

ADMINISTRATIVE PANEL DECISION

Les Mills International Limited v. James LeBron
Case No. D2022-3246

1. The Parties

The Complainant is Les Mills International Limited, New Zealand, represented internally.

The Respondent is James LeBron, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <lesmills.vip> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 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 September 2, 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 September 4, 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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 17, 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.

The Whols-named registrant in this proceeding is a privacy or proxy service which has disclosed the identity and contact details of the underlying registrant of the disputed domain name. There being no evidence that such privacy or proxy service is further related to the underlying registrant or to the use of the disputed domain name, the Panel determines that the underlying registrant shall be the sole Respondent in the proceeding (see section 4.4.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

4. Factual Background

The Complainant is a company registered in New Zealand. It is a provider of fitness programs and classes under the name and trademark LES MILLS.

The Complainant maintains a portfolio of over 380 trademark registrations for the mark LES MILLS in territories throughout the world. Such registrations include, for example, United States trademark registration number 78409040 for the word mark LES MILLS, registered on March 25, 2008, for goods and services in International Classes 9, 16, 25, 28 and 41.

The Complainant is the owner of the domain name <lesmills.com> which resolves to its principal website. It owns numerous additional domain names consisting of the term "lesmills" together with a Top-Level Domain ("TLD") such as <lesmills.io>, <lesmills.live> and <lesmills.tv>.

The disputed domain name was registered on May 31, 2019.

The Complainant provides evidence that, as of August 17, 2022, the disputed domain name resolved to a website bearing prominent page headings "LESMILLS" and a sub-heading "LESMILLS FITNESS". The website offered what appeared to be a range of the Complainant's services, including "LESMILLS CORE", "LESMILLS BODYPUMP" and "LESMILLS GRIT STRENGTH". The website did not appear to include any disclaimer of any relationship between the operator of the website and the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant states that its brand was founded by four-time Olympian Les Mills in 1968 and that the Complainant itself was incorporated in 1997. It submits that it delivers group fitness classes to over six million individuals every week, through a network of over 140,000 accredited and certified instructors and 21,000 gyms. It states that its classes are also available online, via a direct-to-consumer, subscription-based, streaming channel named "LES MILLS +".

The Complainant submits that the disputed domain name is identical to its trademark LES MILLS.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no commercial relationship with the Respondent, which is not one of its authorized licensees. The Complainant submits that the Respondent is infringing its intellectual property rights by using its LES MILLS trademark and reproducing its copyright materials. It contends that the Respondent's website operates as a platform allowing users to download the Complainant's proprietary content for a fee without any authorization from the Complainant.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It states that it is obvious that the Respondent was aware of the Complainant's LES MILLS trademark since its website is offering unlicensed copies of the Complainant's materials. It contends that the disputed domain name is in itself misleading in suggesting to consumers that it directs to one of the Complainant's official

websites. It submits that, by using the disputed domain name, the Respondent is attempting to attract Internet users to purchase products from its website by falsely representing that it has some commercial association with the Complainant.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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

The Complainant has established that it is the owner of registered trademark rights for the mark LES MILLS. The disputed domain name is identical to that trademark, ignoring the word spacing and the generic Top-Level Domain ("gTLD") ".vip" which may be disregarded for the purpose of comparison. The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise.

In certain limited circumstances, a reseller of trademarked goods or services may legitimately incorporate that trademark into a domain name used for the resale of the goods or services in question (see, e.g., section 2.8 of "[WIPO Overview 3.0](#)"). However, the Panel does not find those circumstances to be of any application in this case as the Respondent's website includes no disclaimer which prominently disavows any commercial relationship with the Complainant: on the contrary, the misleading impression given by the Respondent's website is that it is a duly authorized supplier of the Complainant's services. Moreover, the Panel finds the disputed domain name to be inherently misleading, as inevitably representing to Internet users that the website to which it resolves must be owned or operated by, or otherwise commercially affiliated with, the Complainant.

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

C. Registered and Used in Bad Faith

The Panel accepts the Complainant's submission that the Respondent must have been aware of the Complainant's business and trademark when it registered the disputed domain name, since it has used the disputed domain name to offer the Complainant's products. As stated above, the Panel also finds the disputed domain name to be inherently deceptive, as inevitably implying a commercial association with the Complainant, which is in itself indicative of the Respondent's bad faith in seeking to take unfair commercial advantage of the Complainant's business goodwill. The Panel finds, furthermore, that the Respondent has used the disputed domain name to appropriate the Complainant's LES MILLS trademark and copyright materials and misleadingly to offer the Complainant's proprietary services for sale. The Panel therefore finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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, <lesmills.vip>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: October 26, 2022