as provided under 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 disputed domain name, <metalennar.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: August 25, 2022