

ADMINISTRATIVE PANEL DECISION

**Blomquist Builder's Group, Inc. v. Domains By Proxy, LLC /
Denise L Chapman
Case No. D2022-0307**

1. The Parties

Complainant is Blomquist Builder's Group, Inc., United States ("United States"), represented by Lee & Hayes, United States.

Respondent is Domains By Proxy, LLC, United States / Denise L Chapman, United States, represented by Solace Law, United States.

2. The Domain Name and Registrar

The disputed domain names <theestatesatcornerstone.com> and <thesummitatlostmountain.com> (the "Domain Names") are 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 28, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on February 4, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 4, 2022.

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 Respondent of the Complaint, and the proceedings commenced on February 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2022. The Response was filed with the Center on February 25, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 2, 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 March 4, 2021, Complainant filed an unsolicited supplemental submission with the Center. On March 8, 2022, the Panel issued Procedural Order No. 1, which gave Respondent until March 16, 2022 to reply to Complainant's supplemental submission. On March 10, 2022, Respondent replied to Complainant's supplemental submission. In its discretion, the Panel has decided to consider both Parties' supplemental submissions.

4. Factual Background

This is an acrimonious dispute between two Parties who know each other personally. The record here includes many factual allegations and arguments which, in the Panel's view, are not strictly necessary to the disposition of this case under the three elements of the UDRP. The Panel will discuss only those facts, allegations, and arguments which may have some bearing on the outcome here. It should also be noted at the outset that this "Factual Background" section will contain a bit more commentary than is usual. This is done in part to explain why certain points raised by one or both of the Parties need not be discussed further.

Blomquist Builder's Group, Inc. ("Complainant"), is owned by Jennifer Blomquist ("Blomquist"). She is married to Blake Blomquist ("Blake"). There is an entity, Blomquist Holdings, LLC ("Holdings"), whose affiliation with Complainant, Blomquist, and Blake is not altogether clear. Although Respondent makes much of the distinctions among these people and entities, in aid of an unavailing "lack of standing" argument, the Panel sees no reason under this record to consider these people and entities as anything other than a monolith for purposes of this case. It appears that, notwithstanding a couple changes in formal ownership of the business at issue, Blomquist has always been in operational control of the business.

Complainant asserts that it builds and sells "luxury custom homes" in the State of Georgia, United States. Complainant owns the domain name <blomquistbuildersgroup.com>, which it uses for a commercial website to market the homes Complainant builds and offers for sale.

Complainant acquired a 27-lot subdivision called Summit at Lost Mountain. In March 2016, Respondent Denise Chapman ("Chapman") and her husband Alan Mushegan met with Complainant's principal, Blomquist, to discuss the formers' purchase of a home in Summit at Lost Mountain. According to an affidavit submitted by Blomquist in this proceeding, she and Respondent Chapman became "fast friends". Respondent has not disputed the allegation that, in March 2016, Respondent met with Blomquist to discuss the purchase of a property in the subdivision. Respondent must, therefore, have regarded Blomquist as the person who could make such a home purchase possible, and hence the actual owner of the subdivision at that time is not essential to this case, which deals with trademark rights and the Domain Names.

At some point, Complainant and Chapman agreed that Chapman would create and maintain a website dedicated to the Summit at Lost Mountain subdivision in exchange for Complainant providing USD 20,000 worth of free bricks for the Chapman home construction. According to the Blomquist affidavit, Chapman "coerced" additional discounts along the way. Respondent has not disputed these allegations.

The Domain Name <thesummitatlostmountain.com> was registered on July 29, 2017. Complainant alleges that Chapman refused to allow Complainant access to the website codes, this preventing Complainant from making any changes to the website content. Respondent has not disputed these allegations.

In August 2017, Respondent Chapman and her husband moved into their home. According to Complainant, Respondent began making complaints about alleged defects on the property, but would not allow Complainant to enter the premises to inspect and correct and alleged problems. Complainant also alleges that, contrary to the wishes of several other residents in the subdivision, Respondent insisted that

Complainant install gates around the subdivision. When Complainant declined, the Parties' relationship deteriorated. Respondent has not disputed any of these allegations.

