

ADMINISTRATIVE PANEL DECISION

L.M. Waterhouse & Co., Inc. v. David Harding
Case No. D2022-0080

1. The Parties

1.1 The Complainant is L.M. Waterhouse & Co., Inc., United States of America (“United States”), represented by Roche Pia LLC, United States.

1.2 The Respondent is David Harding, Philippines.

2. The Domain Name and Registrar

2.1 The disputed domain name <lmwaterhouse.net> (the “Domain Name”) is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 12, 2022, 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.

3.2 The Center verified that 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”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 9, 2022.

3.4 The Center appointed Matthew S. Harris as the sole panelist in this matter on February 14, 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.

4. Factual Background

4.1 The Complainant is a company that provides investment advisory and management services. It is based in Valhalla, New York, United States, and was incorporated on July 31, 1980. Since its incorporation, the Complainant has used the name “L M Waterhouse” in respect of its business. It manages \$300 million of regulatory assets for 10 client accounts, and since 2017 has offered family asset management services. It has been registered with the United States Securities and Exchange Commission (“U.S. SEC”) as an adviser since 2018.

4.2 The Complainant originally registered the domain name <lmwaterhouse.com> in 2001, but inadvertently let it lapse in 2017. That domain name was then registered on April 20, 2017, and used to host a website that was designed to look like a website operated by the Complainant. On March 31, 2001, the Complainant filed UDRP proceedings (*L.M. Waterhouse & Co., Inc. v. Scott Myers, Intersearch Global*/WIPO Case No. [D2021-0962](#)) in respect of that domain name. In the course of those proceedings the registrant of the domain name was identified to be “Scott Myers, Intersearch Global, Philippines”. In a decision in those proceedings dated June 14, 2021, the panel ordered that the <lmwaterhouse.com> domain name be transferred to the Complainant.

4.3 The Domain Name was registered on October 14, 2021. It has since then been used to host a website which falsely impersonates the Complainant. The impersonation extends not just to offering the same services of the Complainant under the “L M Waterhouse” name, but representing that this is the Complainant’s genuine website. Each webpage on the website and the “Contact US” page of the website provides the corporate name, address and telephone number of the Complainant. The website also invites Internet users to open an account with the Complainant by sending an application form, photo identification and proof of address to an email address.

4.4 Most of the email addresses provided on this website incorporate the Domain Name. However, the email address to which Internet users are invited to send account opening application forms and documents uses the domain name <lmwaterhouse.com>.

4.5 The U.S. SEC has also issued a warning that the website operating from the Domain Name falsely impersonates the Complainant.

4.6 Publicly available Whois details for the Domain Name identify an address and telephone number in the Philippines. A name of an individual is also provided, but it is questionable whether that is the actual name of the registrant. The contact email provided is a protonemail.com email address and incorporates a name that does not match the name given for the registrant.

5. Parties’ Contentions

A. Complainant

5.1 The Complainant claims unregistered trade mark rights in the name “L M Waterhouse”. It refers to its business and contends that from its long-term use of that name in its industry, the Complainant has established “brand equity and recognition” in that name.

5.2 The Complainant describes the website that previously operated from the <lmwaterhouse.com> domain name and the website operating from the Domain Name. The Complainant claims that the website operating from Domain Name has been used to fraudulently impersonate the Complainant and to engage in unlawful phishing practices. It also raises concerns that the Domain Name may have been used to send fraudulent emails.

5.3 The Complainant further contends that the use on the website operating from the Domain Name of an email address using the <lmwaterhouse.com> domain name suggests that the registrant of the domain names and the operator of both websites is the same.

5.4 Against this background, the Complainant contends that the Respondent has no right or legitimate interest in the Domain Name and that the Domain Name has been both registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 There are no exceptional circumstances within paragraph 5(f) of the Rules so as to prevent this Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to lodge a formal Response.

6.2 Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (paragraph 4(a)(i)); and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and

(iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

6.3 However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

A. Identical or Confusingly Similar

6.4 The Panel accepts that the Complainant has unregistered trade mark rights in the name "L M Waterhouse" and that these are sufficient to constitute rights for the purposes of the Policy. The Complainant's activities are conducted in the United States, where it is U.S. SEC registered, and those activities have been substantial over many decades. There are numerous previous decisions under the Policy where United States unregistered trade mark rights have been recognised as sufficient for the Policy (see, for example, *Philip Morris USA Inc. v. Doug Nedwin/SRSPlus Private Registration*, WIPO Case No. [D2014-0339](#)). The Complainant's unregistered trade mark rights in the name "L M Waterhouse" have also already been recognised by the panel in *L.M. Waterhouse & Co., Inc. v. Scott Myers, Intersearch Global* WIPO Case No. [D2021-0962](#).

6.5 The Domain Name can only sensibly be understood as the term "L M Waterhouse", without spaces combined with the ".net" Top-Level Domain. Given this, the Domain Name is at least confusingly similar to a trade mark in which the Complainant has rights. It follows that the Complainant has made out the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests and Registered and Used in Bad Faith

6.6 It is usual for panels under the Policy to consider the issues of rights or legitimate interests, and registration and use in bad faith in turn. However, in a case such as this it is more convenient to consider those issues together.

6.7 The Panel accepts that the Domain Name was indeed registered and is being held for the purpose of fraudulently impersonating the Complainant. The website operating from the Domain Name clearly holds itself out as the website of the Complainant when it is not. The full extent of the Respondent's fraudulent activities is not clear, but at the very least the website is being used to dishonestly solicit account applications and identification documents from Internet users.

6.8 The Panel also accepts that the person or entity behind this fraudulent activity is very likely to be the same person or entity who was behind the registration and use of the <lmwaterhouse.com> domain name. However, whether this is the case ultimately does not matter. The Respondent's intent in respect of the Domain Name is sufficiently clear from the use of the Domain Name alone.

6.9 There are no rights or legitimate interests in holding a domain name for the purpose of engaging in such fraudulent impersonation. Further, the registration and use of a domain name for such a purpose involves registration and use in bad faith (see, for example, *Vestey Group Limited v. George Collins*, WIPO Case No. [D2008-1308](#)). The Respondent's activities in this case also fall within the scope of the example of circumstances indicating bad faith set out in paragraph 4(b)(iv) of the Policy.

6.10 In the circumstances, the Complainant has made out the requirement of paragraph 4(a)(ii) and 4(a)(iii) of the Policy.

7. Decision

7.1 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 <lmwaterhouse.net> be transferred to the Complainant.

/Matthew S. Harris/

Matthew S. Harris

Sole Panelist

Date: February 23, 2022