

## **ADMINISTRATIVE PANEL DECISION**

Automobili Lamborghini S.p.A. v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2023-3112

### **1. The Parties**

The Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <lanborghini.com> is registered with Media Elite Holdings Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 19, 2023. On July 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 20, 2023, 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 (Unknown/Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 2023 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 July 25, 2023.

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 August 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 25, 2023.

The Center appointed Halvor Manshaus as the sole panelist in this matter on September 12, 2023. 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 Complainant is an Italian manufacturer of high-performance sports cars based in sant'Agata Bolognese, Italy, and formed in 1963.

The Complainant owns several trademark registrations of LAMBORGHINI:

- The European Union registration number 001098383 for classes 7, 9, 12, 14, 16, 18, 25, 27, 28, 36, 37 and 41 registered on June 21, 2000;
- The United States of America registration number 74019105 for class 12 registered on November 13, 1990;
- The International registration number 460178 for classes 3, 4, 9, 12, 14, 16, 18, 25, 28 and 34 registered on March 28, 1981; and
- The International registration number 959504 for classes 12 and 28 registered on February 28, 2008.

The Complainant's group promotes the cars known under the LAMBORGHINI trademark over the Internet in different languages, for example, on "www.lamborghini.com". Further, the Complainant's trademark is well-known and has a strong reputation worldwide.

The disputed domain name was registered in 2004 and resolves to a parking page displaying keywords that lead to click-per-click links related to "luxury car".

#### **5. Parties' Contentions**

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

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, LAMBORGHINI. Firstly, the Complainant holds that the specific Top-Level Domain (TLD) does not affect the domain name to determine the identity or confusing similarity of a domain name and a trademark. Further, the Complainant argues that the disputed domain name consists of an obvious and intentional misspelling of the trademark LAMBORGHINI by changing the letter "m" to the letter "n", which is a clear act of typosquatting targeting Internet users searching for the official website of the Complainant and misspelling the Complainant's domain name. Lastly, the Complainant holds that the slight typographical distinction does not distinguish the disputed domain name from the well-known trademark of the Complainant.

The Complainant holds that the Respondent has no legitimate interests in respect of the disputed domain name. The Complainant argues that there is no indication 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 as the disputed domain name resolves to a parking page displaying services in connection to luxury cars and different keywords leading to pay-per-click links competing or capitalizing on the Complainant's goodwill in the trademark and misleading Internet users, which does not represent a *bona fide* offering. Secondly, the Complainant holds that the Respondent does not use the disputed domain name for noncommercial or fair use. Lastly, the Complainant argues that the Respondent is not commonly known by the name comprised in the disputed domain name.

The Complainant states that the disputed domain name was registered and is being used in bad faith as the Respondent is offering the disputed domain name for a price that exceeds the Respondent's out-of-pocket costs, evidencing that the Respondent acquired the disputed domain name with the intent of selling it for profit by exploiting the Complainant's goodwill in its trademark. Furthermore, the Complainant holds that the disputed domain name endorses the assumption of affiliation between the Complainant and the disputed domain name and that the website on the disputed domain name displays a parking page containing keywords leading to sponsored links showcasing that the Respondent aims to generate revenue and benefits by using the Complainant's well-known trademark and reputation to generate website traffic. The Complainant further states that the Respondent knew or should have known of the registration and use of the Complainant's trademark and that the Respondent has not conceived any plausible actual or contemplated activities or legitimate interest in using the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has, in accordance with paragraph 4(a) of the Policy, requested that the disputed domain name be transferred to the Complainant.

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and have the disputed domain name transferred, the Complainant must establish that the three following elements are satisfied for the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Pursuant to paragraph 15 (a) of the Rules, the Panel shall decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

On the basis of the evidence submitted by the Complainant and, in particular, with regards to the content of the relevant provisions of the Policy (paragraph 4(a), (b), and (c)), the Panel concludes as follows:

### **A. Identical or Confusingly Similar**

Under the first element of paragraph 4 (a) of the Policy, the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant holds several trademark registrations of LAMBORGHINI and that the trademark is well-known and holds a strong reputation worldwide.

The disputed domain name comprises the Complainant's trademark with the intentional misspelling of one letter. Despite the misspelling of the Complainant's trademark, the Panel finds that the disputed domain name contains sufficiently recognizable aspects of the Complainant's trademark as the letters "n" and "m" are phonetically and visually similar.

Further, the generic TLD “.com” is not considered when assessing the similarity between a disputed domain name and a complainant’s trademark.

Given the considerations mentioned above, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark and that the requirements under paragraph 4(a) of the Policy have been satisfied.

### **B. Rights or Legitimate Interests**

For the Complainant to succeed under paragraph 4(a)(ii) of the Policy, the Complainant must establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. If the Complainant shows a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the evidentiary burden of production shifts to the Respondent. See section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

In the Panel’s view, the presented evidence referred to by the Complainant is sufficient to establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the disputed domain name is used to mislead Internet users or host a parking page comprising click-per-click links, which does not represent a *bona fide* offering.

The Panel has not been presented with, or discovered, any evidence that i) the Respondent has received a license or other permission to use the Complainant’s trademark or any domain name incorporating this mark; (ii) the Respondent is commonly known by the disputed domain name; (iii) the Respondent has acquired trademark rights to use the disputed domain name; or (iv) the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Based on the above, the Panel concludes that the conditions in paragraph 4(a)(ii) of the Policy have been met.

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

For the Complainant to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Given that the Complainant’s trademark is well-known and predates the registration of the disputed domain name and that the disputed domain name nearly incorporated the trademark in its entirety, the Panel finds it unlikely that the Respondent was unaware of the Complainant’s trademark registrations.

The Panel finds that the website hosted on the disputed domain name is created to attract Internet users for commercial gain, as the website contains pay-per-click links and advertisements, and that the Respondent uses the Complainant’s trademark to attract Internet traffic to increase the commercial gain. Furthermore, the fact that the Respondent is offering the disputed domain name for a price likely exceeding the out-of-pocket costs underlines that the Respondent acquired the disputed domain name intending to exploit the Complainant’s well-known trademark.

Based on the above, the Panel concludes that the Complainant has demonstrated that the Respondent both registered and is using the disputed domain name in bad faith. Therefore, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(b) 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, <lanborghini.com> be transferred to the Complainant.

*Halvor Manshaus*

**Halvor Manshaus**

Sole Panelist

Date: September 26, 2023