Thereafter, the website at the Domain Name <thesummitatlostmountain.com> began to feature, according to Complainant, "false and disparaging" information about the Summit at Lost Mountain subdivision and about Complainant. Complainant states that the reputational damage wrought by Respondent's allegedly defamatory comments forced Complainant to change the name of the subdivision to the Estates at Cornerstone.

On November 22, 2019, Complainant registered the domain name <estatesatcornerstone.com> to set up a website devoted to the newly-named subdivision.

A few weeks later, on December 27, 2019, Respondent registered the Domain Name <theestatesatcornerstone.com>. Again, Respondent set up a website critical of Complainant and the subdivision, featuring numerous photos of allegedly shoddy workmanship and defects.

Complainant evidently has filed a defamation lawsuit against Respondent in Georgia state court. Neither party has discussed the suit in any depth, and it appears that the suit involves alleged defamation and has no bearing on the disposition of the Domain Name.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent contends (in addition to arguments that the Panel finds unnecessary) that Complainant lacks trademark rights, and that Respondent's use of the Domain Names has been for the noncommercial and legitimate purpose of criticizing Complainant's business and the allegedly shoddy workmanship in the homes that Complainant sells.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has common law rights in the unregistered trademarks SUMMIT AT LOST MOUNTAIN and ESTATES AT CORNERSTONE through use demonstrated in the record. The record contains a handful of screenshots from third party websites which make reference to Complainant and either SUMMIT AT LOST MOUNTAIN or, later, ESTATES AT CORNERSTONE. The threshold under the UDRP for demonstrating rights in a trademark is not particularly high. Contrary to Respondent's assertion (page 4 of Response), Complainant in a UDRP case need not show overly "compelling" evidence to establish common law rights in a trademark – especially where, as here, there is no doubt whatsoever that the

Respondent herself has registered the Domain Names by specific reference to the named subdivisions of the Complainant. Here, the Panel finds sufficient evidence of acquired distinctiveness to put Complainant over this initial UDRP hurdle.

Just as importantly, there certainly is one person who regards SUMMIT AT LOST MOUNTAIN and ESTATES AT CORNERSTONE as source identifiers of the homes sold by Complainant, and that person is Respondent Denise Chapman. The record is undisputed that Complainant asked Respondent to set up and maintain a website to advertise Complainant's homes, and Respondent registered the Domain Name <thesummitatlostmountain.com>. Respondent obviously concluded that this Domain Name would create an association in consumers' minds between the Domain Name and Complainant's real estate offerings. Likewise, after the relationship soured and Respondent's goal was to carry on with her criticism of Complainant's homes, she registered the Domain Name <theestatesatcornerstone.com>. Again, Respondent obviously believed that consumers would associate the Domain Name with Complainant's homes, which Respondent wished to criticize.

Put another way, Respondent is not in a strong position to doubt that SUMMIT AT LOST MOUNTAIN and ESTATES AT CORNERSTONE have served as source identifiers for Complainant's real estate offerings. See Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") ("The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier").

As alluded to above, Respondent also spent a great deal of time arguing that Complainant did not even own the 27-lot parcel at the time the Domain Name was registered. The actual title to the real estate in the subdivision at various moments in time is not essential to this dispute over the Domain Names. Respondent has provided no answer to the question why, if Complainant or Blomquist had no relationship with the subdivision in March 2016, why did Respondent approach Blomquist at that time about buying a home there.

The Panel finds that the Domain Names are confusingly similar to Complainant's unregistered trademarks. In each instance, the mark is entirely reproduced in the Domain Name, and preceded by the definite article "the". This slight addition does little or nothing to reduce the confusing similarity between the marks and the Domain Names.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in the Domain Names. Before turning to Respondent's "free speech" argument, the Panel notes again that, on this undisputed record, Respondent had originally agreed to set up and maintain a website for Complainant's subdivision, in exchange for a USD 20,000 reduction of the cost of materials to be used for Respondent's home. Respondent does not even address this undisputed fact. The failure to respond to this clear allegation,

which goes to the core of the reason why the first Domain Name was registered, has the effect of undermining Respondent's credibility. This hole in Respondent's story likewise undermines Respondent's "free speech" argument, and colors that purported motivation as pretextual rather than genuine.

