

ADMINISTRATIVE PANEL DECISION

HPD Software Limited v. Scott Parrott, Income Property Plus Case No. DIO2022-0045

1. The Parties

The Complainant is HPD Software Limited, United Kingdom, represented Stobbs IP Limited, United Kingdom.

The Respondent is Scott Parrott, Income Property Plus, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <landscape.io> 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 September 14, 2022. On September 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 14, 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 (Redacted for Privacy, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 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 September 16, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 14, 2022. The Response was filed with the Center on October 13, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on October 20, 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.

On October 28, 2022, the Complainant forwarded to the Center an unsolicited supplemental filing.

On November 17, 2022, the Panel issued Procedural Order No. 1 inviting the Respondent to provide information and evidence related to any of the points included in the Complainant's unsolicited supplemental filing, and to provide information and evidence in connection to its alleged proposed business plans and its alleged professional career.

4. Factual Background

The Complainant is an international financial software company founded in 1972, which provides various products and services within the financial industry, including factoring, invoice discounting, supply chain finance, and asset based lending software. It was originally incorporated as Hill Price Davison Limited, but changed its name to HPD Software Limited (in 2000), and to Lendscape Limited (in June 2022). The Complainant provides its financial software for some 135 financial services providers in the United Kingdom, Europe, North America, the Middle East, the Far East, and sub-Saharan Africa. Its clients include HSBC and Deutsche Bank. It has offices in the United Kingdom, North America, and Australia, and on 2021, its turnover was in excess of GBP 19.3 million.

Since February 27, 2017, the Complainant operates under the LENDSCAPE mark holding various trademark registrations for this brand, including United Kingdom Trademark Registration No. UK00916751695, LENDSCAPE, word, registered on December 22, 2017, in classes 9, 35, 36, 38, and 42; European Union Trademark Registration No. 016751695, LENDSCAPE, word, registered on December 22, 2017, in classes 9, 35, 36, 38, and 42; and United States Trademark Registration No. 5,457,128, LENDSCAPE, word, registered on May 1, 2018, in classes 9, 35, 36, 38, and 42, (collectively the "LENSCAPE mark").

The Complainant further owns the domain name <lendscape.com> (registered on February 16, 1999, and acquired by the Complainant in 2022), which resolves to its corporate website. This domain name was acquired by the Complainant through a prior case under the Policy, namely *HPD Software Limited v. Dvlpmnt Marketing, Inc.*, WIPO Case No. [D2022-0269](#).

The disputed domain name was registered on July 1, 2019, and resolves to a GoDaddy landing page that offers for sale the disputed domain name and displays various promotional Pay-Per-Click ("PPC") links to third parties' sites in various industries. This parked page is headed by an invitation to "Obtain this Domain", and if one clicks on the "Obtain this Domain" link, one is taken to a page on the GoDaddy platform, which states "lendscape.io is not available, we may still be able to get it for you" and invites the browser to submit an offer.

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The word "lendscape" is a coined term, highly distinctive, and the LENDSCAPE mark is well known. The LENDSCAPE mark has obtained awards and accolades, its launch was accompanied by press coverage, and it has a strong commercial presence, as well as a strong presence over the Internet and on social media.

The disputed domain name is identical to the LENDSCAPE mark. The country code Top-Level-Domain ("ccTLD") ".io" is a merely technical requirement that should be disregarded.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. To the best of the Complainant's knowledge, the Respondent has never been known by the term "lendscape", and nothing indicates that he is making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a parked page that invites visitors to the site to make offers on the disputed domain name via a broker, which allows the Respondent to profit of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Complainant sent a cease and desist letter as well as a subsequent follow-up to the Respondent, which were not replied. Due to the considerable reputation of the LENDSCAPE mark, there is no realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's rights. The term "lendscape" is an invented and highly distinctive word, and any Internet search for this term brings up content related to the Complainant. The use of the disputed domain name indicates that the Respondent registered and uses the disputed domain name primarily for the purpose of attracting visitors for commercial gain, in accordance with paragraph 4(b)(iv) of the Policy, and the generalized offer to sell the disputed domain name falls within the scope of paragraph 4(b)(i) of the Policy.

