

ADMINISTRATIVE PANEL DECISION

Lacamas Shores Homeowners Association v. Catherine Arnold
Case No. D2017-0855

1. The Parties

Complainant is Lacamas Shores Homeowners Association of Camas, Washington, United States of America ("United States"), represented *pro se* by Mark P. Guthrie, United States, a member of the Lacamas Shores Homeowners Association Board.

Respondent is Catherine Arnold of Camas, Washington, United States, appearing *pro se*.

2. The Domain Names and Registrar

The disputed domain names <lacamas-shores.com>, <lacamasshoreshoa.com>, and <lacamasshores.org> (the "Domain Names") are registered with Tiger Technologies LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 21, 2017. On April 27, 2017, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On the same date, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing Respondent's contact details.

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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on May 5, 2017. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2017. The Response was filed with the Center on May 25, 2017.

The Center appointed David H. Bernstein as the sole panelist in this matter on June 7, 2017. 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 Complainant is the Homeowners Association ("HOA") for the community subdivision known as Lacamas Shores in Camas, Washington. This community of homes is found on the southwest shore of Lacamas Lake, and is bordered on the south by Lake Boulevard. The HOA provides services for its community, and often communicates with its members through various methods including via postings on

the Internet.

4.2 Respondent, Catherine Arnold, is a resident of Camas, Washington and of the community known as Lacamas Shores. For at least some period of time Respondent's husband, Richard Arnold, was a volunteer board member of the HOA's Board of Directors ("HOA Board").

4.3 Respondent served as the website editor/developer for the HOA. For some period of time, the website that Respondent maintained contained content provided by the HOA Board for dissemination to HOA members. Respondent was not a member of the HOA Board.

4.4 Respondent registered the Domain Name <lacamasshores.org> in 2002 and began populating it with content in or around that time. At the beginning, the website was hosted by NEXPOINT. At some point around 2012, Respondent states that NEXPOINT was off-line and the website at the Domain Name <lacamasshores.org> became unavailable. At that time, Respondent registered the Domain Name <lacamas-shores.com> through Webhostinghub and used this new domain name for a website to replace the content that had previously been at <lacamasshores.org>. When the "lacamasshores.org" website came back online, Respondent pointed the original website to the new site, which is now hosted on Tiger Technologies.

4.5 Starting in 2004 through at least early March 2016, the websites to which these Domain Names resolved contained at least some information that the HOA Board requested be posted online and disseminated to its members. These Domain Names also contained copyright notices at the bottom of the page that varied from time to time. For example, in 2004, the notice read "Lacamas Shores HOA © 2004. All rights reserved." In March of 2016, the notice read "© LACAMASSHORES 2015 – 2016 ALL RIGHTS RESERVED" followed by the Lacamas Shores HOA mailing address.

4.6 In or around January 2016, Respondent registered a third Domain Name: <lacamassshoreshoa.com>. That Domain Name has never been used for an active website.

4.7 On May 7, 2016, Respondent sent an email to the HOA Board announcing her resignation "as the website editor/developer" as of May 15, 2016. This letter informed the HOA Board that the current website would "transition to being a valuable Community resource" and that it would no longer "host topics that specifically belong on an 'official HOA website.'" Thereafter, the notice on the bottom of the webpage changed, at least as of June 12, 2016, to note that this website "does not represent official statements or views of Lacamas Shores HOA Board."

4.8 Respondent paid out of pocket for hosting fees and other website-related expenses. At least some of those expenses were reimbursed by the HOA. Respondent states that she did not ask for all expenses to be reimbursed.

4.9 The HOA's current website is located at <lacamassshoreshoa.org>. The HOA also appears to own and use <lacamassshoreshoa.net>, which contains a link redirecting users to the website at <lacamassshoreshoa.org>. Respondent, in the meantime, continues to post her own content on the websites available at <lacamas-shores.com> and <lacamsshores.org>, both of which appear to contain the same content. None of Respondent's websites sell goods or services to the public, or have any other element of commerce associated with them.

4.10 Neither of the parties has any registered trademarks containing LACAMAS SHORES or any similar name.

5. Parties' Contentions

A. Complainant

5.1 Complainant argues that "Lacamas Shores" has become a distinctive identifier associated with the community that the HOA serves.

