

ADMINISTRATIVE PANEL DECISION

Praxis Capital, Inc. v. John C. Martinez, The Praxeology Group LLC
Case No. D2019-0254

1. The Parties

The Complainant is Praxis Capital, Inc. of Santa Rosa, California, United States of America (“United States”), represented by One LLP, United States.

The Respondent is John C. Martinez, The Praxeology Group LLC, of Ft. Lauderdale, Florida, United States.

2. The Domain Name and Registrar

The disputed domain name <praxiscapitalgroup.com> 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 January 31, 2019. On February 1, 2019, the Center transmitted, by email, to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2019, the Registrar transmitted, by email, to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On February 6, 2019, the Complainant submitted, by email to the Center, an amendment to the Complaint changing the relief requested from cancellation of the disputed domain name to transfer of the name, which the Center acknowledged later the same day.

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”), 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 that the proceedings commenced on February 6, 2019. In accordance with the Rules, paragraph 5, the due date for Response was set to February 26, 2019. The Respondent did not submit any response. Accordingly, on February 27, 2019, the Center notified the Parties of the Respondent’s default.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on March 1, 2019. 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

As reflected in the registration record for the disputed domain name in the public Whois database (a copy of that record appears in Exhibit A to the Complaint), the disputed domain name was registered on June 25, 2011, and will expire on June 25, 2019.

A. The Complainant's PRAXIS CAPITAL mark

The Complainant owns a single United States registration for the mark PRAXIS CAPITAL INC. in block letters combined with a design element and additional text. The Complainant has provided, in Exhibit C to the Complaint, a copy of the registration certificate for this mark. Pertinent details of this registration are as follows:

1. Mark: PRAXIS CAPITAL INC. (in block letters) together with a stylized "P" in a larger font than and preceding the block letter text, the additional text "RECOGNIZING OPPORTUNITY – DELIVERING RESULTS" in a smaller font than and situated below the block letter text, United States Registration No. 5,289,607; registered: September 19, 2017.

This service mark is registered for use in connection with: "Real estate private equity investment services consisting of managing pooled real estate investment funds" in international class 36. The registration indicates that both first use and first use in commerce of this mark, when used in conjunction with these services, commenced as of June 10, 2010.

B. The Parties and their activities

The Complainant is a real estate investment firm, which provides investment services for private investors in the United States. It has been engaged in real estate investment services since 2010. The Complainant, having over USD 150 million in assets under management, focuses on implementing both tactical and strategic models to acquire underperforming residential real estate assets in growth markets throughout the United States. A copy of the homepage of the Complainant's website appears in Exhibit E to the Complaint.

Both the Complainant and the Respondent, the latter's activity as reflected in its website, operate in the same industry, *i.e.* real estate financing. The Respondent uses the term "Praxis Capital" as a formative component of its logo - which is the same prominent term in the Complainant's mark. Also, both the Respondent's logo and the Complainant's PRAXIS CAPITAL mark use a similar hue of the color blue.

On December 14, 2018, the Complainant's chief investment officer received a LinkedIn message (a copy of that message appears in Exhibit F to the Complaint) from a potential client inquiring about the Complainant's ability to finance a real estate project in California. The client had already received correspondence from someone at the Respondent's "Praxis Capital Group, LLC" who stated that a USD 15,000 deposit was required before the Respondent would consider the project. The client, then apparently believing he had been in correspondence with the Complainant, Praxis Capital, Inc., sought confirmation from the Complainant's chief investment officer that the deposit was necessary. The client also provided the Complainant's chief investment officer with a copy of a term sheet (a copy of which appears in Exhibit G to the Complaint) detailing the proposed debt transaction, which he received from the Respondent. The Respondent's stylized logo for its business "Praxis Capital, LLC" appears in the top right corner of the term sheet. The Complainant's officer then immediately notified the client that the Complainant's Praxis Capital, Inc. and the Respondent's "Praxis Capital Group, LLC" were unaffiliated.

On or about December 21, 2018, the Complainant's attorney sent a cease and desist letter to the Respondent and made several telephone calls to the Respondent's telephone number provided on its website. A copy of the letter appears in Exhibit J to the Complaint. The Complainant did not receive any response from the Respondent nor were any of its telephone calls answered.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its PRAXIS CAPITAL mark.

Specifically, the name contains the prominent portion of the Complainant's mark, namely the term "Praxis Capital". Further, the Respondent, in its website and correspondence, uses, as a portion of its logo, the term "Praxis" in a similar blue hue to that appearing in the Complainant's mark.

Moreover, the Complainant alleges that the similarities between the mark and the name are not coincidental, but rather intentionally selected by the Respondent to cause confusion. In that regard, the Complainant points to an instance, that occurred on December 14, 2018, and as detailed above, where one of its customers was actually confused by the Respondent's use of the term "Praxis", thus having mistakenly believed that the Complainant Praxis Capital, Inc. and the Respondent's "Praxis Capital Group, LLC" are the same entity, when, in fact, they are unrelated.

Thus, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for various reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

First, the Respondent is not affiliated with nor is it authorized by the Complainant to use the Complainant's PRAXIS CAPITAL mark for any purpose. Moreover, the Complainant began using its mark PRAXIS CAPITAL in June 10, 2010, which was well prior to when the Respondent commenced doing business in Florida, on January 31, 2017, as "Praxis Capital Group, LLC". In that regard, a copy of an entity registration record from the Florida Division of Corporations for the "Praxis Capital Group, LLC", as a Florida limited liability company, appears in Exhibit H to the Complaint. Thus, the Respondent was likely well aware of the Complainant when the former registered the disputed domain name on June 25, 2011, with the intent of profiting from the use in the disputed domain name of the formative element, PRAXIS CAPITAL, in the Complainant's mark.

