

ADMINISTRATIVE PANEL DECISION

LPL Financial LLC v. NJABULO PHIWAYINKOSI MTAMBU
Case No. D2023-0578

1. The Parties

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

The Respondent is NJABULO PHIWAYINKOSI MTAMBU, South Africa.

2. The Domain Name and Registrar

The disputed domain name <lplfinancial.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2023. On February 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 amended Complaint on February 14, 2023.

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 February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 10, 2023.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on March 16, 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 a leader in the retail financial advice market, and is considered the largest independent broker-dealer in the U.S. The Complainant serves independent financial advisors and financial institutions, providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow their practices.

The Complainant was founded in 1989 through the merger of two brokerage firms – Linsco and Private Ledger. Since 2010, the Complainant has been publicly traded on the NASDAQ stock exchange.

The Complainant has over 4,800 employees, with its primary offices in San Diego, California; Fort Mill, South Carolina; Boston, Massachusetts and Austin, Texas. In the fourth quarter of 2022, the Complainant's gross profit reached over USD 972 million, with a net income of over USD 319 million.

The Complainant has registered a number of LPL trademarks worldwide covering various goods and services related to the activities of the Complainant. Some of the LPL trademark registrations are indicated below:

- U.S. trademark registration for LPL No. 1801076 registered on October 26, 1993 in Class 36;
- European Union (“EU”) trademark registration No. 018653022 for LPL, registered on May 26, 2022 in Class 36;
- U.S. trademark registration No. 3662425, for LPL FINANCIAL (and design), registered on August 4, 2009 in Classes 36, 42.

The Complainant is the owner of the domain names <lpl.com>, registered in August 2, 1994, <lpl-financial.com> registered on January 11, 2004, <lpl.net> registered on November 16, 1999, and other domain names. The Complainant actively uses these domain names in connection with the websites to promote its products, services, and engage with clients. In addition, the Complainant's parent company, LPL Holdings, Inc., is the owner of the branded new generic Top-Level Domains (“gTLDs”) “.lpl” and “.lplfinancial”.

The Complainant also has a strong presence on various social-media platforms with over 19,000 likes on its official Facebook page and over 25,000 followers on Twitter.

The Respondent registered the disputed domain name on January 13, 2023. The disputed domain name does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has established rights in the LPL and LPL FINANCIAL trademarks by virtue of longstanding use and registration in numerous jurisdictions worldwide.

The trademarks LPL and LPL FINANCIAL are inherently distinctive and well-known in connection with the Complainant's financial advisory services.

The Complainant made substantial investments to develop a strong presence online by being active on various social-media platforms.

The disputed domain name consists of an obvious misspelling of the Complainant's LPL FINANCIAL mark, whereby the first occurrence of the letter "i" is omitted from the term "financial" combined with the gTLD ".com". Therefore, according to the Complainant the dominant textual features of its LPL and LPL FINANCIAL trademarks are recognizable in the disputed domain name and the disputed domain name is confusingly similar to the Complainant's trademarks.

The Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has registered the disputed domain name many years after the establishment of the Complainant's rights on LPL and LPL FINANCIAL trademarks.

The disputed domain name does not resolve to an active website, however, the non-use of a domain name does not amount to use of the domain name in connection with any *bona fide* offering of goods or services.

The Complainant has not authorized the Respondent to use the LPL and LPL FINANCIAL trademarks in the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent was fully aware of the Complainant's reputation and the Complainant's rights on the LPL and LPL FINANCIAL trademarks when the Respondent registered the disputed domain name.

The Complainant additionally sent a cease and desist letter to the Respondent on January 26, 2023, however, the Respondent did not respond.

The disputed domain name was registered in bad faith by the Respondent for the purpose of creating confusion with the Complainant's marks to divert or mislead third parties for the Respondent's illegitimate profit.

Therefore, the disputed domain name has been registered by the Respondent in an unfair manner and in bad faith. It is also inconceivable that the Respondent had any good faith intentions at the point of registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the LPL and LPL FINANCIAL trademarks, based on its EU and U.S. trademark registrations, and continuous use in connection with provision of the financial advisory services.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having relevant trademark rights.

