

## **ADMINISTRATIVE PANEL DECISION**

**Polestar Performance AB, Polestar Holding AB v. Robert Versaggi**  
**Case No. D2022-3340**

### **1. The Parties**

The Complainants are Polestar Performance AB, Sweden and Polestar Holding AB, Sweden, represented by Brimondo AB, Sweden.

The Respondent is Robert Versaggi, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <polestarlasvegas.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 September 8, 2022 against three disputed domain names. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name(s). On September 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name(s) which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on September 12, 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 amended Complaint on September 19, 2022, removing two disputed domain names and proceeding only against the disputed domain name <polestarlasvegas.com>. The Respondent sent an email communication to the Center on September 25, 2022.

The Center verified that the Complaint and 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Response was filed with the Center on October 13, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on November 9, 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.

On December 1, 2022, the Panel issued Procedural Order No. 1 (“the Panel Order”) inviting the Respondent to produce certain evidence and the Complainants to comment thereon. The Panel refers to the Panel Order in section 6 below insofar as relevant. The Respondent and the Complainants made filings in response to the Panel Order on December 6, 2022, December 7, 2022, and December 9, 2022.

The Respondent made an unsolicited supplemental filing on December 9, 2022.

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

The Complainants, and their predecessors, have operated the POLESTAR high-performance automotive brand since 1996. In 2017, the brand was repositioned for use in relation to electric vehicles.

The Complainants are collectively referred to hereafter as “the Complainant”, unless it is necessary to refer to them separately.

The Complainant owns many trade marks for POLESTAR including European Union Trade Mark No. 009424144, filed on October 5, 2010, registered on March 14, 2011, in classes 9, 12, and 41, and United States Registration No. 5,176,584, filed December 21, 2012, registered in April 4, 2017, in classes 25 and 28.

The Complainant owns many domain names consisting of the Complainant’s mark plus the name of a city, e.g., <polestardallas.com>, <polestarhouston.com>, and <polestarnewyorkcity.com>.

The disputed domain name was registered on November 15, 2021.

The Respondent did not reply to the Complainant’s cease and desist letter dated May 27, 2022, (which the Respondent disputes having received).

As of September 1, 2022, the disputed domain name resolved to a GoDaddy parking page with a “Get This Domain” button which led to a page stating that the disputed domain name was taken but that GoDaddy’s domain broker service “still might be able to get it for you”. The parking page also included pay-per-click (“PPC”) links to “Shoppa Polestar – Amazon.se”, “Explore Results Now – Search Here”, and “SpeedyResultsNow.com – Latest Results”. The first link led to an Amazon product search results page for “polestar” listing a number of accessories for various vehicles including those of the Complainant.

On September 23, 2022, the Respondent filed a trade mark application, United States Serial No. 97603768, for POLESTARVEGAS.COM in respect of “Hats; Hoodies; T-shirts; Baseball caps; Baseball caps and hats; Short-sleeved or long-sleeved t-shirts” in class 25.

On an unspecified date, the Respondent resolved the disputed domain name to a “Launching Soon” landing page headed “POLESTAR LAS VEGAS” which included a “Photo Gallery” with a range of images of baseball caps, t-shirts, and mugs branded “PolestarLasVegas.com”.

#### **5. Parties’ Contentions**

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

The following is a summary of the Complainant’s contentions.

The Complainant's trade mark is well-known.

The disputed domain name is confusingly similar to the Complainant's trade mark. The extra term "lasvegas" does not distinguish the disputed domain name from the Complainant's trade mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

There is no evidence that the Respondent owns any trade mark reflecting the disputed domain name or that the Respondent has used the disputed domain name for a *bona fide* offering of goods or services. The PPC page does not constitute a *bona fide* offering as the links compete with or capitalise on the Complainant's mark.

There is no evidence that the Respondent has been commonly known by the disputed domain name.

Nor is there any indication that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name. Rather, the Respondent has set out to take advantage of the Complainant's well-known trade marks.

