

ADMINISTRATIVE PANEL DECISION

Associated Newspapers Limited v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2023-1062

1. The Parties

The Complainant is Associated Newspapers Limited, United Kingdom, represented by Adlex Solicitors, United Kingdom.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <thedaily.maill.com> is registered with Media Elite Holdings Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 9, 2023. On March 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2023, 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.

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 of the Complaint, and the proceedings commenced on March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 18, 2023. 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, Associated Newspapers Limited, was incorporated in the United Kingdom on April 1, 1905, and is the management company and publisher of a range of publications in the United Kingdom including two national newspapers: the Daily Mail and The Mail on Sunday.

The first edition of the Daily Mail was published in 1896 and, currently, by way of example, the Daily's Mail's average United Kingdom circulation in September 2021 was approximately 920,000 per issue.

The Complainant holds trademark registrations for DAILY MAIL, such as the following:

- the United Kingdom Trademark No. 1207666 for DAILY MAIL (words), filed and registered on November 22, 1983, covering goods in International Class 16; and
- the European Union Trademark No. 193433 for DAILY MAIL (words), filed on April 1, 1996, and registered on November 5, 1999, covering goods and services in the International Classes 9, 16, 35, 38, 41 and 42.

The Complainant asserts that its website available at "www.dailymail.co.uk" is one of the most visited websites in the world.

The disputed domain name <thedaily.maill.com> was created on September 16, 2022. At the time of filing the Complaint, according to Exhibit 10 to the Complaint, the disputed domain name resolved to a website that appeared to contain phishing and/or malicious software and was also requesting visitors to provide personal details such as age and gender information. Also, when the Panel tried to visit the website under the disputed domain name, there were security warnings and restrictions.

Exhibit 11 to Complaint submits evidence of MX records associated with the disputed domain name, indicating that the Respondent has set up an email account using the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademarks, trade name and domain name, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the default and the absence of any reply to the Complaint by the Respondent, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- (ii) respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the DAILY MAIL trademark.

The disputed domain name reproduces the Complainant's trademark with an additional word at the beginning, "the", and a final letter "l" added in the word "mail". However, such addition and misspelling do not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical wording, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name and a domain name which consists of a common, obvious or intentional misspelling of a trademark are confusingly similar to the relevant mark for the purpose of the first element. See sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".info", ".one") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark DAILY MAIL, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark DAILY MAIL, that the Respondent is not commonly known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name. In fact, at the time of filing the Complaint the disputed domain name resolved to website redirecting Internet users to phishing or scam websites. In this regard, previous panels have categorically held that the use of a domain name for illegal activity (such as swindle, fraud, identity theft, phishing and impersonation) can never confer rights or legitimate interests in a respondent. See section 2.13 of the of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered or Used in Bad Faith

The Complainant holds trademark rights for DAILY MAIL since at least 1983, the first edition of the Daily Mails newspaper was published in 1896, the website “www.dailymail.co.uk” is one of the most visited news websites in the world and this Panel finds that the name DAILY MAIL acquired worldwide reputation.

The disputed domain name was created in September 2022, and reproduces the Complainant’s trademark, newspaper’s name and domain name with minor alterations.

From the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting the DAILY MAIL trademark.

At the time of filing the Complaint, the disputed domain name, incorporating the Complainant’s trademark, resolves to a page very likely in connection with a phishing or scam scheme. The Respondent was using, without permission, the Complainant’s trademark in order to misleadingly divert Internet users looking for the Complainant to its website, and thus to potentially obtain confidential information and/or commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant. Furthermore, this activity is likely to disrupt the Complainant’s commercial activity and tarnish its DAILY MAIL trademark.

The findings that the Respondent targeted the Complainant compel the Panel to conclude that the Respondent used the disputed domain name in bad faith to impersonate the Complainant, and take unfair advantage of the Complainant’s trademark, attempting to mislead third parties. See also section 3.4 of the [WIPO Overview 3.0](#).

Furthermore, according to evidence on the record, the disputed domain name has active MX records. This entails that the Respondent can send emails through the email address “@thedaily.maill.com”. The Respondent can therefore use (or may already have used) the disputed domain name to send fraudulent emails such as messages containing spam, phishing attempts, etc. See also *Confédération Nationale du Crédit Mutuel, Crédit Industriel et Commercial v. Khodor Dimassi*, WIPO Case No. [D2016-1980](#); or *Statoil ASA v. Registration Private, Domains By Proxy, LLC / Eldar Saetre*, WIPO Case No. [D2018-0563](#).

The Respondent failed to participate in this proceeding and the physical address listed in the Whois was inaccurate or incomplete since the couriers sent out by the Center to this address could not be delivered. The majority of the UDRP panels view the provision of false contact information as an indication of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

Moreover, previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a third party’s well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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, <thedailymaill.com>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: April 28, 2023