ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
LPL Financial LLC v. CV ID Protection d/b/a PROTECT.ID / PT DEWABISNIS DIGITAL INDONESIA, DEWABIZ
Case No. D2022-1340

1. The Parties

The Complainant is LPL Financial LLC, United States of America ("United States"), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is CV ID Protection d/b/a PROTECT.ID, Indonesia / PT DEWABISNIS DIGITAL INDONESIA, DEWABIZ, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <lplfinancialplan.com> is registered with CV. Jogjacamp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 14, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 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 April 20, 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 amended Complaint on April 22, 2022.

The Center verified that the Complaint together with the 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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 18, 2022. Due to file size restrictions, the Center's email with the Annexes to the Complaint was not successfully sent to the Respondent. On May 25, 2022,

therefore, the Center sent an email "Regarding Notification of Complaint" to the Respondent attaching one part of the Annexes and two further emails attaching the remaining parts of the Annexes. The Center's email also informed the Respondent that, if it wished to file a Response following receipt of the Annexes, the Response would be provided to the Panel for consideration. On May 26, 2022, the Center received an email from the Respondent[1] acknowledging receipt of the Center's May 25, 2022 emails. No further Response has been received from the Respondent. The Center notified the Parties the Commencement of Panel Appointment Process on May 27, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 27, 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 Complainant was formed in 1989 in the United States on the merger of two brokerage firms, Linsco and Private Ledger. Its parent, LPL Holdings Inc., has been listed on the NASDAQ under "LPLA" since 2010.

The Complainant provides financial advice services, claiming to be the largest independent broker-dealer in the United States. Its services include the provision to independent financial advisers and financial institutions of technology, research, clearing and compliance services as well as practice management programs. From the materials included in the Complaint, these services are provided under the banner of LPL Financial (with a small device) and make extensive use of "LPL" alone to refer to the Complainant.

According to the Complaint, the Complainant provides its integrated platform of brokerage and investment advisory services to more than 19,100 financial professionals and about 800 financial institutions, managing over USD 1.1 trillion in advisory and brokerage assets. It has over 4,800 employees. In 2021, the Complainant's net revenue reached over USD 7.7 billion with a gross profit of US 2.4 billion.

The Complainant's Facebook page, @LPLFinancialLLC, has 20,000 followers; its Twitter account, @LPL, has 23,200 followers; its LinkedIn account, lpl-financial, has 77,500 followers; and its YouTube channel, LPL Financial, 1,200 subscribers.

The Complainant registered the domain name <lpl.com> in 1994, and uses it for its main corporate website. The Complainant has also registered a number of other domain names based on "lpl" or "lpl-financial" and operates two new Top Level Domains: ".lpl" and ".lplfinancial".

The Complaint includes evidence that the Complainant is the owner of the following registered trademarks:

(a) United States Registered Trademark No. 1,801,076, LPL, which was registered on October 26, 1993, in the Principal Register in respect of financial management services in International Class 36;

(b) United States Registered Trademark No. 3,662,425, LPL Financial and device, which was registered on August 4, 2009, in the Principal Register in respect of a range of financial advice and investment services in International Class 36 and technology services related to financial advice and investment in International Class 42; and

(c) Chinese Registered Trademark No 38031585, LPL Financial, which was registered on February 21, 2020, in respect of a range of financial services in International Class 36.

The disputed domain name was registered on March 14, 2022.

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[1] As the first-named Respondent is a privacy service, the Panel will refer to the second-named Respondent as the Respondent unless the contrary is required.

The disputed domain name resolves to a website, under the heading “LPL Financial Plan”, one section of which appears to be a blog, providing a number of articles related to financial advice. A second section is headed “Shop by Amazon” and appears to have links to buy products from Amazon as part of the Amazon Affiliate program. A third section is headed “Jobs by Career Jet”. This website is in English.

Apart from the website to which the disputed domain name resolves, the Respondent also has a website at “www.dewabiz.com”. This website under the trademark DEWABIZ appears to offer cloud hosting and related Internet services in Indonesian.

5. Discussion and Findings

Apart from the email on May 26, 2022, acknowledging receipt of the Center’s emails attaching the Complaint and the Annexes in three parts and inviting the Respondent to submit a Response for consideration, no response has been filed. Nor has any request for further time been received. In these circumstances, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks for LPL, LPL Financial and device and LPL Financial identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. *E.g.*, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. WIPO Overview 3.0, section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, WIPO Overview 3.0, section 1.10. In the present case, the device element is a noticeable but subsidiary part of the trademark. The verbal element is not overborne or subsumed in it and is the essential or identifying element. Accordingly, it is appropriate to disregard it and refer to the verbal element only.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's LPL Financial registered trademarks and the term "plan". The omission of the space between "lpl" and "financial" is insignificant and, in any event, spaces cannot be represented as such in domain names. The disputed domain name also consists of the Complainant's registered trademark LPL and the descriptive words "financial" and "plan". As this requirement under the Policy is essentially a standing requirement, the addition of such descriptive terms does not preclude a finding of confusing similarity with any of the Complainant's trademarks. See *e.g.,* WIPO Overview 3.0, section 1.8. Apart from anything else, the Complainant's trademarks remain visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See *e.g.*, WIPO Overview 3.0, section 2.1.

