

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Name Redacted Case No. D2022-0921

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom (“UK”), represented by Demys Limited, UK.

The Respondent is Name Redacted.

2. The Domain Name and Registrar

The disputed domain name <online-hmrc.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 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.

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 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2022. The Center received an email communication from the Respondent on April 5, 2022. On April 12, 2022, the Center transmitted an email regarding possible settlement to the Parties. The Complainant sent an email to the Center on April 12, 2022 indicating that the settlement is not possible and requesting redaction of the Respondent’s information. Accordingly, the Center notified commencement of panel appointment process on May 10, 2022.

The Center appointed John Swinson as the sole panelist in this matter on May 12, 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 a non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes. The Complainant can trace its predecessors through to the Board of Taxes (founded in 1665 under Charles II). The Complainant, in its present form and with its current name, was created by the merger of the Inland Revenue and HM Customs and Excise in April 2005 and was established in The Commissioners for Revenue and Customs Act, 2005.

The Complainant owns a UK registered trademark for HMRC, being trademark number 2471470 filed on November 5, 2007 and registered on March 28, 2008.

The named Respondent is an individual from Nigeria. The Respondent did not file a formal response, so little information is known about the Respondent.

The disputed domain name was registered on August 31, 2021.

The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

As the UK Government's tax authority, almost every UK individual and business is a direct customer of the Complainant and user of its services.

The Complainant operates a website that can be accessed via the domain name <hmrc.gov.uk>.

The Complainant notes that, as with other tax authorities around the globe, it and its customers are frequently targeted by phishing, online scams and other criminality.

The Complainant's agent wrote to the Respondent on March 8, 2022 but did not receive a response.

The Complainant owns a registered trademark for HMRC, referred to in section 4 above. This trademark registration pre-dates the registration of the disputed domain name by approximately 13 years.

The Complainant contends that it is very well known in the UK and around the world as HMRC, and has produced a bundle of materials to support this assertion.

The disputed domain name is confusingly similar to the HMRC trademark in that it only differs by the addition of the term "online". Viewed as a whole, the Complainant's trademark is the most prominent, dominant and distinctive element of the disputed domain name.

The Respondent has not received any permission or consent from the Complainant to use its trademark or name. There is no evidence that the Respondent is commonly known by HRMC. The Complainant has not found any trademarks owned by the Respondent that incorporate HMRC. Further, the Respondent is not using the disputed domain name.

The Respondent did not respond to the Complainant's letter (referred to above). The Respondent's non-response and failure to give an explanation to the Complainant's assertions is similarly an admission of the Complainant's contentions.

The disputed domain name is "passively held". Such passive holding of the disputed domain name constitutes bad faith. The Complainant refers to section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the fame, widespread use and reputation of the Complainant, as outlined above and supported by evidence, it is inconceivable that the Respondent could have registered the disputed domain name without the Complainant's trademark in mind and with good-faith intentions. This is especially so given the inclusion of the word "online".

B. Respondent

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

The Respondent sent an email dated April 5, 2022 that stated in part:

"please note the said domain has nothing to do with me as the said email has not been use for awhile because i could not access it, it has been hacked for long and i have to retrieve my password after receiving the written notice from DHL courier today."

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Redaction of Respondent's Name

It appears that, due to a hacking incident, the person listed as the owner of the disputed domain name in the Registrar's records is not the person who controls the disputed domain name. As is appropriate where an innocent individual has been used to shield the true controlled of the disputed domain name (see for example, *Boehringer Ingelheim Pharma GmbH & Co. KG v. Name Redacted*, WIPO Case No. [D2012-0890](#)), the Complainant has requested that that individual's name be redacted from the record of this proceeding.

The Panel requests the Registrar to execute the transfer of the disputed domain name in accordance with the direction in section 7 below and accepting that "Name Redacted" in this decision refers to the name of the individual with an address in Nigeria specified as the registrant in the Registrar's response to the Center's verification request. Attached as Annex 1 to this Decision is an instruction to the Registrar regarding transfer of the disputed domain name that includes the name of the referenced individual, and the

Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding. However, the Panel directs the Center, pursuant to paragraph 4(j) of the Policy and paragraph 16(b) of the Rules, that Annex 1 to this Decision shall not be published based on exceptional circumstances. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#); and *KWM Brands Pte Limited and King & Wood Mallesons v. Registration Private, Domains By Proxy, LLC / Name Redacted*, WIPO Case No. [D2015-1452](#).

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns a trademark registration for HMRC. The disputed domain name includes HMRC in full as well as the word “online”.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#).

The Complaint also refers to the analogous case in *The Commissioners for HM Revenue and Customs v. Dani Gan*, WIPO Case No. [D2017-0357](#) which concerned the domain name <hmrconlinegov.com> in which the panel held that <hmrconlinegov.com> was confusingly similar to the Complainant’s trademark.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant’s HMRC trademark.

The Complainant succeeds on the first element of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Respondent has not received any permission or consent from the Complainant to use its trademark or name. The Complainant also asserts that there is no evidence that the Respondent is commonly known by HRMC, and that the Complainant has not found any trademarks owned by the Respondent that incorporate HMRC. Further, the Respondent is not using the disputed domain name.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file a formal Response. The Respondent has not produced any evidence to establish its rights or legitimate interests in the disputed domain name. To the contrary, the Respondent's informal email of April 5, 2022 suggests that the Respondent has no rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#) ("the *Fifth Street Capital LLC*" case).

The Complainant is well-known, at least in the UK. The Complainant has been the subject of phishing and other online activities designed to defraud members of the public. The fact that there is no current website at the disputed domain name is not fatal to the Complainant's case. For example, the disputed domain name could be being used for phishing or other fraudulent emails.

The Complainant wrote to the Respondent but did not receive a response.

The Panel can easily draw the inference in this case that the primary reason for registering the disputed domain name was for fraudulent purposes or to confuse Internet users into believing that the disputed domain name is associated with the Complainant. The Panel cannot think of any use of the disputed domain name that would not be in bad faith. (Compare *Riyad Bank v J. Boschert*, WIPO Case No. [D2001-1235](#) where the Panel stated in respect of a domain name that had not been used that "the Panel is unable to conceive of any rational explanation for the Respondent's registration other than intended bad faith use".)

The Respondent has provided no justification for registration of the disputed domain name. In fact, it appears that, due to a hacking incident, the person listed as the owner of the disputed domain name in the Registrar's records is not the person who controls the disputed domain name. This strongly suggests bad faith registration and bad faith use or intended use of the disputed domain name.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <online-hmrc.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: May 24, 2022