The Complainant has cited previous decisions under the Uniform Domain Name Dispute Resolution Policy (the "UDRP Policy" or "UDRP") that it considers supportive of its position, and requests the transfer of the disputed domain name.

Additional key contentions included in the Complainant's unsolicited supplemental filing may be summarized as follows:

The Respondent admits in the Response his knowledge of the Complainant's LENDSCAPE brand at the time of the registration of the disputed domain name.

The Respondent has not provided any supporting evidence, which validates his allegations with regard of his purported business idea in connection to the disputed domain name (for a service that would apply to the residential mortgage industry). The Respondent has failed to substantiate this point. Setting-up email accounts related to the disputed domain is not enough to show demonstrable preparations to use the disputed domain name in relation to a legitimate business venture.

The fact that the Respondent counter-offered in a negotiation for the transfer of the disputed domain name for a high 5-figure sum, confirms that he registered the disputed domain name based on the brand value attached to the LANDSCAPE mark, in an attempt to profit from this trademark.

B. Respondent

Key contentions of the Response may be summarized as follows:

The disputed domain name is not identical to the Complainant's trademark. The ccTLD ".io" should be taken into consideration in the analysis. Websites are normally found through searches over the Internet, and a user looking for a brand in the mortgage industry would not be confused by an identical brand operating in a different industry. It is possible that various companies operate in different industries under the same brand, and no regulation or law indicates that an earliest registrar of a domain name should be automatically entitled to all other corresponding ccTLDs or generic Top-Level-Domains ("gLTDS").

The previous decisions under the UDRP cited by the Complainant should be disregarded, as this case is different and the LENDSCAPE mark has not the same level of recognition. The Complainant did not adopt its current company name until June 2022, and the evidence provided in support of the alleged level of recognition of LENDSCAPE mark is insufficient. Its social media pages show a low number of followers.

In July 2019, the Respondent conceived a business idea for a service that would apply to the residential mortgage industry. Specifically, wholesale mortgage, where he has over 20 years of professional experience. The Respondent chose directly the ccTLD ".io" because he was also interested in participating

in the “blockchain/cryptocurrency/web3.0” industry and this ccTLD was becoming popular among companies in this sector. Due to the COVID-19 Global Pandemic, the Respondent had less time to dedicate to his project, and he decided that attempting to launch a business at that time was unwise. He should not be penalized for his prudence. In October of 2020, the Respondent established an email account over the disputed domain name for purposes of communication, and, a year later, an additional email account, which represents demonstrable preparations or intent to use the disputed domain name. The Respondent’s project has not yet been launched, so he has not used the disputed domain name, which currently resolves to a “GoDaddy default page” that is not the result of any action taken by the Respondent. Therefore, he should not be held responsible for this page. The Respondent has not taken any action to make a general offer to sell the disputed domain name.

The Respondent has not acted in bad faith. The Respondent had no knowledge at the time he registered the disputed domain name about the LENDSCAPE mark, because he did not perform any trademark search prior to its registration. The Respondent did not receive the Complainant’s cease and desist letters, and has not used the disputed domain name for any purpose other than email correspondence. The LENDSCAPE mark is not widely known. The Google search provided by the Complainant was performed on September 2, 2022, and it does not refer exclusively to the Complainant and its trademark.¹ “While the Respondent acknowledges that he was aware that [landscape.com](https://www.landscape.com) domain was taken at the time he registered the disputed domain name” an Internet search in July 2019 did not yield the same results (as the search provided by the Complainant, dated September 2022)”. “While the Respondent did not keep the results of a Google search performed in July of 2019, the Respondent recalls seeing the company, HPD Software Limited, with the [landscape.com](https://www.landscape.com) domain name branding themselves as @HPDLandscape in July of 2019;” however, “the Respondent saw no company branding themselves solely as Landscape in July of 2019, and therefore didn’t suspect a conflict.” As the word “landscape” was appended to the letters “HPD” and the Respondent was not aware of the policy of ignoring the gTLD or ccTLD, he had no reason to believe that he was infringing someone else’s rights.

