

ADMINISTRATIVE PANEL DECISION

Toyota Motor Sales, U.S.A., Inc. v. Privacy Service Provided by Withheld for Privacy EHF / black aventador, aventador group, black murcielago, murcielago company, Ivan Santoso
Case No. D2022-2411

1. The Parties

The Complainant is Toyota Motor Sales, U.S.A., Inc., United States of America (“US” or USA”), represented by Dinsmore & Shohl LLP, USA.

The Respondents are Privacy Service Provided by Withheld for Privacy EHF, Iceland / black aventador, aventador group, Cambodia, black murcielago, murcielago company, Cambodia, Ivan Santoso, Indonesia.

2. The Domain Names and Registrars

The disputed domain names <lexus365c.com, lexus365d.com, lexus365h.com, lexus365i.com> are registered with NameCheap, Inc. (the “Registrar 1”) <lexus365.work, lexus365.xyz> are registered with Dynadot, LLC (the “Registrar 2”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 4, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On July 4 and 5, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names, which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 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 July 8, 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 the Respondents of the Complaint, and the proceedings commenced on July 19, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was August 8, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on August 9, 2022.

The Center appointed George R. F. Souter as the sole panelist in this matter on August 16, 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

The Complainant is a wholly-owned subsidiary of the Toyota Motor Corporation, of Japan, and is the exclusive importer and distributor of Toyota automobiles throughout the USA (except the state of Hawaii), the Commonwealth of Puerto Rico and the US Virgin Islands.

The Complainant is also the exclusive licensee of the trademarks of the Toyota Motor Corporation throughout the distribution area. These include the LEXUS trademark, in respect of which the Complainant is the proprietor of US registration number 1574718, issued on January 2, 1990.

The Toyota Motor Corporation's LEXUS luxury range automobiles have been sold in the USA since 1989, in Indonesia since 2007, and are currently marketed in over 90 countries.

The disputed domain name <lexus365c.com> was registered on December 4, 2020.

The disputed domain name <lexus365d.com> was registered on December 4, 2020.

The disputed domain name <lexus365h.com> was registered on January 16, 2021.

The disputed domain name <lexus365i.com> was registered on January 16, 2021.

The disputed domain name <lexus365.work> was registered on May 12, 2021.

The disputed domain name <lexus365.xyz> was registered on May 12, 2021.

All these disputed domains currently resolve to online gambling sites.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain names are all confusingly similar to its LEXUS trademark.

The Complainant alleges that the Respondents lack rights or legitimate interests in the disputed domain names, in particular that they are, to the best of the Complainant's knowledge, not generally known by the disputed domain names registered by them, and the Complainant has never granted permission to any of them to use its LEXUS trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain names have been registered in bad faith, and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

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

A. Consolidation of Respondents

The Complainant requested the consolidation of the Respondents and submitted that the disputed domain names are subject to common control. The Complainant noted that all of the disputed domain names resolve to virtually identical pages bearing the same contact information, all of the domain names share a similar naming convention, the disputed domain names all use the same name servers.

In light of the Complainant's arguments and considering that this consolidation would be fair and equitable to the Parties, the Panel accepts the Complainant's request for consolidation.

B. Identical or Confusingly Similar

The Panel finds that the Complainant has trademark rights to its LEXUS trademark for the purposes of these proceedings, and recognizes the LEXUS trademark to be well known.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level-Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the gTLDs <.com>, <.work> and <.xyz> to be irrelevant in the circumstances of the present case, and finds that they may be disregarded here.

The Complainant's LEXUS trademark is clearly recognizable in all the disputed domain names, rendering all the disputed domain names confusingly similar to the Complainant's trademark, and the additional elements in none of the disputed domain names detract from this finding. Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain names at issue.

C. Rights or Legitimate Interests

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain names to rebut this *prima facie* case.

Furthermore, the nature of the disputed domain names, incorporating the Complainant's well-known LEXUS trademark, carries a risk of implied affiliation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain name.

D. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name

in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainant's LEXUS trademark was deliberately appropriated in all the disputed domain names, are such that the Panel concludes that a finding of registration in bad faith is justified in connection with all the disputed domain names, and so finds.

From the evidence presented to the Panel, it appears that, with the use of the Indonesian language and currency in the websites operated under the disputed domain names, the websites are "tailored" for use by Indonesian customers. Gambling is illegal, for Indonesians and foreigners, in Indonesia. The Panel considers that the illegal use of each of the disputed domain names justifies a finding of use in bad faith, and so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy, in respect of all the disputed domain names.

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 names, <lexus365c.com>, <lexus365d.com>, <lexus365h.com>, <lexus365i.com>, <lexus365.work> and <lexus365.xyz> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: August 30, 2022