The disputed domain name was registered and is being used in bad faith.

The Respondent knew or should have known of the Complainant's trade marks before registering the disputed domain name as the Complainant's brand is well recognised, and is one of the main players in the electrical vehicles industry. The Complainant's trade marks long pre-date the disputed domain name. Use of the disputed domain name for PPC links to websites offering products related to the vehicles of the Complainant or its competitors show that the Respondent knew, or should have known, about the Complainant's brand.

By using the disputed domain name, which incorporates the Complainant's mark, for a page with PPC links to an Amazon shop listing products related to the Complainant or its competitors, the Respondent has set out to create a likelihood of confusion with the Complainant's mark under paragraph 4(b)(iv) of the Policy. This is tantamount to placing advertisements on the Respondent's site for products that compete directly with the Complainant, thereby disrupting the Complainant's business. The Respondent cannot disclaim responsibility for the links on the grounds that they are automated or generated by a third party.

The Respondent registered the disputed domain name for sale to the Complainant under paragraph 4(b)(i) of the Policy. The Respondent's webpage includes a link to "GoDaddy Marketplace" which invites anyone to make an offer for the disputed domain name. The word "might" in the domain brokerage text does not negate the fact that the disputed domain name is being offered for sale to the general public, which includes the Complainant and its competitor.

The Respondent's concealment of its identity, and its failure to respond to the Complainant's case and desist letter, are further evidence of bad faith.

## **B. Respondent**

The following is a summary of the Respondent's contentions.

The Respondent denies that the disputed domain name is confusingly similar to the Complainant's trade marks or that the Respondent lacks rights or legitimate interest in the disputed domain name. Nor has the Respondent registered and used the disputed domain name in bad faith by means of the parking page or by offering it for sale or by seeking to create a likelihood of confusion with the Complainant.

The Respondent has applied for a United States trade mark for POLESTARLASVEGAS.COM. The Respondent carried out a trade mark search at the time, which did not reveal any similar mark on the United States database. The Respondent also conducted due diligence to ensure that the Respondent was not

violating any intellectual property rights.

The Respondent denies that the Complainant's mark is well-known in the United States.

There are some 26 trade marks on the United States register that contain or comprise the term POLESTAR. This proves that the Complainant is not the exclusive owner of this mark.

The Complainant's claim to a monopoly over the domain name formulation "polestar[name of city].com" is vague and baseless. The Complainant has never acquired any ownership over the word mark "POLESTARLASVEGAS". Nor is possible for the Complainant to acquire any monopoly over the names of all cities in the United States, even if they have acquired trade marks consisting of the names of some such cities, e.g., <polestardallas.com>. The Complainant has no right to stop others using the terms "Polestar" or "Polestar[name of city]" unless the Complainant has acquired legal rights to those terms under the laws "of such territory".

The Complainant's trade mark is not orally, visually, or conceptually similar to the disputed domain name.

The Complainant's registered trade mark is limited to the goods and services for which it is registered, and it cannot be used to stop use of term "polestar" plus the name of a city *per se*.

As regards bad faith, the Respondent denies that it knew or should have known about the Complainant's POLESTAR brand.

The Respondent was not aware of the existence of the Complainant. It registered the disputed domain name in good faith for an online clothing business branded "POLESTARLASVEGAS.COM".

The disputed domain name has a dictionary meaning. It consists of two nouns and is not a coined term. The word "polestar" is defined as "a star, preferably bright, nearly aligned with the axis of a rotating astronomical body". It is widely used in connection with astronomy.

The sole reason that the Respondent adopted the disputed domain name was because of the immense popularity of the word "polestar" in Las Vegas and nearby surroundings. The Respondent took the opportunity of the availability of the disputed domain name to secure it for future use with respect to the Respondent's potential project.

The Complainant's brand is not so popular worldwide that it is entitled to claim that the word "polestar" has become synonymous with it or to stop the Respondent using the name comprised in the disputed domain name. UDRP cases say that dealing in dictionary words can constitute a legitimate interest even if a third party has similar trade mark rights.

