



B.E.S.T. GDR, LLC)
 6723 N Sacramento Ave.)
 Chicago, IL 60645 USA)
)
(Complainant))
)
 v.)
)
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)
)
(Respondent))
 _____)

Domain Names In Dispute:
 premiumhomeservice.info

Case Number:
 [REDACTED]

RESPONSE

[1.] Respondent received a Written Notice of Complaint and Commencement of Administrative Proceeding on *June 1st, 2022*. The Notification stated that Complainant had submitted a Complaint for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999 (“UDRP” or “Policy”), and the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), effective July 31, 2015, and the FORUM Supplemental Rules (“Supp. Rules”), effective July 31, 2015. Rule 4.

[2.] **RESPONDENT INFORMATION**

- [a.] Name: [REDACTED]
- [b.] Address: *Redacted, due to specific threats of violence against Respondent received from Complainant.*
- [c.] Telephone: [REDACTED]
- [d.] Fax: N/A
- [e.] E-Mail: info@premiumhomeservice.info

[3.] **RESPONDENT AUTHORIZED REPRESENTATIVE, IF ANY**

- [a.] N/A

UDRP Rule 5(b)(ii).

Respondent's preferred contact person for correspondence relating to this case:

[a.] Contact Name(s): [REDACTED]

[b.] Contact Emails(s): info@premiumhomeservice.info

Rule 5(b)(iii).

The Respondent chooses to have this dispute heard before a (check one):

single-member administrative panel; *three-member administrative panel*].

Rule 5(b)(iv).

[3.] **RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS MADE IN COMPLAINT**

Respondent respectfully requests that panel member take into account the fact that Respondent is a private individual, without representation, and excuses any inadvertent procedural errors or other departures from the typical response format that may result from unfamiliarity with the UDRP process.

This Response specifically responds to the statements and allegations contained in the Complaint and includes any and all bases for the Respondent to retain registration and use of the disputed domain name. Rule 5(b)(i).

[a.] Rule 3(b)(ix)(1); UDRP ¶ 4(a)(i).

Complainant can have no common law trademark right to the phrase "premiumhomeservice," and can have no common law rights to the words "premium," "home," or "service." Given that no trademark or service right can legitimately exist for Complainant, any complaint of confusion with a trade or service mark is moot.

Words such as "premium," "home," and "service" are "merely descriptive" marks that cannot obtain trademark protection. Trademark law does not countenance someone obtaining "a complete monopoly on use of a descriptive term simply by grabbing it first." (*KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111 (2004))

- Complainant is not the first business to use the so-called mark "premiumhomeservice." A brief, non-exhaustive review of business registrations across the US reveals no fewer than 21 other businesses or marks registered as "Premium Home Service" or "Premium Home Services." All of these businesses pre-date the stated dates for start-of-business of Complainant.

See Exhibit 1.

The above represents evidence of widespread use of the phrase "premium home service" in both business entity naming and marks that pre-date any use of the phrase by the Complainant, with businesses using that combination of words active as early as 2002.

- The use of a company's name in or as a domain name does not in itself constitute infringement. Courts have found that speech critical of a business is protected by the First

Amendment (*Taubman Company v. Webfeats and Henry Mishkoff*, 319 F.3d 770). By further example, the website “royaldutchshellplc.com” and “shellenergy.website” have withstood any attempts by the Shell corporation to take control, despite its use of their logo and name. They have been ruled to be complaint sites that no reasonable person could mistake for the actual company.

The same applies to premiumhomeservice.info. It is very clearly a consumer complaint site, and makes no attempt to set itself up in competition or to make any financial gain. No reasonable person could mistake it for having any official involvement with PHS.

- It is apparent that the Complainant may have plagiarised their entity name and website design from a third party, Premium Home Services LLC of Maine (<https://premiumhomeservicesllc.com/>). The owner of this business has confirmed that he has no connection to the Complainant; however, his business name and website design have been extensively copied by the Complainant. This further demonstrates that the Complainant can have no exclusive right to any element of their domain name or website design.

See Exhibit 2.

- Respondent presents further evidence of business impersonation by the Complainant, nullifying any claim by Complainant that they have any trademark or common law right to the phrase “premiumhomeservice”. The unrelated business “Premium Home Services” of Greater Warrenton, Virginia, has been forced to post a warning on their website (<https://premiumservice.com/2021/06/28/scam-alert-be-on-the-lookout-for-a-spoofing-site/>) referring to the activities of the Complainant. As stated by this business, they receive “daily” interruptions to their business by dissatisfied customers of the Complainant mistaking their business for the Complainant’s. Premium Home Services has been in business for over 20 years, predating the Complainant by 2 decades.

