

ADMINISTRATIVE PANEL DECISION

GQA Qualifications Limited v. mike cool

Case No. D2022-4560

1. The Parties

Complainant is GQA Qualifications Limited, United Kingdom (“United Kingdom” or “UK”), represented by Mick Clayton, United Kingdom.

Respondent is mike cool, Australia.

2. The Domain Name and Registrar

The disputed domain name <gqaonlines.net> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 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 (Domain Admin / Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to Complainant on December 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 8, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on December 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 6, 2023.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on January 16, 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

Complainant is an awarding body that appears to award certificates or similar credentials to those who achieve a certain level of skill in various industries. Complainant has a UK registered Trade mark, Registration No. 00002498139 for GQA QUALIFICATIONS, depicted inside of a stylized green “Q” symbol, filed on September 19, 2008, and registered on February 25, 2011. Complainant operates its “Awarding Organization management system” through a website at “www.gqaonline.info”, and also has a corporate website at “www.gqaqualifications.com”.

Respondent registered the disputed domain name on October 26, 2022. Complainant submitted evidence that the disputed domain name was passing off as Complainant’s website “www.gqaonline.info”. Currently, the disputed domain name resolves to an inactive page.

5. Parties’ Contentions

A. Complainant

Complainant asserts that the disputed domain name “is identical to the GQA legitimate, GQA Online website [‘www.]gqaonline.info[.]” Complainant also asserts that it has not authorized Respondent to use GQA in a domain name or to use the GQA trademark on Respondent’s website, and therefore that Respondent has no rights or legitimate interests in the disputed domain name. Complainant further asserts that Construction Skills Certification Scheme (“CSCS”) cards “have become a de facto right-to-work card for constructions site workers in the United Kingdom, and as such are highly sought after and are subject of fraud especially in the entry level roles”, and that Complainant issues a CSCS card known as the “Q-card”. Complainant asserts that Respondent is issuing fake Q-cards and that the disputed domain name is being used to verify the fake Q-cards and convince employers that the fake Q-cards are authorized. Screenshots of Complainant’s verification page and Respondent’s verification page are attached to the Complaint. The layouts of the pages are nearly identical. Complainant thus asserts that “[t]he Respondent’s fake website ([‘www.]gqaonline.net[.]]) is passing off as GQA Qualifications Limited legitimate GQA Online website ([‘www.]gqaonline.info[.]])”, and that “[f]raudulently obtained and fake cards may enable unqualified workers to gain access to construction sites where they may be a risk to themselves, others working alongside them and members of the public.” Thus, Complainant asserts that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings “shall decide a 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”.

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (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 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

Under paragraph 4(a)(i) of the Policy, Complainant must show that the disputed domain name is “identical or confusingly similar to a trademark or service mark in which the complainant has rights”.

Complainant’s trademark registration annexed to the Complaint demonstrates that Complainant has rights in the mark GQA QUALIFICATIONS. Further to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.10, “[p]anel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element”.

The disputed domain name consists of “gqa”, followed by “onlines”, with the “.net” generic Top-Level Domain (“gTLD”) at the end. Generally, “where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. [WIPO Overview 3.0](#), section 1.7. Here, GQA is the dominant feature of the mark and Complainant also maintains a website at “www.gqaonline.info”. A dominant feature of the relevant mark is thus recognizable in the disputed domain name. Moreover, “[w]here the relevant trademark is recognizable 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.” [WIPO Overview 3.0](#), section 1.8. Thus, the addition of “onlines” does not prevent a finding of confusing similarity. Similarly, the addition of the “.net” gTLD prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.11.1 (“The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a mark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Complainant also must demonstrate that Respondent has “no rights or legitimate interests in respect of the domain name”, per paragraph 4(a)(ii) of the Policy.

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent’s] rights or legitimate interests to the [disputed] domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [Respondent] of the dispute, [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) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or

(iii) [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.” Policy, paragraph 4(c).

There is no evidence that Respondent was making a *bona fide* use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Rather, Complainant asserts that Respondent's use of the Complainant's trademark in the disputed domain name is not authorized, that the use of the disputed domain name is to defraud employers and the public, that the disputed domain name is being used to refer to Complainant rather than to Respondent, and that Respondent is making a commercial use of the disputed domain name while tarnishing Complainant's mark.