The Complainant has produced no evidence that the Respondent ever attempted to sell the disputed domain name to the Complainant. There is no basis for the Complainant to claim that the Respondent registered the disputed domain name solely to extort money from the Complainant. If the Respondent were acting in bad faith, it would have approached the Complainant's competitors to offer sell them the disputed domain name, but it never did so.

The Complainant and the Respondent operate in completely different industries, and it is improbable that the public will consider that the parties' respective goods and brands are associated with each other. The Respondent has no intention of using the disputed domain name in connection with automobiles.

The Respondent did not intend to trade on the Complainant's reputation or pass itself off as the Complainant or claim an association with the Complainant.

The Respondent's landing page clearly states that the disputed domain name is owned by the Respondent and explains the purpose of the website. It does not display anything that would lead anyone to believe that

is associated with the Complainant.

It would be unjust to ask the Respondent to stop using the disputed domain name when it was the Complainant who was negligent in failing to eliminate any likelihood of confusion by informing its customers and suppliers that all business-related communications must be made to the Complainant via its official domain name.

The Respondent used a privacy service for legitimate reasons, namely to preserve confidentiality of personal information and avoid unwanted promotional emails and cold calling.

The Respondent has not sought to impersonate the Complainant.

### **C. Respondent's response to Panel Order**

The following is a summary of the Respondent's contentions insofar as the Panel considers that they are responsive to the Panel Order and potentially relevant to its decision.

The Respondent denies receiving communications from the Complainant or the Center in May, June, July, August, or September.

The Respondent's landing page, merchandise inventory, design process, construction, and ideas were part of a prudent and cautious business process. The business model, and the ultimate decision whether to invest in an online or a bricks and mortar store, were "under outside marketing advisement and consideration for well over 12 months". The original launch date was delayed due to the pandemic and United States recession.

The Respondent has produced evidence of the popularity of the word "polestar" in Las Vegas and different areas of the United States, unrelated to automobiles.

### **D. Complainant's response to Panel Order**

The following is a summary of the Complainant's contentions insofar as the Panel considers that they are responsive to the Panel Order and potentially relevant to its decision.

The Complainant has submitted evidence that the Complainant sent cease and desist letters to the Respondent via the Registrar.

The Respondent has failed to submit evidence regarding the date of creation of its landing page or product list or any other preparations to use the disputed domain name for its alleged business.

The Respondent's evidence does not prove the popularity of the word "Polestar" in Las Vegas or nearby. It only establishes use of "Pole Stars", including in Las Vegas, in connection with pole dancing. The search terms are not shown, and the results are undated.

Internet searches by the Complainant for "polestar" and "las vegas" are dominated by the Complainant's brand and give no hint of popularity of any other brand.

### **E. Respondent's supplemental filing**

The following is a summary of the Respondent's contentions in its supplemental filing insofar as admitted by the Panel.

The Respondent's website and business model for the disputed domain name "was placed under duress" by this attempt by the Complainant to usurp its lawfully owned domain name. The Respondent was forced to accelerate the timeframe of its landing page, merchandise and business model which was under outside

marketing consulting and web designer collaboration and construction. The Respondent had “no reasonable business investment risk/reward to create and initiate earlier”.

The evidence of popularity of the term “polestar” in and around Las Vegas was clearly demonstrated by the Respondent’s evidence regarding pole dancing. The Complainant’s lack of the understanding and history of this meaning of the term does not invalidate it. By the Complainant’s own admission, its search engine research showed automobile-related information and therefore the Respondent’s business does not conflict with, or infringe, the Complainant’s automotive business.

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

### **A. Consolidation – Preliminary Issue**

The principles governing the question of whether a complaint may be brought by multiple complainants or against multiple respondents are set out in section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

The Panel is satisfied that (a) the Complainants, which are part of a group of companies, have a specific common grievance against the Respondent and that the Respondent has engaged in common conduct that has affected the Complainants in similar fashion and (b) it would be equitable and procedurally efficient to permit the consolidation.