See Exhibit 3.

- The cases which Complainant presents, in an attempt to support their position, generally relate to situations where there was a clear attempt by the responding party to cause confusion as to the ownership of the website, or to represent themselves as the complainant in the relevant case. This is not the case here, and the cases cited by Complainant are not relevant to the situation, particularly given that the business name of the Complainant is in no way unique and that no legitimate trademark regarding to the term “premiumhomeservice” can be held.

[b] Rule 3(b)(ix)(2); UDRP ¶ 4(a)(ii).

UDRP ¶ 4(c):

(i.) *Whether, before any notice to the Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name is in connection with a bona fide offering of goods or services; or*

(ii.) Whether Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if Respondent has not acquired trademark or service mark rights; or

(iii.) Whether 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 service mark at issue.

The Respondent is not making commercial use of the domain name.

The Respondent maintains a consumer protection website related to a business with a long and well-documented history of poor business practices. It is in the public interest to make this information available. Part of making the information available is ensuring that it is locatable by those consumers who may require it. The domain name is chosen carefully and legitimately, the website being one which provides information (“info”) about the Premium Home Service business.

There is no attempt to mislead any consumer. No legitimate trademark or service mark exists to be tarnished.

[c.] Rule 3(b)(ix)(3); UDRP ¶ 4(a)(iii).

- The Complainant alleges that use of the “privacy” settings when registering a domain name is evidence of bad faith.

The Respondent points out that the “privacy” setting is enabled by the majority of domain name registrars by default and is common practice, often requiring specific intervention when registering a domain name in order to de-select it.

Respondent further points out that the Complainants’ own website uses the exact same “privacy” setting for its registration as does Respondents’, which draws the conclusion that their argument is made in bad faith.

See Exhibit 4.

The Respondent has at no point attempted to make any secret of involvement with the site, freely confirming such involvement to employees of the Complainant. For example, this was confirmed by phone to a manager of the Exelcius call center in the Philippines and employee of the Complainant in late April 2022, and in writing to an employee of Complainant on 10th May 2022.

- Complainant alleges that the domain name was registered in bad faith in order to disrupt the business of the Complainant. Simply publication of factual information about a business cannot be regarded as an attempt to disrupt, any more than leaving reviews of a business on a service such as Google or the BBB.

It is clearly stated on the website of the Respondent that the purpose of the website is two-fold:

1. Respondent entered into a business transaction with Complainant on 26 April 2022. Respondent attempted to cancel the subscription in accordance with the electronic agreement, which was refused by Complainant. Respondent found it necessary to gather the information included on Respondent's website before any employee of the Complainant was willing to issue a refund in accordance with the contract.

The primary purpose of the website is to provide this information to any other customer who actively seeks it out, and requires it in order to enforce their contractual rights. The Complainant's attempt to shut down this website is in bad faith, and can be considered an attempt to hide their poor business practices.

2. The website aims to facilitate a successful conclusion of contracts between Complainant and customers, by providing information to customers that allow them to communicate with the correct people in Complainant's organisation to have their problems resolved. Figure 4 shows examples of instances where customers have contacted the website of Respondent after Complainant has failed to deliver in accordance with the contract. It can be seen that in each case, Respondent directs the customer to the correct person to resolve the issue.

See Exhibit 5

- This use of the premiumhomeservice.info domain to provide truthful and legitimate criticism of a business is protected under the 1st amendment and cannot constitute bad faith. The choice of domain name is logical given the purpose of the site.

The response further addresses each of the main points from the UDRP below:

UDRP ¶ 4(b):

(i.) Whether there are 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 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 Respondent's documented out-of-pocket costs directly related to the domain name; or

The Respondent has made no attempt to, and has no intention of, selling, renting or transferring the domain name to the Complainant.

(ii.) Whether 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

The Respondent has registered only a single domain name, clearly demonstrating that there is no pattern demonstrating an attempt to deny the Complainant use of the phrase (no valid mark exists).

(iii.) Whether Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

The Respondent is a private individual and is not in the business of providing home services. The Complainant can therefore not be considered a competitor of the Respondent.

(iv.) Whether by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location.

The domain registered by the Respondent is not monetized in any way, and has no way of delivering a commercial gain to the Respondent. The website at the Respondent's domain cannot be confused for a website affiliated with the Complainant by any reasonable person.