5.2 Complainant asserts that Respondent and her husband "obtained the [Domain Names] in their capacities as webmaster and board members of the [HOA]." Complainant further asserts that Respondent registered the Domain Names on behalf of the HOA "for the sole purpose of facilitating interaction between the residents of the community and the HOA."

5.3 Complainant also alleges that Respondent was the webmaster, website editor and developer of the

HOA's website, and that when she resigned from those roles in May 2016, she should have transferred ownership of the Domain Names to the HOA Board, but she refused to do so. It further asserts that Respondent is no longer associated with the HOA, and that, as such, Respondent's continued control over the domains at issue "frustrates the purposes for which the [Domain Names] were obtained." It thus contends that Respondent has no legitimate interests in the Domain Names at issue, and that Respondent's refusal to sign over the Domain Names "to their rightful owner" – *i.e.*, the HOA – is improper.

5.4 Complainant alleges that the Domain Name <lacamasshores.org> hosted the HOA's website content from 2004 through March 2016, but that, in and around that March 2016, Respondent changed the website's content to "personal content without authorization from the Association, and in direct violation of a written demand from the association." Complainant provides evidence of written demands made on August 1, 2016 and April 4, 2017.

5.5 Complainant also asserts that Respondent was fully reimbursed for any out-of-pocket expenses incurred in connection with running the website, thus suggesting that the websites, and their corresponding Domain Names, belong to the HOA.

B. Respondent

5.6 Respondent contends that she registered the first Domain Name, <lacamasshores.org>, in 2002 because Respondent was interested in publishing information about the community in her capacity as an individual. Respondent argues that her registration of the Domain Name was done without any involvement of the HOA or the HOA Board, was not done on the HOA Board's behalf, and that it was almost two years before the HOA Board first became aware of this website (as reflected in the HOA Board's minutes of April 14, 2004, when the HOA Board indicated that it was "very satisfied" with the website that Respondent developed "for the neighborhood so that information and links can be posted for resident's use."). As such, Respondent claims legitimate rights in the Domain Name <lacamasshores.org>.

5.7 Respondent also argues that Complainant's full legal name is "Lacamas Shores Homeowners Association," not "Lacamas Shores." As such, she argues, Complainant should have no trademark rights in the term of "Lacamas Shores" alone – which, Respondent claims, is a purely geographically descriptive term used to connote proximity to the Lacamas Lake in Clark County, Washington. Respondent asserts that this is a term that is not associated exclusively with Complainant.

5.8 Respondent further argues that neither commercial competition nor gain is at issue in this dispute. She alleges that Complainant does not provide services "to the general public," and that no website at issue in this matter sells goods or services or participates in commerce.

5.9 Respondent alleges that she was never a member of the HOA Board or of a "website committee," that she never signed a written agreement with Complainant for the development or maintenance of a website on the HOA's behalf, and that she was not compensated as a contractor or employee for any such work. Rather, Respondent alleges, she graciously allowed the HOA Board to include information it wanted to disseminate to the community alongside content that she posted on her websites, which she maintained for her own communicative purpose. Respondent further alleges that, in 2016, "specific [HOA] Board related information was removed from [the Domain Name <lacamasshores.org>] (at the request of the current [HOA] Board) . . . to avoid any confusion . . . that [the Domain Name] could be construed to be owned by the Complainant." When she decided in May 2016 to use the websites for purely personal reasons, *i.e.*, to post only her own content, Respondent alleges that she gave proper and sufficient notice to the HOA Board and placed disclaimers on the websites to avoid any confusion by visitors.

5.10 Respondent alleges that she registered the second Domain Name, <lacamas-shores.com>, in 2012 because the service hosting the website to which the original Domain Name <lacamasshores.org> resolved had gone off-line. Respondent alleges that she personally copied and uploaded the content from the original website to this new website, and that it was used for the same purpose. Eventually, when the original website at the Domain Name <lacamasshores.org> came back online, the two Domain Names were set to point to each other and/or display the same content.

5.11 Respondent alleges that she registered the third Domain Name, <lacamassshoreshoa.com>, "before [she] was forced to discontinue posting official HOA Board information and in anticipation of an expanded use of the website." Respondent also states that she had no plans to use the Domain Name <lacamassshoreshoa.com> and that no content was ever posted to that site.

5.12 Respondent alleges she was reimbursed in-part, but not in-full, for expenses incurred for hosting and maintaining the website.