### **B. Supplemental Filing – Preliminary Issue**

The Respondent has made an unsolicited supplemental filing that was not invited in the Panel Order.

Section 4.6 [WIPO Overview 3.0](#) states that UDRP panels have repeatedly affirmed that the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response, e.g., owing to some “exceptional” circumstance.

In this case, the Panel had decided to admit part of the Respondent’s supplemental filing insofar as it casts further light on the timeline of the alleged preparations for its business and responds to new evidence provided by the Complainant in response to the Panel Order that the Panel considers relevant. The Panel rejects the remainder of the Respondent’s supplemental filing on the grounds that the issues raised could have been raised in, or repeat, earlier Respondent filings, or constitute standard rebuttal. The Panel would add, however, that even if the disallowed material in the supplemental filing had been admitted, it would have made no difference to the outcome of this case.

### **C. Identical or Confusingly Similar**

The Complainant has established registered rights in the mark POLESTAR, as well as unregistered trade mark rights deriving from the Complainant’s extensive and longstanding use of that mark.

Section 1.7 of [WIPO Overview 3.0](#) makes clear that the first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name.

For the purposes of this first element, therefore, it is irrelevant if, as the Respondent claims, other people have registered trade marks that contain or include the term POLESTAR.

The Respondent further argues that the Complainant's registered trade mark is limited to the goods and services for which it is registered. However, section 1.1.2 of [WIPO Overview 3.0](#) explains that the goods and/or services for which the mark is registered or used are not relevant to the first element test.

The Respondent also asserts that the Complainant is unjustifiably claiming a monopoly over use of the term "polestar" in conjunction with the name of any city in the United States. Even if the Complainant had made such a claim (which it has not), neither this nor the Respondent's rebuttal thereof would have been relevant under the first element, which is only concerned with a relatively straightforward comparison between trade mark and domain name as explained above. See further under section 6E below.

Furthermore, contrary to the Respondent's assertion, the Complainant has not invoked ownership of the mark "POLESTARLASVEGAS". The Complainant simply submits that the disputed domain name is confusingly similar to its POLESTAR trade mark. Section 1.8 of [WIPO Overview 3.0](#) explains that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, geographical, or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant's trade mark, which remains readily recognisable within the disputed domain name, plus the additional geographical term "lasvegas", which does not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

#### **D. Rights or Legitimate Interests**

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent claims that it registered the disputed domain name in connection with an online clothing business to be branded "POLESTARLASVEGAS.COM".

As explained in section 2.2 of [WIPO Overview 3.0](#), where a respondent relies on future plans, clear contemporaneous evidence of *bona fide* pre-complaint preparations is required. While, depending on the circumstances, such evidence may not need to be particularly extensive, it must go beyond a mere statement of a claimed intention. Also, because business plans and operations can take time to develop, panels have not necessarily required evidence of intended use to be available immediately after registration of a domain name, but the passage of time may be relevant in assessing whether purported demonstrable preparations are *bona fide* or pretextual.

The Respondent annexed to its Response an undated screenshot of the “Launching Soon” landing page at the disputed domain name, described in section 4 above, as well as undated photos of baseball caps, T-shirts and bags branded with the disputed domain name.

In the Panel Order, amongst other things, the Panel invited the Respondent to produce dated evidence as follows:

“a. demonstrating that the landing page in Exhibit #4 and/or the products in Exhibit #2 were created before the Complainant’s cease and desist letter of May 27, 2022, and/or before service of the Complaint on September 27, 2022; and

b. otherwise establishing if and when the Respondent made preparations to use the disputed domain name in connection with the Respondent’s alleged intended *bona fide* online clothing business (see items (i) to (v) in section 2.2 of [WIPO Overview 3.0](https://www.wipo.int/amc/en/domains/search/overview3.0/#item22) at <https://www.wipo.int/amc/en/domains/search/overview3.0/#item22> for examples of the kind evidence that the Respondent may wish to produce) [...]”