The Respondent has not taken any actions to use or promote the disputed domain name for business purposes or for purposes of harming the Complainant’s brand. The current landing page linked to the disputed domain name is a GoDaddy default page. The Respondent received two unsolicited offers from third parties (of USD 5,000) to purchase the disputed domain name, which he declined, and he replied to the last offer that he “would be open to an offer in the high 5 figures” just to make the broker “go away.” The Respondent’s rejections to sell the disputed domain name refute the claim that he registered the disputed domain name primarily for purpose of selling it. The Respondent has not taken any action to promote or drive users to the disputed domain name, and there is no overlap between the Complainant’s business and the projected business of the Respondent (both operate in different industries).

The Respondent refutes the statements and allegations in the Complaint, and respectfully requests the Panel to deny the remedies requested by the Complainant.

Additional key contentions provided by the Respondent in reply to Panel Procedural Order No. 1 may be summarized as follows:

The Complainant has provided no evidence that the Respondent was aware of the Complainant’s LENDSCAPE mark at the time of the registration of the disputed domain name. Nowhere on the Complainant’s website, nor within the original Google search performed by the Respondent in 2019, or the subsequent Google search provided as Annex 6 of the Response, is any symbol for registered trademark used on the term “landscape”. The Complainant did not use this symbol in 2019, and is still not using this symbol in 2022.

¹ The Respondent indicates that, on page 1 of this search, there is a reference to a company “Solarscape (formerly Landscape),” and a reference to “Landscape Pricing at a domain www.capterra.com” which is likely the Complainant but is not readily apparent; and, On page 2, there is a reference to “Landscape Projects at Behance.net,” not readily apparent that this is related to the Complainant; and there are multiple references to HPD Landscape.

There are other “Landscape.TLDs” that have been registered.

No evidence of the Respondent’s efforts to launch a business is available per the reasons outlined in the Response. The Panel may visit the Respondent’s LinkedIn profile to see his professional experience at “www.linkedin.com/in/scott-parrott-1998492.”

The Complainant should be compelled to explain why it waited for three years to assert its rights and start this proceeding. The Complainant only started this proceeding after the ccTLD “.io” began becoming popular, and it is trying to strip the Respondent of his rightful registration.

The Respondent reiterates his explanations regarding his aim to dissuade GoDaddy domain brokers with his responses to their communications. Nobody in their right mind would consider his dismissive responses serious proposals. The Complainant has not met its burden of proving the three elements required by the Policy.

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules. Noting the substantive similarities between the Policy and the UDRP, the Panel will refer to prior UDRP cases and doctrine where appropriate, as well as various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Preliminary issue: Complainant’s Unsolicited Supplemental Filing and Panel Procedural Order No. 1

The Panel will take into consideration the Complainant’s unsolicited supplemental filing. To ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, the Panel has provided to the Respondent the opportunity to respond to the Complainant’s unsolicited supplemental filing through Panel Procedural Order No. 1.

B. Identical or Confusingly Similar

The Complainant indisputably has rights in the LENDSCAPE mark, both by virtue of its trademark registrations and as a result of its continuous and extensive use of this brand since 2017.

The first element of the Policy functions primarily as a standing (or threshold) requirement. In cases where a domain name incorporates the entirety of a trademark, it will normally be considered identical to that mark for purposes of the Policy; and the applicable gTLD or ccTLD in a domain name is considered a standard technical registration requirement and, as such, is generally disregarded under the first element confusing similarity test. This practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to “new gTLDs”); the ordinary meaning ascribed to a particular TLD may be relevant in the assessment of the second and third elements. See sections 1.7, and 1.11, [WIPO Overview 3.0](#).

The disputed domain name incorporates the LENDSCAPE mark in its entirety, and the ccTLD “.io” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity.

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant’s trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

C. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior decisions under the Policy (as well as under the UDRP) have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the Respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* case the Respondent lacks rights or legitimate interests.