In this vein, the Panel also notes that Respondent did not dispute Blomquist's sworn statement that Respondent coerced other discounts from Complainant along the way. Again, this is a fairly serious allegation, as it has potential relevance to the question whether Respondent's conduct is ultimately opportunistic in nature.

Regarding the first Domain Name, <thesummitatlostmountain.com>, the Panel concludes, based on the undisputed record, that Respondent has no rights or legitimate interests in that Domain Name. This is chiefly because Respondent had no right to register it on her own behalf. Rather, it is undisputed that she registered that Domain Name as Complainant's agent, in exchange for financial consideration. On this record, it is clear that Respondent did not register this Domain Name for purposes of engaging in free speech. This agency concept was recognized in *Ruby's Diner, Inc. v. Joseph W. Popow*, WIPO Case No. [D2001-0868](#) ("an employee or former employee is not a licensee, and thus has no authorization to use a company's trademark or a confusingly similar variation thereof without permission"). See also *Accenture Global Services Limited, Ireland, v. David Jentz*, WIPO Case No. [D2021-3275](#) ("Respondent's ownership of the Domain Name was always as an agent for Complainant and never as a legitimate owner in his own right. Any use to which Respondent ever put the Domain Name which was not entirely for the benefit of Complainant would be illegitimate").

Regarding the second Domain Name, <theestatesatcornerstone.com>, which Respondent registered not as Complainant's agent but as her critic, a different analysis is required (even though the following discussion may also be applied to the first Domain Name as well).

The Panel turns now to the question whether Respondent may claim a legitimate interest in the Domain Name <theestatesatcornerstone.com> (and, as a secondary rationale, the Domain Name <ummitatlostmountain.com>) by virtue of the criticism levied at her website, and the lack of any commercial content on the website.

Section 2.6 of [WIPO Overview 3.0](#) states that "UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent's claim to a legitimate interest under the Policy". Further, the respondent's alleged fair use must be "genuine and noncommercial". *Id.* at section 2.6.1.

Complainant raised a recent UDRP case that dealt with this basic issue, *East-West Worship and Conference Center, Inc. v. John Hawkins, Hawkins Consulting*, WIPO Case No. [D2021-3529](#).¹

The panel in *East-West Church* (the same panelist as in the instant case) reviewed the leading cases in this area of UDRP jurisprudence, as well as the [WIPO Overview 3.0](#), and set forth the following analysis:

This Panel finds the most persuasive treatment of this issue, namely, whether a respondent may claim a legitimate interest in a domain name that is identical to a complainant's trademark and may avoid a finding of bad faith in such circumstances, to be found in the prior UDRP decision in *The First Baptist Church of Glenarden v. Melvin Jones*, WIPO Case No. [D2009-0022](#). In that case, the panel transferred the domain name <fbcglenarden.com> to the complainant church. The respondent in *First Baptist* was a disgruntled former congregant who redirected the domain name to a website offering critical commentary about religion and churches, and criticism of complainant's pastor in particular. In ordering a transfer of the domain name, the panelist in *First Baptist* reasoned:

"Respondent's selection of Complainant's name for her criticism site allows her to make use of Complainant's service mark in a manner that would lead an ordinary Internet user initially to believe that

¹ It is noted that Respondent's counsel in the instant case was counsel for the prevailing complainant in *East-West Church*.