However, despite this invitation, and despite asserting that its business was “under marketing advisement and consideration for well over 12 months” and “under outside marketing consulting and web designer collaboration and construction”, the Respondent has not produced any dated evidence regarding preparations for its alleged business, such as dated communications with its above alleged collaborators.

Accordingly, the Panel considers that the Respondent has failed to establish that it has made demonstrable preparations for a *bona fide* offering of goods or services before notice of the dispute in accordance with paragraph 4(c)(i) of the Policy. Similarly, the Respondent’s landing page at the disputed domain name does not constitute an actual *bona fide* offering of goods or services, given that the Panel has concluded in section 6E below that, on the balance of probabilities, it was created for pretextual purposes.

Nor does use of the disputed domain name for a parking page with PPC links to goods/services that compete with those supplied by the Complainant confer rights or legitimate interests. See section 2.9 of [WIPO Overview 3.0](#), which states that use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalise on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

The Respondent asserts that, according to UDRP cases, dealing in dictionary words can constitute a legitimate interest even if a third party has similar trade mark rights. However, section 2.10.1 of [WIPO Overview 3.0](#) observes that, in order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trade mark rights. Whereas, in this case, the Respondent has not claimed that it registered the disputed domain name for use in connection with its relied-upon dictionary meaning, and the disputed domain name has been used to trade off third-party trade mark rights.

There is no evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Respondent also relies on its trade mark application for POLESTARLASVEGAS.COM filed on September 23, 2022, as evidencing rights or legitimate interests. However, this application not yet proceeded to registration. In any case, section 2.12 of [WIPO Overview 3.0](#) explains that a respondent’s registration of a trade mark corresponding to the disputed domain name will not suffice to establish rights or legitimate interests if the overall circumstances demonstrate it was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant’s exercise of its rights. Here, while the Respondent denies receiving any communications from the Complainant or the Center in the period from May to September 2022, the Respondent did email the Center on September 25, 2022, incorporating a previous communication from the Center dated September 12, 2022. It is therefore clear that the Respondent had notice of this proceeding before filing its trade mark application on September 23, 2022.



On balance, therefore, the Panel concludes that the trade mark was applied for to circumvent the UDRP given that it was filed after the Respondent had notice of this dispute and in light of the other circumstances mentioned above.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

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

The Respondent claims that it had not heard of the Complainant when it registered the disputed domain name, allegedly for a proposed online clothing business. For the following reasons, the Panel does not find the Respondent's position to be credible.

First, as noted in section 6D above, despite the Respondent's assertion that it has been collaborating with marketers and web developers for some 12 months, and despite the Panel's specific invitation, the Respondent has not produced any dated evidence confirming that it had indeed conceived of its alleged project before receiving notice of this dispute. Even if the Respondent had been forced to delay the launch, it would surely possess evidence of communications with people with whom it had allegedly been collaborating for some 12 months. The Respondent's failure to produce such information casts doubt on the veracity of its explanation for selecting the disputed domain name.

Furthermore, the Respondent's assertion in its supplemental filing that it accelerated its business timeframe following receipt of the Complaint, as well as the post-Complaint filing of its trade mark application, reinforce the impression that the evidence presented by the Respondent, including the landing page at the disputed domain name, was cobbled together as a defensive and pretextual move in response to the Complaint rather than having been generated in connection with a genuine pre-existing business.

Second, according to the registrant address for the disputed domain name, the Respondent is not located in or near Las Vegas, and the Respondent has not established any connection between its alleged proposed business and Las Vegas.

Third, the Respondent invokes the dictionary meaning of "polestar" in connection with astronomy, and claims that "the sole reason" it selected the disputed domain name was because of the alleged "immense popularity" of the word "polestar" in Las Vegas and nearby surroundings.