- The content of the website makes it very clear that the site has been set up by consumers to document poor experiences with the company in question.
- The layout of the website is materially different to that of the Complainant (for example, the Complainant's website features a horizontal menu at the top of each page, and the Respondent's website features a vertical menu down the side of each page). The general concept of a website with rectangular spaces for text, and a menu on each page, is widespread and cannot be considered a distinguishing feature of the Complainant's website or as any cause for confusion.
- PHS holds no valid trademark in the color of their website. Color marks must serve a source identification function, and must not serve a merely decorative or utilitarian purpose; furthermore, color marks require proof of "secondary meaning" (*Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159). Despite its use of yellow on the website, PHS does not provide or use yellow branding anywhere else. Furthermore, yellow is in common use on similar sites across the internet. We assert that there is no possible infringement regarding the color, as no color mark exists. However, the color of the premiumhomeservice.info site has been changed as a gesture of goodwill and to prevent the need for further discussion.

See **Exhibit 6** below.

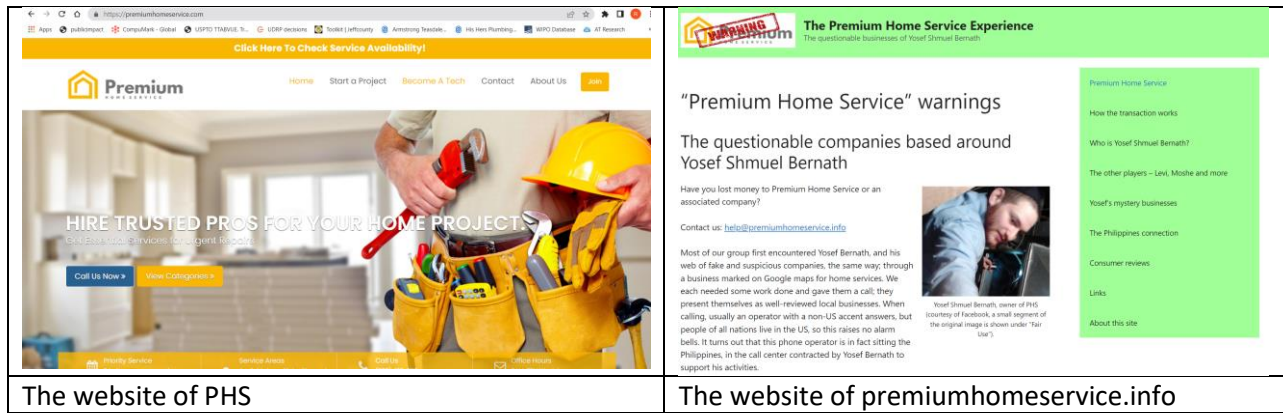


Exhibit 6 – comparison of websites

- No elements of the Complainant’s website are in any way unique, and are in fact copied from pre-existing businesses such as Premium Home Services LLC of Maine. See Figure 2, above.

Additional examples of almost identical site logos are included in **Exhibit 7**, further dispelling any notion of unique branding on the part of the complainant.

[4.] OTHER LEGAL PROCEEDINGS

A case has been opened with Sugar Land Police Department, Texas, regarding online impersonation of the premiumhomeservice.info domain. Evidence in the form of IP addresses suggest involvement of individuals associated with the Complainant. The relevant case number is [REDACTED].

The Complainant is currently the subject of multiple US law enforcement and consumer protection investigations at Local, State and Federal levels. For further details on these ongoing investigations please contact Investigator [REDACTED] of Racine County Sheriffs Office at [REDACTED] (cell) or [REDACTED] (desk), or on [REDACTED].

You can also contact Investigator [REDACTED] of the State of WI Dept of Agriculture, Trade, Consumer Protection on [REDACTED], or on [REDACTED].

[5.] RESPONSE TRANSMISSION

The Respondent asserts that a copy of the Response, as prescribed by FORUM’s Supplemental Rules, has been sent or transmitted to the Complainant, in accordance with Rule 2(b). Rule 5(b)(vii); FORUM Supp. Rule 5.

[6.] The Respondent respectfully requests that the Administrative Panel denies the remedy requested by the Complainant.

[7.] CERTIFICATION

Respondent certifies that the information contained in this Response is to the best of Respondent’s knowledge complete and accurate, that this Response is not being presented for

any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

Signature redacted

██████████

20th June 2022

[Date]

Schedule of exhibits

Exhibit 1 - other US businesses using identical or almost identical names to Complainant

Exhibit 2 – Comparison of complainants’ website with that of the earlier Premium Home Services LLC

Exhibit 3 - a warning on the legitimate “Premium Home Services” website about the activities of Complainant.

Exhibit 4 – Complainant’s domain registration, showing their registration using the privacy option to conceal their contact information

Exhibit 5 - email responses from Respondent’s domain to customers of Complainant

Exhibit 6 – comparison of websites

Exhibit 7 – examples of the non-unique nature of Complainant’s colours and logo