

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. houchang li
Case No. D2022-2634

1. The Parties

The Complainant is Pixabay GmbH, Germany, represented by SafeNames Ltd., United Kingdom.

The Respondent is houchang li, China.

2. The Domain Name and Registrar

The disputed domain name <pixabsy.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 20, 2022, 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 July 20, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On July 20, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 the Respondent in English and Japanese of the Complaint, and the proceedings commenced on July 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on August 26, 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 an online copyright-free image, video and music creating and sharing platform founded in 2010. The Complainant has been operating from its website at “www.pixabay.com” since at least August 2011. The website is available in 26 languages.

The Complainant holds several trade mark registrations for PIXABAY, including the following:

Trade Mark	Origin	Registration Number	Registration Date	Class
PIXABAY	Australia	2004679	April 22, 2019	9, 42, 45
PIXABAY	India	4212079	June 20, 2019	9, 42, 45
PIXABAY	Mexico	2033884	August 28, 2019	9
PIXABAY	European Union	018041811	September 20, 2019	9, 42, 45

The disputed domain name <pixabsy.com> was registered on February 18, 2019. At the date of this Complaint, the disputed domain name resolved to: (i) webpages with pay-per-click (“PPC”) links to third-party websites or (ii) solicit offers from Internet users to purchase the disputed domain name.

The Respondent is an individual based in China. In response to the Complainant’s cease and desist letter, the Respondent offered to transfer the disputed domain name for USD 288.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name is almost identical to the Complainant’s trademark except for the substitution of the letter “s” for the letter “a” the second time it appears. The use of the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name does not eliminate the overall notion that the designation is connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization or license to use the Complainant’s trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name; and

(c) The disputed domain name was registered and is being used in bad faith. The Complainant has made significant use of PIXABAY as a trademark since 2010 (even though it only applied to register the mark in 2019) and the Respondent must have known of it when registering the disputed domain name. The Respondent has registered a disputed domain name that incorporates the PIXABAY trade mark primarily to sell the disputed domain name to the Complainant. The Respondent requested payment of USD 288 to transfer the disputed domain name. The Respondent is using the disputed domain name to attract Internet users for commercial gain by the use of PPC links and the Respondent is a serial cybersquatter who has registered many domain names incorporating marks of others as well as having been the Respondent in a

number of domain name cases.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. In response to the Complainant's cease and desist letter before the submission of the UDRP complaint, the Respondent offered to transfer the disputed domain name for USD 288.

6. Discussion and Findings

6.1. Preliminary Issues – Language of the Proceeding

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the language of the Registration Agreement for the disputed domain name is Japanese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- (i) The disputed domain name is solely composed of letters from the Latin alphabet;
- (ii) The pages to which the disputed domain name resolves contain English-language text (e.g., PPC link category titles such as "Cloud Storage Pictures" and "Training");
- (iii) The Respondent's Whois-listed email address is evidently comprised of two English words;
- (iv) The Respondent has registered domain names which comprise English words or acronyms (e.g., <bestcrmttools.com>, <2022taxcalculator.com> and <2023holidays.com>);
- (v) The Respondent responded to the Complainant's cease and desist correspondence in English;
- (vi) Panels in previous UDRP proceedings have found that the Respondent is likely proficient in English, and that the proceedings could continue in English; and
- (vii) The Complainant's representatives are based in the United Kingdom and requiring a translation would result in the incurrence of additional expense and unnecessary delay.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraph 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Japanese;
- the Respondent has not commented on the language of the proceeding;
- the Respondent's responded to the Complainant's cease and desist letter in English; and
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- (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. Identical or Confusingly Similar

The Panel finds that the disputed domain name <pixabsy.com> is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the PIXABAY trade mark with the second letter "a" replaced by the letter "s", along with the gTLD ".com". This is a clear case of typosquatting and the trademark is still recognizable. (See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The gTLD is generally disregarded when considering the first element. (See section 11.1 of [WIPO Overview 3.0](#)).

The Panel notes that the Complainant did not rely on any registered trademarks in China where the Respondent is located nor in Japan where the Registrar is located. The Panel also notes that the disputed domain name was registered before the Complainant obtained trademark registrations. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's PIXABAY trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name "PIXABSY".

There is also no other evidence that the Respondent has used or is planning to use the disputed domain name for a *bona fide* offering of goods or services. In addition, the Respondent has not formally responded to any of the Complainant's contentions.

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second

element.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

While the disputed domain name was registered a few months before the first of the Complainant's trademarks were registered, the Complainant was founded in 2010 and has been offering its PIXABAY services since at least August 2011 from its website at "www.pixabay.com". The Panel is satisfied that the Respondent was aware of the Complainant and its PIXABAY trade mark when it registered the disputed domain name.

The Respondent offered to transfer the disputed domain name for USD 288 which is very likely more than its out of pocket expenses and established bad faith under paragraph 4(b)(i) of the Policy.

It also appears to the Panel that the Respondent has registered the disputed domain name for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs to a webpage containing PPC links which generate revenue or commission for the Respondent.

Finally, the Respondent has registered numerous other domain names incorporating famous brands and has been named as a respondent in a number previous UDRP cases. In all the previous cases, the domain name at issue was transferred to the complainant. The Respondent's past pattern of conduct shows bad faith on the part of the Respondent in this proceeding.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) of the Policy.

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 <pixabsy.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: September 9, 2022