

ADMINISTRATIVE PANEL DECISION

LPL Financial LLC v. FortiOne Down
Case No. DIO2023-0047

1. The Parties

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

The Respondent is FortiOne Down, Belgium.

2. The Disputed Domain Name and Registrar

The disputed domain name <lplfinancing.io> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2023. On November 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 27, 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 December 1, 2023.

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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 26, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on January 2, 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 Complainant founded in 1989 through the merger of two brokerage firms – Linsco and Private Ledger, is currently considered one of the largest independent broker-dealers in the United States. Since 2010, the Complainant has been publicly traded on the NASDAQ under “LPLA”. The Complainant has been publicly traded on the NASDAQ market since 2010; has 4,800 employees; and its gross profit was over USD 1,010 million, with a net income of over USD 224 million in the third quarter of 2023.

The Complainant holds trademark registrations for LPL and LPL FINANCIAL, such as the following:

- the United States Trademark Registration number 1801076 for the mark LPL (word), filed on January 22, 1993, registered on October 26, 1993, and covering services in Nice class 36;

- the United States Trademark Registration number 3662425 for the mark LPL FINANCIAL (with device), filed on October 25, 2007, registered on August 4, 2009, and covering services in Nice classes 36, and 42; and

- the European Union Trademark registration number 018653022 for the mark LPL (word), filed on February 11, 2022, registered on May 26, 2022, and covering services in Nice class 36.

The Complainant has a strong presence online through its websites and various social-media platforms. The Complainant holds many domain names consisting of or containing LPL, such as <lpl.com>, registered in 1994 from which it operates its main corporate website, <lplfinancial.com>, <lpl.net>, and <lpl-financial.com>. The Complainant’s parent company is the owner of the branded new generic Top-Level Domains (“gTLDs”) “.lpl” and “.lplfinancial”.

The disputed domain name was registered on August 17, 2023, and, at the time of filing the Complaint, it resolved to a parking page provided by the Registrar.

On October 12, 2023, the Complainant send a cease-and-desist letter to the Respondent via the privacy service listed in the WhoIs, putting the Respondent on notice of the Complainant’s trademark rights, and requesting the transfer of the disputed domain name to it. No response was received.

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 its trademarks LPL and LPL FINANCIAL, which are inherently distinctive and well-known in connection with the Complainant’s advisory services; its trademarks have been continuously and extensively used for more than 30 years and therefore have acquired considerable worldwide reputation and goodwill; the Respondent both registered and used the disputed domain name in bad faith particularly because: it registered it using a privacy service and there is no contact information on the web page to which the disputed domain name resolves; the Respondent did not respond to the Complainant’s cease-and-desist letter with any claims of having made preparations to use the disputed domain name for any *bona fide* purpose; in the light of degree

of similarity between the disputed domain name, the Complainant's company name, trademarks, and domain names, there is an appreciable risk that the disputed domain name could be used in connection with a fraudulent scheme targeting the Complainant's advisors and/or clients, or for other fraudulent purposes, since the banking industry is one of the primary target for both fraud and phishing schemes; in the Complainant's view, the presence of the disputed domain name in the hands of the Respondent represents an abusive threat hanging over the head of the Complainant.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent's default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, the Complainant can only succeed in this administrative proceeding under the Policy if the following circumstances are met;

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

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 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 1.7.¹

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "financing") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

¹ Given the similarities between the Policy and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the [WIPO Overview 3.0](#).

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 composition of the disputed domain name carries a high risk of implied affiliation with the Complainant. In the light of the high degree of similarity between the disputed domain name and the Complainant’s company name, trademarks, and domain names, such composition cannot constitute fair use as it effectively suggests sponsorship or endorsement by the Complainant. Furthermore, there is an appreciable risk that the disputed domain name could be used in connection with fraudulent financial activities. [WIPO Overview 3.0](#), section 2.5.1.

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

C. Registered or 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 or use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because its registration followed with about 30 years the first registration of the Complainant’s LPL trademark; the composition of the disputed domain name itself, comprising the LPL trademark followed by the term “financing” which directly relates to the core area of the Complainant’s business; and the international reputation of the LPL mark in relation to financial services.

At the time of filing the Complaint, the disputed domain name resolved to a parking page.

Panels have 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, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant’s trademark; the composition of the disputed domain name which is highly similar to the Complainant’s trademark, domain names, and trade name; the Respondent’s failure to provide a response to the Complainant’s cease-and-desist letter and in this proceeding; the Respondent’s use of privacy service; and the implausibility of any good faith use to which the disputed domain name may be put, and, 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.

Based on the available record, the Panel finds 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 <lplfinancing.io> be transferred to the Complainant.

/Marilena Comanescu

Marilena Comanescu

Sole Panelist

Date: January 11, 2024