

ADMINISTRATIVE PANEL DECISION

Lennar Pacific Properties Management, LLC, Lennar Corporation v.
yangyang, yangyang
Case No. D2024-2466

1. The Parties

The Complainant is Lennar Pacific Properties Management, LLC, United States of America (“US”) (“First Complainant”), and Lennar Corporation, US (“Second Complainant”), represented by Slates Harwell LLP, US.

The Respondent is yangyang, yangyang, China.

2. The Domain Name and Registrar

The disputed domain name <lennarmortgagejobs.com> (“Disputed Domain Name”) is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2024. On June 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 24, 2024, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainants on June 24, 2024, 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 amendment to the Complaint on June 24, 2024.

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 June 25, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was July 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 18, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on July 26, 2024. 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 Complainants and their connected companies are a well-established home construction group which have provided real estate management, brokerage, development, construction, mortgage, and financial services since the 1950s. The First Complainant is a US incorporated company that owns various word and figurative trademarks for or containing the term "LENNAR" ("Complainants' Trademark"). The Second Complainant is a related company and the authorized licensee of the Complainants' Trademark.

The relevant trademark registrations include, inter alia, US Trademark ("USTM") Registration No. 3108401 registered for LENNAR on June 27, 2006, in Classes 35, 36, and 37; USTM registration No. 3477143 for LENNAR registered on July 29, 2008, in Classes 36 and 37; and USTM Registration No. 6980927 for LENNAR MORTGAGE registered on February 14, 2023, in Class 36.

The Complainants' Trademark is fully incorporated in the Second Complainants' domain names <lennar.com> and <lennarmortgage.com> registered on September 5, 1996, and November 5, 2019, respectively, and resolves to the Second Complainants' websites ("Complainants' Websites").

The Disputed Domain Name was registered by the Respondent on September 6, 2023. At the time of filing of the Complaint, the Disputed Domain Name resolved to a Chinese language website hosting a variety of pornographic content. At the time of rendering of this decision, the Disputed Domain Name resolved to an inactive website which displayed a message that reads "Your IP address is blocked. If you this error, please contact webmaster!" (collectively with the Chinese language website, "Respondent's Website").

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainants contend that:

(a) The Disputed Domain Name is confusingly similar to the Complainants' Trademark. The Disputed Domain Name reproduces the Complainants' Trademark in its entirety, with the only difference between the Disputed Domain Name and the Complainants' Trademark being the addition of the descriptive term "jobs".

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence that the Respondent is using, or has made demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services; nor is the Respondent commonly known by the Disputed Domain Name, has relevant trademark rights or is making legitimate noncommercial or fair use of the Disputed Domain Name. Moreover, the Respondent is not making legitimate noncommercial or fair use of the Disputed Domain Name, instead using it for commercial gain and to misleadingly divert Internet users and tarnish the reputation of the Complainants' trademark by hosting pornographic content on the Respondent's Website.

(c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. The Respondent is making use of the Disputed Domain Name to disrupt the Complainants' business, tarnish the reputation of the Complainants' Trademark, and/or to sell the Disputed Domain Name to the Complainant or a competitor of the Complainant for profit. This is supported by the Respondent's lack of response to the Complainants' cease and desist letter dated August 24, 2024, and continued use and registration of the Disputed Domain Name following receipt of this letter.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainants are required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainants' Trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have shown rights in respect of the Complainants' Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainants' LENNAR MORTGAGE trademark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark LENNAR MORTGAGE for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, in this case, "jobs", may have a bearing on the assessment of the second and third elements, since the Complainants' LENNAR MORTGAGE trademark is still recognizable within the Disputed Domain Name, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainants' LENNAR MORTGAGE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control 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 on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainants' prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel agrees with the Complainants that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name. There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services, or should be regarded as legitimate noncommercial or fair use. Moreover, panels have held that use of a domain name containing an established trademark to resolve to a website containing adult-oriented material cannot constitute bona fide use (see *Tipico Co. Ltd. v. jihemei2019 mu m huateng, mai*, WIPO Case No. [D2020-0364](#)). Having reviewed the available record, the Panel notes that it is difficult to conceive that the Respondent may be using the Disputed Domain Name in connection with a bona fide offering of goods or services, or for legitimate noncommercial or fair use.

The Respondent would likely not have adopted the Complainants' Trademark if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainants.

Moreover, the Disputed Domain Name incorporates the Complainants' LENNAR MORTGAGE trademark in its entirety. While the Disputed Domain Name includes the additional term "jobs", this is descriptive and does not affect the dominant presence of the Complainants' Trademark in the Disputed Domain Name. Thus, the Disputed Domain Name carries a high risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainants and cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name is inherently misleading. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainants' contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that use of a domain name containing a complainant's trademark to host adult material is, in and of itself, sufficient evidence to support a finding of bad faith registration and use (see *Boehringer Ingelheim Pharma GmbH & Co. KG. v. Denis Stravinsky*, WIPO Case No. [D2019-1282](#); *Unilabs AB v. Domain Administrator*, See *PrivacyGuardian.org / Xian Xing Hao*, WIPO Case No. [D2019-2599](#); and *VIVENDI v. Guseva Svetlana*, WIPO Case No. [D2018-2631](#)). The Panel therefore finds that the hosting of pornographic content on the Respondent's Website; the Respondent's failure to respond to the Complainants' cease-and-desist letter; and its continued registration of the Disputed Domain Name after receiving said letter should be taken into consideration in a finding of bad faith under the Policy.

At the time of this decision, the Disputed Domain Name resolves to an inactive website. However, panels have nonetheless found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding.

Although panelists will look at the totality of the circumstances in each case, key factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's trademark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Bearing in mind the distinctiveness and reputation of the Complainants' Trademark, as well as the composition of the Disputed Domain Name, the Panel finds that in the circumstances of this case, the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel therefore finds that the Complainants have established the third element 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 <lennarmortgagejobs.com> be transferred to the First Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: August 9, 2024