Moreover, the Respondent's business does not appear to exist in reality, as there are no: consumer reviews, evidence of deals or presence on the Internet, other than the Respondent's website, under the disputed domain name. In that regard, there is no evidence of any clients who have actually benefitted from the Respondent's real estate financing services. The Respondent's website is comprised of copied copyrighted content from various other websites and online profiles of various professionals unaffiliated with his business. The Respondent copied these profiles and posted them on his website claiming that they are the professional backgrounds of the Respondent's "team members". These alleged "team members" do not appear to exist in reality. A true and correct copy of the employee descriptions page ("Team" page) of the Respondent's website as of January 10, 2019, as well as the online professional profiles from which the copyrighted descriptions were copied, appear in Exhibit I to the Complaint.

Consequently, under the present facts of record, there is simply no plausible actual use by the Respondent of the present disputed domain name that would be legitimate under paragraph 4(c) of the Policy.

(iii) Registered and Used in Bad Faith

The Complainant also contends that the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Specifically, the Complainant alleges that the Respondent, with knowledge of the Complainant, the Complainant's PRAXIS CAPITAL mark, and the Complainant's reputation, intentionally registered the disputed domain name, which is confusingly similar to that mark, to deliberately exploit that reputation to likely confuse Internet users into believing that the parties were related when, in fact, they are not. Such confusion would cause Internet users, who seek the Complainant's website and its real estate financing services, to reach the Respondent's website instead, thus diverting, as a result of the confusion, potential resulting business from the Complainant to the Respondent for the latter's own commercial gain.

B. Respondent

In view of the lack of any Response, this administrative proceeding continued by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant's undisputed factual allegations which the Panel finds are not inherently implausible.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's PRAXIS CAPITAL mark.

From a simple comparison of the disputed domain name to the Complainant's mark, no doubt exists that the disputed domain name is confusingly similar to it. The disputed domain name consists of the formative and prominent words of the mark, specifically "PRAXIS CAPITAL", followed by the word "group" to form a composite term "praxiscapitalgroup" to which the generic Top-Level Domain ("gTLD") ".com" has been appended, with the addition of the ".com" being irrelevant in this case in assessing confusing similarity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in prior UDRP cases, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to prevent confusing similarity. Here, a clearly prominent and distinguishing feature of the Complainant's mark is the term "PRAXIS CAPITAL", as that term appears in a much larger font than any of the other text in the mark. The Respondent's addition of the word "group" to the Complainant's mark to form the disputed domain name unquestionably constitutes such a minor variation. See also, *e.g.*, *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; and *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148. Though an incident of actual confusion is unnecessary for an ICANN panel to find confusing similarity as just a likelihood that such

confusion will arise usually suffices, *i.e.* to the extent of confusion being more likely under the circumstances to occur than not, nevertheless actual confusion where it exists - as here - reflects that such a likelihood is not abstract but rather real and potentially significant.

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize the Complainant's PRAXIS CAPITAL mark and has no relationship, affiliation or connection whatsoever with the Respondent.

Further, in view of the Respondent's default, the Panel accepts as uncontested the Complainant's assertions that the Respondent, contrary to the listings on its website, has no staff connected with its business conducted under the name "Praxis Capital Group, LLC" and, of greater importance, that business does not even exist at all. The Panel finds, as corroboration, there is simply no evidence of record that the Respondent actually used the disputed domain name in connection with a *bona fide* offering of goods or services or made any prior demonstrable preparations to do so. Using a domain name that intentionally infringes the exclusive trademark rights of another fails to qualify as a *bona fide* use.

Given the Complainant's exclusive rights in its PRAXIS CAPITAL mark, which predate, by approximately a year, the date (June 25, 2011) on which the Respondent registered the disputed domain name and approximately 6 1/2 years prior to the date (January 31, 2017) when the Respondent registered its business under the name "Praxis Capital Group, LLC" with the Florida Division of Corporations, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to that of the Complainant — at least for the real estate investment services provided by the Complainant under its PRAXIS CAPITAL mark — without interfering with the exclusive trademark rights of the Complainant. See, *e.g.*, *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; and *Chicago Mercantile Exchange Inc., Cummins Inc. and Staatliche Porzellan-Manufaktur*, all cited *supra*. Consequently, the Respondent is not commonly known by the disputed domain name or the Complainant's mark.

Hence, the Respondent does not fall within any of paragraphs 4(c)(i) to 4(c)(iii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The Panel infers, particularly from the lack of any Response, that it is likely that the Respondent was well aware of the Complainant, its reputation and goodwill in its PRAXIS CAPITAL mark, and the exclusive rights which the Complainant then had in that mark when the Respondent registered the disputed domain name. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondent intentionally registered the name for its potential to cause confusion with the Complainant's mark.

In that regard, the Respondent very likely believed that Internet users, who sought the Complainant's website and were familiar with the corresponding mark of the Complainant would be confused, upon entering that name into their browsers, by the similarity between the name and that mark - inasmuch as the name incorporated the formative and prominent term "Praxis Capital" of the Complainant's mark, and would consequently assume that a relationship of some sort exists between the parties, possibly a sponsorship,

affiliation or endorsement of the Respondent's website by the Complainant, when in fact no such relationship exists at all. Thus, the Respondent would intentionally divert Internet traffic, otherwise destined to the Complainant's website, to his own site instead thus depriving the Complainant of resulting business and quite possibly injuring its reputation to the Complainant's ultimate detriment. This conduct is a clear violation of paragraph 4(b)(iv) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The disputed domain name <praxiscapitalgroup.com> is to be transferred to the Complainant.

Peter L. Michaelson
Sole Panelist
Date: March 13, 2019