6. Discussion and Findings

6.1 To succeed in these proceedings Complainant must establish the following three elements, by a preponderance of the evidence, for each of the Domain Names at issue:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which Complainant has rights (Policy, paragraph 4(a)(i)); and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name (Policy, paragraph 4(a)(ii)); and
- (iii) the Domain Name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

6.2 A threshold question is whether Complainant has trademark rights in LACAMAS SHORES, LACAMAS SHORES HOA, and/or LACAMAS SHORES HOMEOWNERS ASSOCIATION. Complainant argues that it has common law trademark rights in LACAMAS SHORES because it “has become a distinctive identifier associated with the community serviced by the Lacamas Shores Homeowners Association.” Respondent responds that “Lacamas Shores” is merely descriptive in that it identifies a geographic area and cannot serve as a trademark. Other than these bald assertions, the parties have provided little by way of facts or arguments to assist the Panel in adjudicating this question. The Panel has therefore undertaken independent research on the legal question of whether a homeowners association can establish trademark rights in its name.

6.3 It is well established that a city or country name cannot serve as a trademark for the city or country itself. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.6. Here, though, Lacamas Shores is not a city name; rather, it is the name of a community as named by a commercial developer in the late 1980s. See Short History of LAS, *available at* <http://lacamasshores.org/welcome/welcome1.html#history>. “The mere fact that a term may be the name of a place that has a physical location does not necessarily make that term geographic under § 2(e)(2) [of the Lanham Act].” 8-1200 Gilson on Trademarks 1210 (citing *In re Pebble Beach Co.*, 19 USPQ2d 1687 (TTAB 1991) (17 MILE DRIVE not a geographic term, where it refers to a specific location wholly owned by applicant, and was coined by applicant to refer both to applicant’s services and the place where the services were performed)). In fact, “the use of names of condominium complexes, apartments, homeowners’ associations, tourist attractions, and real estate developments have been held to have achieved status as marks” such that unlicensed uses have been found to be infringing. “Commercially named locations,” 2 McCarthy on Trademarks and Unfair Competition § 14:16 (4th ed.).

6.4 The case of *Tortoise Island Homeowners Ass’n, Inc. v. Tortoise Island Realty, Inc.*, 790 So. 2d 525 (Fla. 3d DCA 2001) is illustrative. In that case, a commercial developer chose the name “Tortoise Island” for his development because the island was originally inhabited by gopher and snapping tortoises; prior to its development, the area had no name. *Id.* at 528. The developer began using the name and logo he created in the 1970s to advertise the community; after development was complete, the Tortoise Island Homeowners Association was created and took over responsibility for the neighborhood. *Id.* Sometime thereafter, a realtor named his business “Tortoise Island Realty, Inc.” and evidence indicated that the realtor’s name created confusion – *i.e.*, third parties thought the two were part of the same entity. The court held that the trademark TORTOISE ISLAND was originally arbitrary to identify the subdivision, even though it would have been descriptive to identify an island upon which tortoises lived. *Id.* at 532. The record established that, at the time of development, there was no other area with the name Tortoise Island; the court thus found the TORTOISE ISLAND trademark to be arbitrary and distinctive for homeowners association purposes. *Id.* at 535. The court noted that arbitrary names attached to a location need not prove secondary meaning for trademark protection, but that “if the name has been used by others near, in and around the area, so that what was once an arbitrary name has become, in the public mind, a geographic place, it is not protectable.” *Id.* at 533. However, the court found that no such evidence was adduced in this case. *Id.* Thus, having been used for approximately thirty years, the court found that the TORTOISE ISLAND trademark gained a reputation as an exclusive residential community and that the realtor’s use of “Tortoise Island” in the same area, to advertise properties in that residential community, was found to be infringing. *Id.* at 535.

6.5 The facts in this case do not square directly with the facts in the *Tortoise Island Homeowners Ass'n* case. Because the community serviced by Complainant is located on the shores of Lacamas Lake, the Lacamas Shores name does appear somewhat more descriptive than Tortoise Island. Although it is a close question, the Panel finds, on this record, that Complainant has failed to show that Lacamas Shores is inherently distinctive; instead, the Panel will treat it as a descriptive term for a community located on the shores of Lacamas Lake.