In response to the Panel Order inviting the Respondent to provide evidence supporting its assertion as regards the popularity of this term in the Las Vegas area, the Respondent has produced a mishmash of search results which are difficult to follow because they show only brief extracts from the relevant pages and, for the most part, they omit the search terms used, and which only partly relate to Las Vegas. In the Panel's view, the most that can be said of this evidence is that it appears to reveal some use of the term "pole stars" in connection with pole dancing in Las Vegas, but nothing remotely supporting the Respondent's claim as to the alleged "immense popularity" of the term "polestar" in the Las Vegas area.

For its part, the Complainant has produced Internet search results for "polestar" and "las vegas", which are dominated by results relating to sale of the Complainant's vehicles in Las Vegas.

Fourth, the Complainant has established that its brand has established a reasonably high profile, including in the United States media. This is relevant as one of a number of factors applicable to the likelihood of the Respondent's awareness of the Complainant's mark at the time of registration of the disputed domain name, but it should not be taken as suggesting that the Complainant has some sort of automatic right to stop the Respondent using the disputed domain name simply based on the extent of the worldwide popularity of the Complainant's mark, which the Respondent appears to claim (wrongly) that the Complainant is asserting.

Fifth, the format of the disputed domain name, consisting of the word "polestar" plus the name of a United States city mirrors the formulation used by the Complainant for many of its own domain names.

The Panel would add that, contrary to the Respondent's assertion and as mentioned in section 6C above, the Complainant has not claimed a monopoly over use of the term "polestar" in conjunction with the name of any city in the United States. In any event, the Panel is not specifically concerned with issues relating to trade mark infringement but, rather, with the likelihood or otherwise that the Respondent selected and used the disputed domain name by reference to the Complainant's trade mark. And, in the Panel's view, the similarity between the disputed domain name and the trade mark plus city formulation adopted by the Complainant for its own domain names is one of a number of factors which point towards that conclusion.

For the above reasons, the Panel considers that, on the balance of the probabilities, the Respondent registered the disputed domain name with the Complainant's trade mark in mind, in order to take unfair advantage of, or otherwise unfairly abuse, the Complainant's mark.

Furthermore, in the Panel's view, by using the disputed domain name, comprising the Complainant's distinctive trade mark, in connection with a parking page with PPC links relating to the Complainant's industry, the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Section 3.5 of [WIPO Overview 3.0](#) makes clear that respondents cannot disclaim responsibility for "automatically" generated PPC links on their websites and that neither the fact that such links are generated by a third party such as a registrar, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.

The Panel also considers that the Respondent's subsequent use of the disputed domain name for a pretextual landing page, as discussed above, further supports a finding of bad faith.

Finally, the Panel does not consider that the Respondent's following assertions assist it for the reasons set out below:

1. That there is no evidence that the Respondent intended or attempted to sell the disputed domain name to the Complainant or its competitors. Even if so, that does not prevent a finding of bad faith on the grounds set out above.
2. That the Complainant and the Respondent operate in completely different industries and, accordingly, there is no likelihood of confusion. As explained, the Respondent has not provided credible evidence that it does indeed genuinely operate in the industry claimed.
3. That the Respondent has no intention of using the disputed domain name in connection with automobiles. The Panel's finding of bad faith is based on the circumstances relating to the registration and use of the disputed domain name to date, and not with what the Respondent may or may not do with the disputed domain name in future.
4. That the Respondent's landing page does not display anything that would lead anyone to believe that is associated with the Complainant. As explained above, the Panel has concluded that the landing page was pretextual.
5. That the Complainant was negligent in failing to eliminate any likelihood of confusion by informing its customers and suppliers that all business-related communications must be made to the Complainant via its official website. The Respondent cannot avoid the consequences of any likelihood of confusion arising from its registration and/or use of the disputed domain name by blaming the Complainant for not taking mitigatory steps, which in any case were unlikely to have been effective.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

## **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 <polestarlasvegas.com> be transferred to the Complainant.

*Adam Taylor*

**Adam Taylor**

Sole Panelist

Date: December 13, 2022