

## **ADMINISTRATIVE PANEL DECISION**

PN II, Inc. v. Tosha Thornton

Case No. D2025-0291

### **1. The Parties**

The Complainant is PN II, Inc., United States of America ("United States"), represented by Adams and Reese LLP, United States.

The Respondent is Tosha Thornton, United States.

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

The disputed domain name <pultenewhomes.com> (the "Disputed Domain Name") is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 24, 2025. On January 28, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 28, 2025, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 2025, 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 January 31, 2025.

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 5, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 25, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 27, 2025.

The Center appointed Lynda M. Braun as the sole panelist in this matter on March 6, 2025. 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 Nevada, United States corporation, with headquarters in Atlanta, Georgia, United States. The Complainant is a wholly-owned subsidiary of PulteGroup, Inc., a homebuilding company currently operating in approximately fifty markets. The Complainant and its predecessors have been using the PULTE trademarks since at least as early as 1969 to offer new home construction, real estate, and mortgage services, and to advertise and promote these services.

The Complainant is the owner of the following registered trademarks with the United States Patent and Trademark Office ("USPTO"): PULTE, United States Trademark Registration No. 3,676,026, registered on September 1, 2009, in International Class 36; PULTE, United States Trademark Registration No. 1,942,747, registered on December 19, 1995, in International Classes 36 and 37; PULTE, United States Trademark Registration No. 7,025,786, registered on April 11, 2023, in International Classes 36 and 37; PULTEGROUP, United States Trademark Registration No. 4,077,463, registered on December 27, 2011, in International Class 37; and PULTE HOMES, United States Trademark Registration No. 1,942,626, registered on December 19, 1995, in International Class 37. The Complainant also is the owner of registered trademarks in Canada.

The foregoing trademarks will hereinafter collectively be referred to as the "PULTE Mark".

The Complainant is also the owner of many domain names incorporating the PULTE Mark, including <pulte.com>, <pultegroup.com>, <pultehomes.com>, <pultebenefits.com>, <pultegroupinc.com>, <pultemortgage.com>, <pultecapital.com>, and <pultehomesinc.com>. The Complainant operates its principal websites at "www.pulte.com", "www.pultegroup.com", and "www.pultegroupinc.com".

The Disputed Domain Name was registered on October 26, 2023, and resolved to a pay-per-click ("PPC") advertising page with links to third-party sponsored websites, purportedly offering services identical to those offered by the Complainant. On November 12, 2024, the Complainant's counsel sent the Respondent, via a contact form on the Registrar's site, a cease-and-desist message informing the Respondent that the Disputed Domain Name was infringing the Complainant's trademark. The Respondent, however, did not reply to the message.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant's PULTE Mark, as it includes the PULTE Mark in its entirety, followed by the terms "new" and "homes", and then followed by the generic Top-Level Domain ("gTLD") ".com";
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Disputed Domain Name resolves to a landing page that contains PPC third-party sponsored hyperlinks; the Complainant has not authorized, licensed, or otherwise permitted the Respondent to register a domain name containing the PULTE Mark; the Respondent was not making a bona fide offering of goods or services through use of the Disputed Domain Name; and the Respondent has never been commonly known by the PULTE Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith since, among other things, the Disputed Domain Name resolved to a PPC landing page where the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's PULTE Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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**

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the PULTE Mark.

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 complainant's 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.

It is uncontroverted that the Complainant has established rights in the PULTE Mark based on its decades of use as well as its registered trademarks for the PULTE Mark with the USPTO and Canada. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the [WIPO Overview 3.0](#), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having trademark rights in the PULTE Mark.

The Disputed Domain Name consists of the PULTE Mark in its entirety followed by the terms "new" and "homes" and then followed by the gTLD ".com". Accordingly, the Disputed Domain Name is confusingly similar to the PULTE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. In addition, where the Complainant's PULTE Mark, as here, is recognizable in the Disputed Domain Name, this does not prevent a finding of confusing similarity or identity under the first element. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms [...] would not prevent a finding of confusing similarity under the first element".

Moreover, the Disputed Domain Name is followed by the gTLD ".com". The addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that such element may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar

to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant's PULTE Mark.

Based on the available record, the Panel finds that 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name. Here, the Respondent has not so demonstrated.

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 Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's 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 Complainant's prima facie case includes the fact that the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its PULTE Mark, that the Complainant does not have any type of business relationship with the Respondent, that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, and that there is no evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, as noted above, the Disputed Domain Name resolves to a parking page displaying PPC links to various third-party goods and services. The Complainant infers, and the Panel concurs, that the Respondent is seeking to generate click-through revenue from Internet users drawn to the Respondent's web page due to a perceived association between the Disputed Domain Name and the Complainant's trademark. Such conduct, where the Respondent is seeking to unfairly capitalize on the goodwill associated with the Complainant's trademark, does not amount to use of the Disputed Domain Name in connection with a bona fide offering of goods or services. As such, the Respondent's registration and use of the Disputed Domain Name may be deemed commercially motivated and does not amount to a legitimate noncommercial or fair use within the meaning of paragraph 4(c)(iii) of the Policy.

Based on the available record, the Panel finds that 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.

The Disputed Domain Name resolves to a parking page displaying PPC links to third-party services, allegedly those identical or related to the services offered by the Complainant. The Complainant infers that the Respondent derives click-through revenue from the presence of such links on the website to which the

Disputed Domain Name resolves. The Panel finds that by using the Disputed Domain Name in such a manner, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's PULTE Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Moreover, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business by diverting Internet users who were searching for the Complainant's services from its official website to the Respondent's landing page. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The Respondent's use of the Disputed Domain Name is also likely to confuse Internet users into incorrectly believing that the Respondent's use is somehow authorized by, or that the Respondent is affiliated with the Complainant.

Finally, the Panel also finds that the Respondent knew that the Complainant had rights in the PULTE Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. The Respondent created a near identical domain name, incorporating the entirety of the PULTE Mark, making clear that the Respondent was well aware of the Complainant and its PULTE Mark. Therefore, it strains credulity to believe that the Respondent had not known of the Complainant or its PULTE Mark when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#) ("a finding of bad faith may be made where the respondent 'knew or should have known' of the registration and/or use of the trademark prior to registering the domain name"). Thus, the Panel concludes that in the present case, the Respondent had the Complainant's PULTE Mark in mind when registering the Disputed Domain Name.

Based on the available record, the Panel finds that the third element of the Policy has been established.

## 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 <pultenewhomes.com> be transferred to the Complainant.

/Lynda M. Braun/

**Lynda M. Braun**

Sole Panelist

Date: March 15, 2025