6.6 That does not end the inquiry, though. Even if the mark is descriptive, it still may qualify for common law protection if the mark has acquired secondary meaning. Such a mark can be protected even if it has acquired distinctiveness only in a limited geographic area. WIPO Overview 3.0 at section 1.3. Here, it is undisputed that Complainant has offered homeowners association services to residents of this community since 1988, for nearly 30 years. It is reasonable to infer that, when residents of Camas, Washington hear the term “Lacamas Shores Homeowners Association,” they will understand that to refer to a specific entity, rather than to a number of different entities that may provide services to homeowners in the Lacamas Shores community. Because that is the key test of secondary meaning, the Panel finds that Complainant has common law trademark rights in the name LACAMAS SHORES HOMEOWNERS ASSOCIATION.

6.7 The remaining question under the first factor is whether the Domain Names are confusingly similar to Complainant’s trademark. The three Domain Names at issue all contain the term “Lacamas Shores,” which is the most distinctive part of the trademark (since “Homeowners Association” is generic for homeowners association services); one of the Domain Names even contains the term “Lacamas Shores HOA,” in-full. Therefore, the Panel finds that the Domain Names are confusingly similar to a trademark in which Complainant has rights.

B. Rights or Legitimate Interests

6.8 Complainant argues that Respondent lacks rights or legitimate interests in the Domain Names because Respondent registered the names for the benefit of the HOA, and is obligated to transfer them to the HOA now that she is no longer serving as the HOA’s webmaster.

6.9 It is undisputed that Respondent registered and established the first Domain Name, <lacamasshores.org>, in 2002 without the permission of, or direction from (or even the knowledge of), the HOA Board. It was not until 2004 that the HOA or its Board had any involvement in the website. Thereafter, though, Respondent did use that Domain Name, as well as the Domain Name <lacamas-shores.com>, as the official websites of the HOA Board. That is reflected both in the copyright notices that were included on the websites (indicating that the content of the websites was owned by the Lacamas Shores HOA), as well as by Respondent’s resignation letter, in which she indicated that the websites would no longer serve as the “official HOA website,” which serves as a concession that, prior to her resignation, the websites did function as the official HOA websites.

6.10 Even though these websites were the official websites of the HOA, that does not mean that Complainant is entitled to transfer of the Domain Names. The UDRP was designed to prevent abusive cybersquatting, not to adjudicate contractual disputes related to domain names. See *The Thread.com LLC v. Jeffrey S. Poploff*, WIPO Case No. D2000-1470 (“This Panel is not a general domain name court, and the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names.”). Any contention by Complainant that Respondent is obligated by some agreement to transfer the Domain Names to the HOA (such as because the HOA paid for the Domain Name registrations through 2022) is a contractual issue that is beyond the scope of this proceeding. If the parties have a contractual dispute, they could present that to a court for resolution.

6.11 For purposes of this UDRP proceeding, the question is not whether Respondent is required to transfer the Domain Names because she is no longer the webmaster for the HOA; rather, the question is whether she has rights or legitimate interests in the Domain Names (and whether she registered and used the Domain Names in bad faith).

6.12 Respondent has credibly articulated rights and legitimate interests in two of the Domain Names, <lacamasshores.org> and <lacamas-shores.com>. Respondent uses these Domain Names to post information and opinions about the community of Lacamas Shores – a community of which Respondent is a member. This is a fair use because Respondent is “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 services mark at issue.” Paragraph 4(c)(iii) of the Policy. There is no allegation that

Respondent is making commercial use of these Domain Names or is misleadingly diverting consumers away from the HOA.

6.13 Respondent has not, however, demonstrated any rights or legitimate interests in the third Domain Name, <lacamasshoreshoa.com>. Respondent registered that Domain Name in January of 2016, just a few months before she resigned as webmaster. Although she claims she registered it to facilitate an expanded use of the HOA's website, she has refused to transfer it to the HOA without payment. In the meantime, Respondent admits that this Domain Name was never used or populated with any content, and that Respondent "currently has no plans to use" it.

6.14 Respondent's conduct with respect to this Domain Name smacks of the kind of lack of legitimate interest that constitutes abusive cybersquatting. This Domain Name does not include merely the Lacamas Shores descriptive reference; rather, because it contains the terms "Lacamas Shores" and "HOA," it purports to be the official website of the Lacamas Shores HOA. See WIPO Overview 3.0 at section 2.5 ("Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner."). Moreover, Respondent does not claim any fair use purpose for this registration. For example, she has not used this website to post information about the Lacamas Shores community, and disclaims any intention to do so. Instead, she appears to have registered this Domain Name to impersonate the HOA, which is not a right that she has and which does not give rise to any legitimate interest. See WIPO Overview 3.0 at section 2.5.1 ("Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.").