Respondent was Complainant or that Respondent had Complainant's permission to distribute her message. Such use is not legitimate under paragraph 4(a)(ii) of the Policy, and the safe harbor of paragraph 4(c)(iii) is not available because Respondent undeniably intended 'to misleadingly divert consumers.' The present case illustrates very well why applying [this view – captured in WIPO Overview section 2.6.2] will not interfere in any way with Respondent's vigorous exercise of his free speech rights on the Internet. This decision will not require Respondent to change one word of the content of his principal site (including his statements about Complainant), and will not require Respondent to move that content to a new web address. Respondent's current [separate] site will proceed exactly as it does now. Respondent does not post any content at the domain name that incorporates Complainant's mark; copying Complainant's mark is not used for free speech, indeed for any speech at all. All commentary may be found at Respondent's principal website, "www.pulpit-pimps.org". Rather than using the disputed domain name as a forum for criticism of Complainant or its pastor Respondent uses it only to attract, then immediately divert, individuals searching for Complainant. Preventing such an appropriation of another's asset intentionally to mislead is precisely why the Policy was adopted. As the Panel pointed out in *Justice for Children v. R neetso / Robert W. O'Steen*, WIPO Case No. [D2004-0175](#): 'Decisions under the Policy focus upon a respondent's use of another's mark in a domain name to attract Internet users to respondent's site. This is true in typosquatting cases and in cases where a respondent selected his domain name in anticipation of subsequent sale to the mark owner. The content of Respondent's sites in these two categories of cases in which respondents almost uniformly lose is irrelevant to the harm to the mark owner and to the unwary consumer. That harm results from the confusion caused by the initial attraction to the site by means of borrowing the complainant's mark. And that is exactly the harm the Policy was adopted to address. [...] By intentionally selecting Complainant's mark to present his views, he has not made a legitimate use of the domain names'.

The Panel finds the reasoning of the panel in *First Baptist* to be persuasive, and the same essential facts apply in the instant case. See also *Puravankara Projects Limited v. Saurabh Singh*, WIPO Case No. D2014-2054 ("Respondent has used a domain name which is closely aligned to the Complainant's trade mark and which is likely to make a misrepresentation to Internet users that any associated website is connected with the Complainant").

Respondent asserts that Complainant's reliance on the *East-West Worship* decision is misplaced, to say the least. In Respondent's words:

"The most glaring misapplication of precedent being the Complainant in *East-West Worship* held United States Statutory Trademark Rights to the domain at issue and the complainant in that case is an active entity operating as a Church. The standard applied to legitimate use and bad faith is accordingly completely unrelated and this argument amounts to a desperate attempt to conflate unrelated fact patterns that have no similarities beyond the fact that this Panel rendered the decision."

The Panel disagrees with Respondent on this score. The Panel has already found (above) that, under the relatively straightforward standard in UDRP cases, Complainant has trademark rights, albeit unregistered, in SUMMITATLOSTMOUNTAIN and ESTATES AT CORNERSTONE. As such, the difference between the registered trademark in the *East-West Worship* case and the common law marks here cannot have much, if any, significance to the "rights or legitimate interests" factor under discussion.

As respects the second alleged difference, namely, that the complainant in *East-West Worship* "is an active entity operating as a Church", the Panel again disagrees with Respondent. If Complainant were not "an active entity" at this time, then the entire purported purpose of Respondent's criticism website (and her alleged interest in the Domain Names) would be lacking. (Moreover the fact that it is a church – if the Respondent seeks to distinguish the cases on this point – has no bearing on the application of the principles in that case here.)

In sum, the Panel sees no principled basis upon which to distinguish the *East-West Worship* decision from the instant case.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith. The Panel incorporates its discussion above in the “rights or legitimate interests” section. In the *East-West Worship* case discussed in the previous section (and in the cases cited therein), the panels’ findings of “bad faith” were based on essentially the same rationale as was employed to support their findings that the respondents lacked rights or legitimate interests in respect of the domain names. Relying on those cases, the Panel in the instant case also concludes bad faith registration and use of the Domain Names for the reasons set forth in the previous section.

The Panel finds Respondent’s bad faith even more acute in the context of the first Domain Name, which was registered pursuant to Respondent’s agreement with Complainant – in exchange for financial consideration – to set up and maintain a website that would help Complainant’s business, not harm it.

It bears emphasis that nothing in this decision would prevent Respondent from airing her grievances about Complainant via another domain name that was not virtually identical to the latter’s mark.

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Names <theestatesatcornerstone.com> and <thesummitatlostmountain.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 16, 2022