

ADMINISTRATIVE PANEL DECISION

XPEL, Inc. v. Schezir Knoll, Trade X ME LLC

Case No. D2022-3133

1. The Parties

The Complainant is XPEL, Inc., United States of America (“United States”), represented by Dykema Gossett PLLC, United States.

The Respondent is Schezir Knoll, Trade X ME LLC, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <xpelme.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 25, 2022. On August 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 26, 2022 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 2022, 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 amended Complaint on September 2, 2022.

The Center verified that the Complaint together with the amended 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 September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 27, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on October 6, 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

For some 25 years, the Complainant has supplied paint protection, antimicrobial protection, and window film products under the mark “XPEL”.

The Complainant owns many XPEL formative marks including United States Trademark No. 3542360 for XPEL plus design, filed on April 8, 2008, registered on December 9, 2008, in class 17, and United States Trademark No. 5855304 for the word XPEL, filed on October 25, 2018, registered on September 10, 2019, in classes 17, 21 and 37.

The Complainant operates its own website at “xpel.com”.

According to the Complainant, the parties “were in business together going back to approximately 2011-2012”.

The disputed domain name was registered on November 23, 2015.

Under a distribution agreement dated January 1, 2019, the Complainant appointed Trade X ME LLC as its distributor (exclusive for some products; non-exclusive for others) in respect of certain territories.

The Respondent terminated the distribution agreement on May 17, 2022.

On May 23, 2022, the Complainant wrote to the Respondent requiring that, amongst other things, the Respondent stop using the Complainant’s trade marks, and that it promptly transfer to the Complainant any domain names containing any Complainant trade mark.

On July 27, 2022, the Complainant sent a cease and desist letter to the Respondent objecting to the Respondent’s failure to shut down the website at the disputed domain name, and requiring transfer of the disputed domain name.

The Respondent did not respond to either of the above letters.

As of August 24, 2022, the disputed domain name resolved to a website that not only offered the Complainant’s products for sale but was also a close copy of the Complainant’s site, including logo, layout, colour scheme, images and text. The contact details of the Respondent (Trade X Me LLC) appeared in the footer of the site along with a copyright notice in the Complainant’s name.

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The Complainant is a worldwide leading supplier in its industry and its trade mark is well-known.

The disputed domain name is confusingly similar to the Complainant’s trade mark. Addition of the letters “ME” functions only as an abbreviation of the geographical term “Middle East”.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to register the disputed domain name or to use its trade mark and there is no indication that the Respondent owns any relevant trade mark.

The Respondent has used the disputed domain name in an illegitimate manner, namely to deceive the Complainant's customers and divert them to the Respondent's own website.

Nor is there any evidence that the Respondent is making any legitimate fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

There is no doubt that the Respondent was aware of the Complainant's well-known mark when it registered the disputed domain name, as the Complainant is well-known in its industry and the parties had a prior business relationship.

The 2019 distribution agreement prohibited the Respondent from registering any domain names incorporating the Complainant's marks and the Respondent would have been aware of this when renewing the disputed domain name thereafter.

The Respondent has used the disputed domain name in bad faith by creating a website that impersonated the Complainant by deceptively copying the Complainant's website in order to offer goods and services competing with those of the Complainant, thereby causing actual and future customer confusion and damaging the Complainant's business and reputation.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Preliminary Issue - Identity of the Respondent

Schezir Knoll is the registrant of the disputed domain name as shown in the WhoIs record.

According to the evidence supplied by the Complainant, Mr Knoll is the managing director of Trade X ME LLC, which is the entity that entered into a distribution agreement with the Complainant in 2019 and is also shown in the footer as the operator of the website at the disputed domain name. In these circumstances, the Panel considers it likely that Trade X ME LLC exercises control of the disputed domain name and/or is the beneficial owner of the disputed domain name. Furthermore, its potential rights or legitimate interests in the disputed domain name, and its alleged bad faith, are at stake. The Panel therefore considers that this entity is also correctly named as a Respondent. See, e.g., *The Royal Bank of Scotland Group plc v. Reserved Branch of Strategic Geographers / Domain ID Shield Service*, WIPO Case No. [D2012-1733](#), and *Skoda Auto a.s v. GlobeHosting, Inc.; Bogdan Hasnes, Evox Protrade SRL*, WIPO Case No. [DRO2019-0017](#).

Accordingly, unless stated otherwise, references to "the Respondent" in this decision should be treated as including both Schezir Knoll and Trade X ME LLC.

B. Identical or Confusingly Similar

The Complainant has established registered trade mark rights in the mark XPEL. Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant's distinctive trade mark, which remains readily recognisable within the disputed domain name, plus the additional term "ME", which does not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, it is not necessary for the Panel to consider whether the terminated 2019 distribution agreement between the parties potentially created rights or legitimate interests under the second element. Section 2.11 of [WIPO Overview 3.0](#) observes that, without prejudice to a complainant's duty to establish registration and use in bad faith, panels tend to assess respondent rights or legitimate interests in the present, *i.e.*, with a view to the circumstances prevailing at the time of the filing of the complaint, and that a past agreement or relationship between the parties would not necessarily constitute rights or legitimate interests when the decision is rendered.

The Panel is not clear whether, after termination of the 2019 agreement, the Respondent continued to distribute the Complainant's products on an unofficial basis or whether, as the Complainant has asserted but not evidenced, the Respondent instead offered competing products for sale.

If the Respondent was acting as an unofficial reseller of the Complainant's own products, the consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the "Oki Data requirements"). In this case, far from complying with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, the Respondent set out to impersonate the Complainant, as explained in section 6D below.

If the Respondent was not reselling the Complainant's products but was instead offering competing products for sale, then the Respondent's behaviour was obviously even more egregious.

In either case, the Respondent's offering could not be described *bona fide*.

Furthermore, there is no evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

D. Registered and Used in Bad Faith

As the Panel has not been provided with any evidence indicating later acquisition by the Respondent, the Panel proceeds on the assumption that the Respondent has owned the disputed domain name since the Whois creation date, November 23, 2015.

On this basis, the Respondent acquired the disputed domain name before the parties entered into the 2019 distribution agreement.

However, the Respondent was nonetheless plainly well aware of the Complainant when registering the disputed domain name in 2015 because the Complainant says that the parties were had already “in business” together by 2011-2012. While the Complainant does not provide details of this earlier relationship, no doubt it involved some sort of distribution/resale arrangement. Despite this relationship, the Complainant has made it clear that it did not authorise the Respondent to register the disputed domain name containing its trade mark and the Respondent has not appeared in this proceeding to argue otherwise.

Furthermore, the disputed domain name does not include a term referable to a distributor/reseller relationship but, rather, consists of the Complainant’s trade mark plus “me”, which, in the Panel’s view, may be seen as a widely used acronym for geographical term “Middle East” or simply denoting “me”. In either case, the Panel considers that the disputed domain name tends to suggest official sponsorship or endorsement by the trade mark owner, creating a risk of implied affiliation.

For these reasons, and in the absence of any explanation from the Respondent, the Panel finds that the Respondent registered the disputed domain name in bad faith.

And the Panel has little difficulty in concluding that the Respondent has also used in the disputed domain name in bad faith, given that the Respondent’s website, which purported to offer the Complainant’s products for sale, not only lacked any prominent disclaimer, but effectively impersonated the Complainant, as explained in section 4 above.

The Complainant has therefore established the third element of 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 <xpelme.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: October 20, 2022