The applicable standard of proof is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of [WIPO Overview 3.0](#).

The Complainant's *prima facie* assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name in order to rebut the Complainant's *prima facie* case.

Paragraph 4(c) of the Policy provides the circumstances, without limitation, for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy, and to establish rights or legitimate interests in the disputed domain name.

The Respondent alleges that, before the notice of the dispute, in July 2019, he had a business idea for a service in the residential mortgage industry, sector in which he has over 20 years of professional experience, but he decided to postpone this project due to the pandemic crisis.

The Panel notes, however, that the Respondent did not provide in his Response any evidence in support of these allegations, such as any specific information and documentation related to his alleged project and/or his experience (e.g., (i) evidence of business formation-related due diligence/legal advice/correspondence; (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards; (iii) proof of a genuine business plan utilizing the domain name, and credible signs of pursuit of the business plan; (iv) *bona fide* registration and use of related domain names; and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent). See section 2.2, [WIPO Overview 3.0](#). In this respect, the Panel considers insufficient evidence of demonstrable preparations to use the disputed domain name in connection to the alleged business project, the mere configuration of two email accounts over the disputed domain name.

In Panel Procedural Order No. 1, the Respondent was given an additional opportunity to provide any evidence in support of his allegations in respect of his alleged business project. However, the Respondent has provided no additional piece of evidence related to his alleged project, apart from a link to his LinkedIn profile and the invitation to the Panel to consult this profile.

The Panel notes that according to the Respondent's LinkedIn profile, he works in the banking business since April 2016, working for a bank located in California, United States, and he has had various other prior positions in the banking business in connection to mortgage and financial solutions. However, the Panel has not been able to find any reference to the Respondent's alleged projected business under the name "lendscape" in his LinkedIn profile.

The Panel notes, particularly, that the Respondent has been provided two opportunities to submit any evidence related to his alleged projected business, not providing any piece of evidence in this respect, apart from the configuration of two email accounts and a link to his LinkedIn profile. The Panel considers that if the configuration of the email accounts were used for communication purposes in relation to the Respondent's alleged business project, it would have been easy for the Respondent to show the Panel any emails related to his business using these accounts (similarly as he provided some emails related to the negotiations over the disputed domain name). However, the Respondent has not provided any evidence of

emails related to his alleged business idea. Furthermore, the Panel notes that the Respondent's LinkedIn profile does not mention his alleged project in any publication.

Additionally, the Panel notes that the parked page currently linked to the disputed domain name displays an invitation to obtain the disputed domain name, as well as promotional PPC links to third parties' sites in various sectors. In this respect, the Respondent alleges that he has taken no action in relation to this default-landing page. However, the Panel notes that the Respondent has not alleged taking any action or any efforts to suppress this content.

The Panel considers that the use of the disputed domain name to host a parked page comprising and offer to obtain the disputed domain name and promotional PPC links does not represent a *bona fide* offering. Such PPC links may compete with or capitalize on the reputation and goodwill of the Complainant's mark and mislead Internet users.

The Panel further notes that the Respondent has not provided any information about how and why he chose the term "lendscape" to identify his projected business.

It is further to be noted that a core factor in assessing potential fair use of the disputed domain name is that it does not falsely suggest affiliation with the Complainant's trademark. See section 2.5, [WIPO Overview 3.0](#). The disputed domain name incorporates the LENDSCAPE mark in its entirety, adding no other element but the ccTLD ".io", which the Panel considers insufficient to avoid the implied affiliation and risk of confusion with the Complainant and its trademark.

The Respondent alleges that the use of the ccTLD ".io" may avoid any likelihood of confusion and/or implied affiliation, and he indicates that this specific ccTLD ".io" is a "popular domain for startups, engineers, coders, and geeks in general" and in the "blockchain/cryptocurrency/web3.0 industry". In the Panel's view, however, these circumstances may not be sufficient to avoid the implied affiliation and risk of confusion.

