

ADMINISTRATIVE PANEL DECISION

Automobili Lamborghini S.p.A. v. hevi serdar, The Social Momentum
Case No. D2023-2282

1. The Parties

The Complainant is Automobili Lamborghini S.p.A., Italy, represented by HK2 Rechtsanwälte, Germany.

The Respondent is hevi serdar, The Social Momentum, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <lamborghiniemirates.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2023. On May 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 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 amendment to the Complaint on May 30, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on June 27, 2023. 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 – commonly referred to as Lamborghini – is an Italian manufacturer of high-performance sports cars based in Sant'Agata Bolognese, Italy. The company was founded in 1963 by Ferruccio Lamborghini as Automobili Ferruccio Lamborghini. The vehicles of the Complainant belong to the world's most famous luxury sports cars.

The Complainant owns several trademark registrations for LAMBORGHINI, including the following:

- European Union Trade Mark Registration No. 001098383 LAMBORGHINI, registered on June 21, 2000, in classes 7, 9, 12, 14, 16, 18, 25, 27, 28, 36, 37, 41;
- International Trademark Registration No. 460178 LAMBORGHINI, registered on March 28, 1981, in classes 3, 4, 9, 12, 14, 16, 18, 25, 28, 34;
- International Trademark Registration No. 959504 LAMBORGHINI, registered on February 28, 2008, in classes 12, 28;
- United States Trademark Registration No. 74019105 LAMBORGHINI, registered on November 13, 1990 in class 12.

Also, the Complainant owns, *inter alia*, the domain name <lamborghini.com> which resolves to the Complainant's main website informing about the Complainant's business.

The disputed domain name <lamborghiniemirates.com> was registered on October 8, 2020 and resolves to a website of the "Lamborghini Club UAE" which includes special discounts for club members on parts and goods from "the factory in Santa Aga Bolognese" and also redirects to third party sale offers of assorted goods.

5. Parties' Contentions

A. Complainant Contentions

The Complainant asserts that it operates worldwide, that the LAMBORGHINI name and trademark enjoy widespread recognition and have generated significant goodwill.

The Complainant claims that the disputed domain name is confusingly similar with the trademark LAMBORGHINI in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant has no relationship or affiliation with the Respondent.

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its LAMBORGHINI trademark. Further, the Respondent is not commonly known by the disputed domain name.

The Complainant believes that the disputed domain name has been registered for the sole reason of commercial gain by means of misleadingly diverting consumers seeking the Complainant to the Respondent's website.

The Respondent has no rights or legitimate interests in the disputed domain name as it is clearly not distinctive from any official fan site. The Lamborghini logo, that is slightly amended to the colors of the United Arab Emirates, is prominent – and without any permission of the Complainant – used on the website.

In addition, the Respondent describes its Club as an “official club”, thereby clearly misrepresenting itself as an official partner of the Complainant and is therefore misleading Internet users.

In addition, by promoting “Benefits” and describing them as “Discount” on parts and goods directly from the factory in “Santa Aga Bolognese” on the landing page of the website again the Respondent deliberately strengthens the impression that there is an official partnership with the Complainant, as the Complainant has its factory in Sant’ Agata Bolognese, Italy.

Finally, the Complainant requests the Panel to issue an order to have the disputed domain name transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant’s LAMBORGHINI trademark.

The disputed domain name incorporates the Complainant’s trademark LAMBORGHINI in its entirety with the addition of the term “emirates” which does not prevent a finding of confusing similarity.

As provided in Section 1.8 of [WIPO Overview 3.0](#), when the relevant trademark is recognizable within the disputed domain name - as it occurs in this case - the addition of other terms would not prevent a finding of confusing similarity under the first element.

The “.com” generic Top-Level Domain (“gTLD”) is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark LAMBORGHINI in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name. Rather, it seems that Respondent intends to use the disputed domain name for the purpose of taking unfair advantage from the Complainant's well-known trademark LAMBORGHINI by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's name and trademark LAMBORGHINI mentioned in section 4 above (Factual Background) when it registered the disputed domain name on October 8, 2020. The Complainant's use of its trademark and business activities as world famous car manufacturer predates the disputed domain name registration by decades.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's LAMBORGHINI trademark in the disputed domain name creates a presumption of bad faith. Moreover, the addition of the term "emirates" in the disputed domain name, rather than helping to distinguish

the disputed domain name from the Complainant's trademark, contributes to their confusion among Internet users, as it conveys the idea that it has the endorsement of the Complainant or that it is the website of the Complainant for the United Arab Emirates.

The Respondent, when registering the disputed domain name, has targeted the Complainant's trademark LAMBORGHINI with the intention to confuse Internet users and capitalize on the fame of the Complainant's trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has registered and is intentionally using the disputed domain name to attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's LAMBORGHINI trademark as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under paragraph 4(b)(iv) of the Policy.

The Panel finds that the Respondent has registered and is using the disputed domain names in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <lamborghiniemirates.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: July 6, 2023