These allegations make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not rebutted. See, e.g., *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#) ("It is clear that no license or authorization of any kind has been provided by Complainant to Respondents to use any of its trademarks or to apply for or use any domain name incorporating those marks. [...] Thus, it is clear that no *bona fide* or legitimate use of the domain names could be claimed by Respondents."); *Beachbody, LLC v. Registration Private, Domains By Proxy, LLC / Trang Pham Thi*, WIPO Case No. [D2019-2123](#) (where Complainant asserted, and Respondent did not rebut, that "Respondent's website significantly copied the Complainant's copyright images and text from its official websites without consent or authorization", the Panel found that, "given the nature of the website to which the Domain Name once resolved *i.e.* one that at best creates a misleading impression that it is in some way associated with the Complainant and, at worst, is designed to cheat consumers out of their money by purportedly selling legitimate SHAKEOLOGY products but not delivering them, it would be difficult to conclude, without a proper explanation from the Respondent, that there is anything legitimate or non-commercial or fair about the Respondent's use").

In addition, considering the use of the disputed domain name to impersonate the Complainant and allegedly commit fraud under the guise of the Complainant, the Panel finds that the use of the disputed domain name does not confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

Accordingly, the record supports a conclusion that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant also bears the burden of establishing that the "domain name has been registered and is being used in bad faith". Policy, paragraph 4(a)(iii). As set forth in the Policy, paragraph 4(b):

"[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant 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
- (ii) [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
- (iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] website or location or of a product or service on [Respondent's] website or location."

“Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant’s trademark would also satisfy Complainant’s burden.” [WIPO Overview 3.0](#), section 3.1.

Complainant asserts that Respondent is using the disputed domain name as part of a scheme to fool employers into hiring workers with fake Q-cards, and that this endangers the public because it may allow unqualified workers to work on construction projects. Respondent has not rebutted these allegations.

The registration and unauthorized commercial use of a domain name that is confusingly similar to another party’s trademark, and the use of a domain name to confuse users into believing that the domain name is associated with a trademark owner when it is not, and the use of a domain name to cause illegitimate harm to the public, all are evidence of bad faith under the Policy. *Caliber Home Loans, Inc. v. Domains By Proxy, LLC / Patrick Scott*, WIPO Case No. [D2018-0524](#) (“What is clear is that the Respondent (a) was well aware of the Complainant’s mark, which the Respondent emulated in the email as well as in the Domain Name itself, and (b) traded on the Complainant’s reputation to attract Internet users to a portal that offered both competing and related financial services, presumably for commercial gain. This is very like the example cited in the Policy, paragraph 4(b)(iv), and certainly amounts to bad faith for Policy purposes”); *Cotton on Clothing Pty Ltd v. THLOH*, WIPO Case No. [D2009-1132](#) (“Given the fact, that the Complainant operates a number of retail outlets in Singapore, where the Respondent is located, it is inconceivable to this Panel that the Respondent registered the disputed domain name without knowing of the Complainant’s COTTON ON Marks. Therefore, the Panel concludes that the Respondent registered the domain name <cottonon.com> with full knowledge of the COTTON ON Marks and therefore in bad faith. As to bad faith use, by fully incorporating the COTTON ON Marks into the disputed domain name and by using the website at such domain name [for commercial purposes] [t]he Panel is therefore satisfied that the Respondent has also used the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy.”); *Sanofi-Aventis v. PLUTO DOMAIN SERVICES PRIVATE LIMITED*, WIPO Case No. [D2008-1483](#) (“The use of a domain name that is confusingly similar to a prescription drug, in order to sell the drug without a prescription, presents a potentially serious public health risk and is a bad faith use of the domain name.”); [WIPO Overview 3.0](#), section 3.1.1 (“If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, ... (iv) website content targeting the complainant’s trademark, e.g., through links to the complainant’s competitors ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name”).

Accordingly, the Panel finds that the record supports a conclusion that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(a)(iii) of the Policy is satisfied.

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, <gqaonlines.net>, be transferred to Complainant.

/Bradley A. Slutsky/

Bradley A. Slutsky

Sole Panelist

Date: January 27, 2023