The disputed domain name is comprised of the Complainant's LPL FINANCIAL trademark with omitted first letter "i" in the term "financial", and combined with the gTLD ".com".

Domain names that consists of a common, obvious, or intentional misspelling of a trademark are considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

The Panel notes that the omission of the first letter “i” in the term “financial” in the disputed domain name does not prevent the Complainant’s trademark from being recognizable in the disputed domain name.

Thus, the Panel finds that the disputed domain name incorporates the Complainant’s LPL and LPL FINANCIAL trademarks entirely.

Furthermore, the Panel considers that the disputed domain name is confusingly similar to the Complainant’s LPL and LPL FINANCIAL trademarks.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant’s *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent’s rights or legitimate interests to the disputed domain name, and that complainants frequently address to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not involved into a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the Complainant, the Respondent is not an authorized or licensed to use the LPL and LPL FINANCIAL trademarks in the disputed domain name.

Moreover, given that the disputed domain name consists of a misspelling of the Complainant’s trademark, the Panel struggles to conceive any legitimate interests of the Respondent in the disputed domain name. Under such circumstances, any use of the disputed domain name by the Respondent only increases the possibility of the Internet users’ to falsely attribute the disputed domain name to the activities of the Complainant, seeing as such Internet users will likely be unaware of the typographical variation in the disputed domain name as compared to the Complainant’s trademark.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Taking into account the reputation and long period of use of the Complainant’s LPL and LPL FINANCIAL trademarks, and in the corresponding Complainant’s domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent’s activities does not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy).

The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name and concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

As the Panel established above, the Complainant's LPL and LPL FINANCIAL trademarks were used in commerce well before the registration of the disputed domain name on January 13, 2023. The Complainant's LPL trademark predates registration of the disputed domain name for around 30 years.

Previous UDRP panels have already recognized the wide reputation of the LPL and LPL FINANCIAL trademarks: "The Complainant's LPL and LPL FINANCIAL trademarks are well known in connection with the Complainant's financial advisory services. The Complainant's trademarks have been continuously and extensively used for many years and have as a result acquired considerable reputation and goodwill worldwide." See *LPL Financial LLC v. Domains By Proxy, LLC. / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-0819](#).

Another UDRP panel also noted: "Complainant's marks LPL and LPL FINANCIAL are inherently distinctive (arbitrary), and it is plausibly alleged (and supported by the number of Complainant's customers and its annual revenues) that these marks are well known." See *LPL Financial LLC v. Contact Privacy Inc. Customer 7151571251 / Shawn Chapman*, WIPO Case No. [D2022-2089](#).

The Panel agrees and considers that the well-known character of the LPL and LPL FINANCIAL trademarks is established.

The Panel finds with a high degree of certainty that the Respondent knew of the Complainant's LPL and LPL FINANCIAL trademarks when registering the disputed domain name. This conclusion is supported by the well-known character of the Complainant's marks, strong presence of the Complainant online and the intentional misspelling of the Complainant's marks by the Respondent in the disputed domain name.

Furthermore, the Respondent failed to submit a response to disprove allegations of illegal activity or provide any evidence of a good-faith use or to show rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent's intent for registering the disputed domain name, which reproduces the Complainant's trademark entirely has always been to capitalize on the goodwill of the Complainant's trademark.

According to previous UDRP panel decisions, passive holding may indeed amount to bad faith use in certain circumstances. See section 3.3 of [WIPO Overview 3.0](#).

Furthermore, the Panel finds it implausible that the disputed domain name could be used by the Respondent in good faith considering that it is confusingly similar to the Complainant's trademarks. The Panel finds that the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith in these circumstances.

Therefore, based on the confirmed reputation, fame, long term and worldwide use of the Complainant's LPL and LPL FINANCIAL trademarks, and in the absence of the response from the Respondent providing any explanation or evidence of actual or contemplated good-faith use, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <lplfinancial.com> be transferred to the Complainant.

/Oleksiy Stolyarenko/

Oleksiy Stolyarenko

Sole Panelist

Date: March 31, 2023