6.15 Under these circumstances, the Panel finds that Respondent does not have rights or legitimate interests in the <lacamasshoreshoa.com> Domain Name. Complainant has thus met the requirements of paragraph 4(a)(ii) of the Policy as to the <lacamasshoreshoa.com> Domain Name.

C. Registered and Used in Bad Faith

6.16 Pursuant to paragraph 4(b) of the Policy, the following circumstances provide evidence of the registration and use of a domain name in bad faith by a respondent:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your web site or location.

6.17 It is important to note that this element requires a showing that a Domain Name is both registered and used in bad faith in order for paragraph 4(a)(iii) of the Policy to be violated.

6.18 The Domain Names <lacamasshores.org> and <lacamas-shores.com> were not registered in bad faith. As noted above, Respondent registered <lacamasshores.org> in 2002, without any direction from the HOA Board, for Respondent's own expressive purpose. The Domain Name itself does not contain any reference to the HOA, so it is not impersonating the HOA or HOA Board. There is no indication that the Domain Name <lacamasshores.org> was registered for eventual sale to the HOA. There is also no evidence that the Domain Name <lacamasshores.org> was registered primarily to disrupt the HOA's business, or that Respondent sought commercial gain through confusion with the HOA's mark. In fact, as of 2004, the HOA

began sharing use of this Domain Name, and it therefore knew of and approved of its use. Thus, no evidence exists to support a finding that the Domain Name <lacamasshores.org> was registered in bad faith.

6.19 The second Domain Name, <lacamas-shores.com>, was registered by Respondent in 2012 in order to provide an alternative website only when the first Domain Name, <lacamasshores.org>, was unexpectedly taken off-line. It appears that the Domain Name <lacamas-shores.com> was registered and used with the knowledge and approval of the HOA Board. This registration also was not in bad faith.

6.20 Complainant likewise fails to prove that either of the <lacamasshores.org> or <lacamas-shores.com> Domain Names are being used in bad faith. Rather, they are being used by Respondent to post expressive content about the Lacamas Shores community. Moreover, each website contains a disclaimer at the bottom to advise visitors that “the information on this website does not represent official statements or views of Lacamas Shores HOA Board.” Although the disclaimer could be clearer (in noting that these are no longer the official HOA websites, and providing a link to the HOA’s new website) and more prominent (preferably at the top of the webpage instead of at the bottom), it appears clear from the overall content of the websites (which include some posts that are critical of the HOA) that these are not official websites of the HOA.

6.21 However, the third Domain Name, <lacamasshoreshoa.com>, warrants a different analysis. When the Domain Name <lacamasshoreshoa.com> was registered, tensions were apparently brewing between Complainant and Respondent. Respondent registered this Domain Name in January 2016, just two months before she started changing the content on the websites and four months before she resigned as webmaster. These facts support the inference that Respondent likely registered this Domain Name with knowledge of her impending resignation or plan to stop posting material on the HOA’s behalf.

6.22 Moreover, Respondent has provided no explanation about why she registered the <lacamasshoreshoa.com> Domain Name, other than a “planned expanded use of the website.” The fact that the Domain Name <lacamasshoreshoa.com> includes the term “HOA” in conjunction with “Lacamas Shores” indicates that this planned expansion likely contemplated Complainant and its mark and services. Respondent otherwise failed to claim any legitimate use of this Domain Name and admits she has no plans to use the <lacamasshoreshoa.com> Domain Name for any fair use purpose in the future.

6.23 That Respondent is now willing to negotiate the transfer of a Domain Name she has no plans to use, but only for a negotiated fee, indicates that selling the <lacamasshoreshoa.com> Domain Name for a profit (and/or preventing the HOA Board from using this Domain Name itself) may well have been Respondent’s motivation for registration all along.

6.24 Therefore, the Panel finds that the <lacamasshoreshoa.com> was registered and used in bad faith, in violation of paragraph 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 Domain Name <lacamasshoreshoa.com> be transferred to Complainant. However, the Complaint is denied as to the Domain Names <lacamas-shores.com> and <lacamasshores.org>.

David H. Bernstein
Sole Panelist
Date: June 20, 2017