

## **ADMINISTRATIVE PANEL DECISION**

Orton Plantation, LLC v. Domains By Proxy, LLC / Aileen Hersom  
Case No. D2022-1621

### **1. The Parties**

Complainant is Orton Plantation, LLC, United States of America (“United States”), represented by Akin, Gump, Strauss, Hauer & Feld, United States.

Respondent is Domains By Proxy, LLC, United States / Aileen Hersom, United States.

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

The disputed domain name <ortonplantatlon.net> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2022. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 5, 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 May 6, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 6, 2022.

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 Respondent of the Complaint, and the proceedings commenced on May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 30, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 7, 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**

Complainant owns and operates the Orton Plantation, a historic plantation house built in 1735 in Brunswick County, North Carolina. Orton Plantation is listed on the National Register of Historic Places, and is a tourist attraction. The site is also used to host weddings and other special events, and a number of movies feature scenes shot at the site.

Complainant offers for sale various products, including clothing, hats, plates, cards, and other items, which feature the trademark ORTON or ORTON PLANTATION. Complainant also operates a commercial website, located at "www.ortonplantation.net", to advertise and sell its event and tourism services and its ORTON and ORTON PLANTATION products. Annexed to the Complaint are numerous examples of goods and services offered under these marks, and advertised at Complainant's website.

Complainant has no registered trademark but claims common law rights in ORTON and ORTON PLANTATION.

The Domain Name was registered on March 3, 2022. The Domain Name is identical to the alleged ORTON PLANTATION trademark except that the "i" in "plantation" is an "l" instead.

The Domain Name does not resolve to an active website. According to Complainant, Respondent has made fraudulent use of the Domain Name. Complainant alleges:

"In early March 2022, Complainant discovered that Respondent hacked into its Email system and hijacked two Orton Plantation employee email accounts (\_\_\_@ortonplantation.net), possibly through a phishing scheme perpetuated by Respondent. Respondent is believed to have accessed an email thread for funding the Orton Plantation bank account and sent new, fraudulent wire instructions. Then the fraudulent ortonplantation.net domain name and email domain were registered and used for alerting on replies to the initial fraudulent Emails. As a result of the criminal scheme, two money wires transferred a substantial amount of money to the perpetrators' account. The full extent of the damage caused directly or indirectly by the perpetrators is not yet known."

Respondent has not denied the foregoing allegations of phishing and attempted fraudulent conduct.

#### **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 did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

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

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (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 rights in the trademark ORTON PLANTATION through use demonstrated in the record.

The Panel also concludes that the Domain Name is confusingly similar to that mark. The only difference between the mark and the Domain Name is the substitution of the letter “l” for the letter “i” in the word “plantation”. The substitution of “l” for “i” has become a common, and often nefarious, form of typosquatting, particularly given how similar a lower-case “l” and a lower-case “i” appear on most screens.

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

### **B. Rights or Legitimate Interests**

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 respect of the Domain Name. Respondent has not come forward in this proceeding to dispute the serious and plausible allegations raised in the Complaint. The Panel would normally expect anyone in a UDRP proceeding accused of such fraudulent conduct as has been alleged here would, if innocent, step up and declare his innocence. In addition, the Panel can conceive of no reason to register the Domain Name, comprised of the proper noun “orton” and a close misspelling of a dictionary term “plantation”. The combination of these two words, even with the misspelling, cannot reasonably be put down to coincidence.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

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) 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) Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) 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 Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section.

The Panel finds plausible Complainant's assertion that Respondent registered the Domain Name with Complainant's ORTON PLANTATION mark in mind, and that Respondent's motive was to carry out one or more phishing scams through the fraudulent impersonation of Complainant and the diversion, through deception, of wired funds. Such misconduct, as laid out in this undisputed record, clearly constitutes bad faith use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

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 Name <ortonplantatlon.net> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: June 21, 2022