

## **ADMINISTRATIVE PANEL DECISION**

### **The Commissioners for HM Revenue and Customs v. James Kent Case No. D2023-4469**

#### **1. The Parties**

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

The Respondent is James Kent, UK.

#### **2. The Domain Name and Registrar**

The disputed domain name <gov-support-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 October 27, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 27, 2023, 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 (REDACTED FOR PRIVACY PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2023, 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 November 2, 2023.

The Center verified that 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 November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2023.

The Center appointed Jane Lambert as the sole panelist in this matter on December 5, 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 is a non-ministerial department of the UK Government. It was established in 2005 by the merger of the Inland Revenue and HM Customs and Excise pursuant to The Commissioners for Revenue and Customs Act, 2005.

It is responsible for collecting taxes, paying some forms of state support and enforcing payment of the minimum wage. Almost every business and individual in the UK has dealings with it at some time or another. One of the ways by which it interacts with the public is through its website at <hmrc.gov.uk>.

The Complainant has registered the following trademarks:

Number	Mark	Jurisdiction	Registration date	Classes
2471470	HMRC	UK	March 28, 2008	9, 16, 35, 36, 38, 41, 45
3251234	HM REVENUE & CUSTOMS	UK	Dec 29, 2017	9, 16, 35, 36, 38, 41, 45

The Respondent has made use of PrivacyGuardian.org llc's "Redacted for Privacy" service. As at the time of this submission, the disputed domain name did not resolve to an active website. The Respondent did not respond to a letter dated October 26, 2023, from the Complainant's agent proposing an informal settlement of this matter and warning of further proceedings should it not be resolved.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name is confusingly similar to its HMRC mark in that it incorporates those initials in their entirety with the addition of the fragments "gov" and "support". The Complainant refers to *The Commissioners for HM Revenue and Customs v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf /Red Man*, WIPO Case No. [D2021-1997](#) and *The Commissioners for HM Revenue and Customs v. Andrey Maximov*, WIPO Case No. [D2022-2245](#) in which the facts were similar and the issue of confusing similarity was decided in the Complainant's favor.

The Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain name. It refers to section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), which asks, "How do panels assess whether a respondent lacks rights or legitimate interests in a domain name?" and answers:

"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."

Accordingly, the Complainant seeks to make out a *prima facie* case to demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Complainant adds that it has found no evidence that the Respondent has been known by the names HRMC or GOV SUPPORT HMRC prior to or after the registration of the disputed domain name. It has found nothing to suggest that the Respondent owns any trademarks that incorporate or are similar to the “hmrc” or “gov support hmrc.” He is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its marks or name in association with the registration of the disputed domain name or, indeed, any other domain name.

The Complainant further contends that the Respondent cannot claim a legitimate interest as the nature of the disputed domain name carries a risk of implied affiliation. In support of that contention the Complainant refers to section 2.5.1. of the WIPO 3.0. Overview which states that a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. It also relies on the panel’s decision in *The Commissioners for HM Revenue and Customs v. Ivan Popov, Private Person*, WIPO Case No. [D2022-4777](#).

The Complainant relies on the panel’s observation in *The Commissioners for HM Revenue and Customs v. Whois Privacy, Private by Design, LLC/reco wow*, WIPO Case No. [D2022-1585](#) that “the passive use of the Domain Name does not provide any indication as to how the Respondent could possibly be seen as making a bona fide use of the Domain Name.” The Complainant submits that the facts of that case are very similar to this one.

Finally in relation to the second element, the Complainant says that the Respondent’s failure to respond to the Complainant agent’s letter of October 26, 2023, is inconsistent with any right or legitimate interest in the disputed domain name.

In respect of the third element the Complainant relies on section 3.3 of the [WIPO Overview 3.0](#):

“From the inception of the UDRP, panelists have found that the non- use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

As to the degree of distinctiveness or reputation of the complainant’s mark, the Complainant contends that its mark is very well known in the UK and beyond. With regard to the second factor, the Complainant noted that the Respondent failed to respond to its agent’s letter of October 26, 2023. As to the third, the Respondent made use of a privacy service. In respect of the fourth no plausible use has been suggested for the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The agreement for the registration of the disputed domain name incorporates the following provision of the Policy:

“You are required to submit to a mandatory administrative proceeding in the event that a third party (a ‘complainant’) asserts to the applicable Provider, in compliance with the Rules of Procedure, that (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.”

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms “gov” and “support” may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Complainant has pointed out that it is frequently targeted by phishing, online scams and other criminality. There are characteristics which are common to domain names that have been used to target the Complainant and its customers for abusive purposes. These include the use of domain names made up of the Complainant’s mark and additional generic terms such as “support” or “gov”.

Each of the foregoing circumstances if taken in isolation might not be sufficient to give rise to a presumption of registration and use in bad faith but when taken together they are *ejusdem generis* the circumstances listed in paragraph 4(b) of the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <gov-support-hmrc.com> be transferred to the Complainant.

*/Jane Lambert/*

**Jane Lambert**

Sole Panelist

Date: December 13, 2023