The Respondent registered the disputed domain name well after the Complainant had registered its trademarks and also after the Complainant began using its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The Complainant points out that the "Shop by Amazon" facility on the website to which the disputed domain name resolves and the Respondent's involvement in the Amazon Affiliate program precludes reliance on the example provided by paragraph 4(c)(iii). As in *Zachry Alexander Brown v. Bormon Bolen*, WIPO Case No. D2018-0951, it is clearly open to infer that the Respondent is deriving, or seeking to derive, revenue through that facility.

The Complainant contends that at least a number of the posts in the "Financial Plan" section of the Respondent's website are very close or "bowdlerised" versions of articles originally posted on other, apparently unrelated sites such as "www.genyplanning.com", "www.mainstreetplanning.com", and "www.clevergirlfinance.com". For example, the post "9 Must-Do Financial Tasks To Check Off Your Year-End List" posted on the Respondent's website in April 2022 corresponds very closely to a post on November 5, 2021 on the Gen Y Planning blog. The title is the same, the same nine tasks are covered (although some are slightly bowdlerised) and the text is very close. For example, the opening four paragraphs on the Gen Y Planning website read:

"Year-end is a special time filled with traditions, old and new, and hopefully space to relax, decompress, and prepare for a wonderful new year.

"As the final days of 2021 rapidly approach, it's important to carve out intentional time to ready your finances for 2022.

"What should go on your year-end to-do list?

"Here are nine financial elements you won't want to forget!"

These may be compared to the corresponding paragraphs on the Respondent's website (italics indicating altered text):

"*Yr*-end is a *particular* time *crammed* with traditions, *previous* and new, and hopefully *area* to *loosen up*, decompress, and *put together* for *an exquisite new 12 months*.

"As the *ultimate* days of 2021 *quickly strategy*, it's *vital* to carve out intentional time to *prepared* your *funds* for 2022.

"What *ought to* go in your year-end to-do *listing*?

"*Listed below are 9 monetary parts* you *gained't need to overlook*!"

The degree of resemblance is so close in fact that the post on the Respondent's website, published in April 2022, simply repeats the end of year sign off from the Gen Y Planning post, "We wish you a restful, joyful, and fulfilling new year! See you in 2022". changing only "wish" to "want".

The Panel notes that at the time this decision is being prepared, there are 10 "posts" on page 1 of the Financial Plan section of the Respondent's website of which seven consist simply of different stock images and the word "Array" repeated many times.

In these circumstances, the Panel accepts the Complainant's contention that the Respondent is not engaged in making a genuine offer of financial advice or services but appears to be using the Complainant's trademark in a pretextual attempt to mask its cybersquatting activities.

The disputed domain name is not derived from the Respondent's name. While "LPL" is a three-letter acronym, it is not one which appears to be associated with the "Dewabiz" name or business. Contrast for example *Man Marken GmbH v. Gavinji*, WIPO Case No. D2022-0973. There is no obvious connection between the acronym and financial planning or services (apart from its adoption and use by the Complainant. Moreover, the Respondent appears to have adopted it well after the Complainant had

established a very extensive reputation in the acronym in connection with financial services. The inclusion of the "Shop By Amazon" functionality, the Amazon Affiliate disclaimer and provision on the Respondent's website for Digital Millennium Copyright Act ("DMCA") notices indicate the Respondent has familiarity with United States businesses. Moreover, unlike the Dewabiz website which is in Bahasa Indonesian, the Respondent's website is in English.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g., Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. D2010-0470.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

A number of factors point to the high likelihood that the Respondent was aware of the Complainant's trademark when registering the disputed domain name. First, as already mentioned, there is the length of the Complainant's use. The Respondent's website also demonstrates considerable familiarity with United States-based businesses and activities. Moreover, as the Complainant points out, a Google search on "LPL Financial" returns results which are substantially references to the Complainant and its services including being the only business referenced on the first pages of results. Further, as already discussed in section 5.B. above, there is no obvious or apparent connection between "LPL" or "LPL Financial" and the Respondent or any services it offers.

Accordingly, the Panel finds that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark and, having regard to the content of the website discussed above, to take advantage of the significance of "LPL Financial" as the Complainant's trademark. The Panel finds, therefore, that the disputed domain name has been registered in bad faith.

For the reasons considered in section 5.B. above, it also appears that the financial planning posts on the Respondent's website are not use in connection with a genuine financial planning service but a pretext for other activities. Thus, the Complainant contends, and the Panel accepts, that the Respondent appears to be seeking to obtain financial gain through its Amazon Affiliate links through the use of the Complainant's trademarks in the disputed domain name.

In circumstances where the Respondent has not sought to claim, let alone establish, that it has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used the disputed domain name in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <lplfinancialplan.com>, be transferred to the Complainant.

/Warwick A. Rothnie/
Warwick A. Rothnie
Sole Panelist
Date: June 10, 2022