

## **ADMINISTRATIVE PANEL DECISION**

Clopay Corporation v. Domain Admin, Totaldomain Privacy Ltd  
Case No. D2023-4107

### **1. The Parties**

The Complainant is Clopay Corporation, United States of America ("US"), represented by Dinsmore & Shohl LLPUS.

The Respondent is Domain Admin, Totaldomain Privacy Ltd, Panama.

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

The disputed domain name <cloplaydoors.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 29, 2023. On October 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Complainant filed an amended Complaint on October 9, 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 October 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 10, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on November 14, 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 one of the largest overhead door manufacturer of North America and operates in this field since more than 50 years. The Complainant has four manufacturing plants and over fifty distribution centers throughout the US and Canada. The Complainant uses the trademark CLOPAY since the thirties. Since the sixties, the trademark CLOPAY is used in connection with doors.

The Complainant is the owner of various registrations for the trademark CLOPAY in the US, among which the following:

- CLOPAY (word mark), registration No. 1,777,639, filed on October 14, 1992, and registered on June 22, 1993, claiming first use in commerce since December 1964, for “garage doors” in class 6;
- CLOPAY (word mark), registration No. 3,341,661, filed on February 16, 2006, and registered on November 20, 2007, claiming first use in commerce since June 26, 2007, for “non-metal entry doors” in class 19;

The Complainant is also the owner of the domain names <clipaydoor.com>, <clipaydoors.com> <clipay.com> and <myclipay.com>, which resolve to the Complainant’s main website and are used in connection with the Complainant’s door business.

The disputed domain name was registered on April 26, 2016, and resolves to a parking page containing links redirecting to third party’s competitors of the Complainant. The disputed domain name is also offered for sale for USD 2,599.

#### 5. Parties’ Contentions

##### A. Complainant

According to the Complainant’s the disputed domain name is confusingly similar to its trademark CLOPAY as it essentially consists of a misspelling of the Complainant’s trademark with the addition of the term “doors”, which refers to the Complainant’s business and which cannot prevent a finding of confusing similarity.

The Complainant also maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not known by the disputed domain name. The Respondent does not own trademark rights over the disputed domain name, nor has the Complainant ever assigned, sold or transferred any rights in any of its CLOPAY trademarks to the Respondent. The Complainant has not authorized the Respondent to use or register its trademark as a domain name. Moreover, the Respondent is not using the disputed domain name in connection with a legitimate noncommercial or fair use of the disputed domain name, or a *bona fide* offering of goods or services. The disputed domain name resolves to a parking page displaying links referring to the Complainant’s activity. Presumably, these links generate click-through revenues. At the very least, they may mislead consumers.

Lastly, the Complainant maintains that the disputed domain name was registered and is being used in bad faith. The Respondent was almost certainly aware of the Complainant’s trademark when it registered the disputed domain name as the disputed domain name consists of a misspelling of the Complainant’s mark followed by the term “doors”, which refers to the Complainant’s business.

The registration of the disputed domain name is an attempt to exploit the Complainant’s name and reputation. The similarity between the Complainant’s CLOPAY trademark and the disputed domain name gives rise to a clear likelihood of confusion or mistake on the part of users. As a result, the Respondent registered the disputed domain name to attract users to its website for commercial gain.

The disputed domain name is offered for sale for an amount that is certainly in excess of the Complainant's out-of-pocket costs directly related to the disputed domain name. Moreover, the Respondent has engaged in a pattern of bad faith conduct as it has already registered numerous domain names involving variations of well-known trademarks.

Finally, the Complainant notes that the Respondent has used a double layer of privacy protection service when registering the disputed domain name. In fact, when the first privacy protection service disclosed the "identity" of the registrant, the latter appeared to be another company offering privacy protection services. This circumstance further supports the Respondent's bad faith if considered in conjunction with the other elements at play.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Panel finds that the Complainant has duly substantiated its rights over the trademark CLOPAY. The "cloplay" component of the disputed domain name is a misspelling of the Complainant's trademark as it only adds a letter "l" in the final part of the word ("pay" vs. "play"). Notwithstanding this slight difference, the disputed domain name contains sufficiently recognizable aspects of the relevant mark. The last part of the disputed domain name consists of the word "doors", which cannot prevent a finding of confusing similarity. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's mark for the purpose of the first element of the Policy (see also sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition; the "[WIPO Overview 3.0](#)").

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

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, 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 disputed domain name.

In the instant case, the Panel notes that the Complainant has no relation with the Respondent and that the Complainant did not authorize the Respondent to incorporate its CLOPAY trademark (or a misspelling of this trademark) in the disputed domain name. The Respondent is not a licensee of the Complainant and does not own any trademark rights for the disputed domain name. Finally, nothing in the file suggests that the Respondent is commonly known by the disputed domain name.

The Panel also finds that the Respondent's use of the disputed domain name does not amount to a *bona fide* offering of goods or services or to a noncommercial or fair use. The disputed domain name contains a misspelling of the Complainant's mark and the term "doors", which is a direct reference to the Complainant's activity. As such, the disputed domain name is likely to mislead potential customers of the Complainant, by inducing them to believe that the disputed domain name belongs to the Complainant or to a related entity. The disputed domain name leads to a parking page displaying links to competitors' websites. From each click on these links the Respondent is likely to derive some income. Such use cannot confer to the Respondent any rights or legitimate interests in the disputed domain name, as the links appearing on the Respondent's parking page compete with or capitalize on the goodwill of the Complainant's mark or otherwise mislead Internet users (see section 2.9 of the "[WIPO Overview 3.0](#)").

In view of the above, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production now shifts to the Respondent to provide convincing evidence that it has rights or legitimate interests in the disputed domain name. However, the Respondent has chosen not to rebut the Complainant's arguments by omitting to file a Response.

Accordingly, the Panel finds that the Respondent has failed to demonstrate that he owns rights or legitimate interests in the disputed domain name and considers that the Complainant has successfully established the second condition under the Policy.

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

The Panel is of the opinion the Respondent was aware of the Complainant's trademark when it registered the disputed domain name. The Complainant's trademark consists of an invented word and the disputed domain name is a misspelling of this trademark. Already this circumstance in itself makes it difficult to believe that the Respondent registered the disputed domain name by accident. The fact that the Respondent also included in the disputed domain name the term "doors", which is descriptive of the Complainant's activity, removes any remaining doubt about the Respondent's effective knowledge of the Complainant's trademark at the time of the registration of the disputed domain name. Accordingly, the Panel finds that the Respondent registered the disputed domain name in bad faith, as the Respondent intentionally targeted the Complainant and its trademark when it proceeded with the registration of the disputed domain name.

The disputed domain name resolves to a parking page containing pay-per-click links to the Complainant competitors' websites. The Respondent is probably deriving an income from each click on these links. The use, for commercial gain, of a domain name confusingly similar to a third party's trademark, without rights or legitimate interests on this trademark, to lead to a parking page containing links to the websites of the Complainant's competitors', amounts to use in bad faith. Moreover, the Respondent is offering for sale the disputed domain name for an amount that is likely in excess of the directly related out-of-pocket costs. This use amounts to use in bad faith as the Respondent is trying to capitalize on the goodwill of the Complainant's CLOPAY trademark.

Finally, the Panel notes that the Respondent is a company offering privacy services. Such a circumstance, along with the others mentioned above, are further indication of bad faith.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name 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, <cloplaydoors.com>, be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: November 27, 2023