The Panel further notes that the alleged projected business in the mortgage or the financial industry may be considered related to the services provided by the Complainant, both related to or belonging to a general category of financial services.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent has not sufficiently rebutted the Complainant's *prima facie* case. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

D. Registered or Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered or is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#). The Panel considers such standard appropriate in the present case.

The Panel considers that the cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the Panel notes the extensive use of the LENDSCAPE mark, the press coverage of its launch in 2017, in English press, and its presence over the Internet; in particular, the Panel notes that any search over the Internet reveals the Complainant and its trademark;

(ii) the disputed domain name is identical to the Complainant's trademark, generating an intrinsic likelihood of confusion or implied affiliation;

(iii) the LENDSCAPE mark is used over the Internet and the Complainant operates internationally, including in United States, where the Complainant has various locations and the Respondent is located;

(iv) the Respondent works for a bank, in the same sector where the Complainant operates (the banking industry);

(v) the disputed domain name resolves to a landing page that includes an offer for obtaining the disputed domain name through the GoDaddy platform's brokers, and displays various promotional PPC links to third parties' websites in different sectors; and

(vi) the Respondent has not sufficiently alleged and proof any rights or legitimate interests in the disputed domain name, not providing any evidence in support of his alleged projected business in connection to the disputed domain name.

Furthermore, the Respondent has admitted knowing about the Complainant and its presence over the Internet at the time of registration of the disputed domain name. The Respondent indicates in his Response that, at the time of the registration of the disputed domain name he "recalls seeing the company, HPD Software Limited, with the [landscape.com](https://www.landscape.com) domain name branding themselves as @HPDLandscape in July of 2019". The Respondent further alleges that he thought that the disputed domain name would not create any conflict with the Complainant's prior rights, because the Complainant used (at that time) a company name that included the letters "PDH" together with the term "landscape."

The Panel consider that these allegations corroborate that the Respondent knew about the Complainant and its business, as well as the use by the Complainant of the term "landscape" to identify its business in the financial sector, so he may have easily consider that the registration of the disputed domain name would collide with the Complainant's prior rights and mislead Internet users, probably increasing the traffic of any site linked to the disputed domain name.

The Respondent further alleges that he has not taken any action to offer for sale the disputed domain name, that the landing page linked to the disputed domain name is a default site linked to it without the Respondent's request, and that he decline the two unsolicited offers that he had for the disputed domain name. In this respect, the Panel finds that the Respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. Neither the fact that such content is generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the Respondent himself may not have directly profited, would by itself prevent a finding of bad faith. See section 3.5, [WIPO Overview 3.0](#).

The Panel further notes that the Respondent's rejections to the offers received for the disputed domain name do not clearly indicate that the disputed domain name is not for sale. On the contrary, these offers opened an exchange of communications between the Respondent and the respective brokers discussing the price for the transaction. Therefore, on a balance of probabilities, the Panel considers that these rejections may simply manifest the Respondent's disagreement with the offered prices, as a strategy to increase the price for the disputed domain name, and this may be the reason why the Respondent indicates that he "would be open to an offer in the high 5 figures."

In light of the above, taking into consideration all cumulative circumstances of this case, on the balance of probabilities, the Panel considers that the disputed domain name was registered and is being used targeting the LENDSCAPE mark, in bad faith. The circumstances of this case show that the Respondent's purpose has been to increase the traffic of the landing page associated to the disputed domain name by misleading Internet users seeking for the Complainant, obtain profit from the promotional PPCs displayed at this page, and potentially obtain a price exceeding its documented out-of-pocket registration costs for the transfer of the disputed domain name, which constitutes bad faith under the Policy.

The Respondent further alleges that the Complainant should be compelled to explain why it waited for three years to assert its rights and start this proceeding. In this respect, it is to be noted that it is widely recognized

that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits under the Policy. See section 4.17, [WIPO Overview 3.0](#).

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the disputed domain name has been registered and is being used 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 <lendscape.io> be transferred to the Complainant.

/Reyes Campello Estebanz/

Reyes Campello Estebanz

Sole Panelist

Date: December 2, 2022