

ADMINISTRATIVE PANEL DECISION

AXA SA v. WhoisSecure / Emeka Nwonye

Case No. D2022-0904

1. The Parties

The Complainant is AXA SA, France, represented by Selarl Candé - Blanchard - Ducamp, France.

The Respondent is WhoisSecure, United States of America / Emeka Nwonye, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <axa-wealth.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 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 17, 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 March 17, 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 amendment to the Complaint on March 17, 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 the Respondent of the Complaint, and the proceedings commenced on March 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2022. Accordingly, the Center notified the Respondent’s default on March 17, 2022 and March 24, 2022, the Respondent sent email communications to the Center but did not submit any formal Response. On April 12, 2022, the Center informed the Parties that it will proceed to panel appointment.

The Center appointed Peter Burgstaller as the sole panelist in this matter on April 19, 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 disputed domain name was registered on April 24, 2021 (Annex 1 to the Complaint).

The Complainant owns various trademark registrations for the mark AXA in many jurisdictions around the world, including:

- International Registration (word) No 490030 registered December 5, 1984 in classes 35, 36 and 39, designated *inter alia* for Algeria, Austria, Bosnia, Croatia, Egypt, Spain, Hungary, Italia, Morocco, Monaco, Portugal, North Korea, Romania, Russia, Sudan, Ukraine, Vietnam, Benelux and Switzerland;
- International Registration (figurative) No 1 519 781 registered May 29, 2019 in classes 35, 36, 37, 39, 44 and 45, designated for Australia, Colombia, EU, Japan, Mexico, Norway, Philippines, Singapore, Thailand, Turkey, United States, China, Algeria, Morocco, Russia and Ukraine;
- EU Registration (figurative) No 373894 registered July 29, 1998 in classes 35 and 36;
- EU Registration (word) No 8772766 registered September 7, 2012 in classes 35 and 36; and
- French Registration (word) No 1270658 registered January 10, 1984 in classes 35, 36 and 42. (Annexes 11 – 15 to the Complaint).

Moreover, the Complainant is the owner of the domain names <axa.com> registered on October 23, 1995, <axa.fr> registered on May 20, 1996, <axa.net> registered on November 1, 1997 and <axa.info> registered on July 30, 2001 (Annexes 16 – 19 to the Complaint).

The disputed domain name is not actively used (Annex 21 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is the holding company of the AXA Group; the AXA Group is famous for its numerous activities in three major lines of business: property and casualty insurance, life insurance and savings, and asset management, proposed both to individuals and to business companies. Employing 153 000 people worldwide and serving 105 million customers, the AXA Group is a world leader in these lines of business.

The Complainant holds several AXA trademark registrations around the world. For nine consecutive years and until 2017, the Trademark AXA was considered as the leading global insurance brand; in 2021, the AXA trademark was ranked 48th among the best global brands according to the Interbrand ranking.

Moreover, the Complainant is the owner of several domain names containing the AXA trademark, especially <axa.com> registered in 1995.

The disputed domain name is confusingly similar to the trademarks in which the Complainant has rights, since it contains the famous and distinctive trademark AXA in its entirety and only adds the generic term "wealth" which makes reference to AXA's activities in the field of financial services.

The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name including the above-mentioned trademarks. Therefore, there is no relationship

whatsoever between the involved parties. Moreover, the Respondent has no prior rights and/or legitimate interest to justify the use of the Complainant's trademarks; the Respondent is not commonly known by the disputed domain name or even associated with the name AXA.

Because of the fame of the Complainant the Respondent must have been aware of the Complainant's AXA trademarks at the time he acquired the disputed domain name. Although the disputed domain name is not used actively, passive holding is within the concept of use in bad faith in the present case especially because of the strong reputation of the Complainant's trademark AXA around the world. Hence, the disputed domain name was registered and is being used in bad faith by the Respondent.

B. Respondent

The Respondent did not submit a formal Response. However he sent email communications to the Center on March 17, 2022, and March 23, 2022, stating "I don't understand?" and "Hello, i'm not in use of the domain. I've never used it before, I thought they will buy it from me. Could you please cancel or transfer out the domain?".

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to 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

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark AXA.

The disputed domain name is confusingly similar to the Complainant's registered trademark AXA since it entirely contains this famous and distinctive mark and only adds the word "wealth".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top Level Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's famous and distinctive mark in its entirety together with the term "wealth", cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Although the Respondent sent an email within the time limit for the Response, it's allegations did not show any rights or legitimate interests in the disputed domain name – on the contrary: the Respondent rather confirmed that he did not have any rights or legitimate interest, and only wanted to sell the disputed domain name to the Complainant.

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark AXA in a domain name or in any other manner, and the contentions of the Respondent, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well known, famous and highly distinctive registered trademark AXA, which is registered and used in many jurisdictions around the world. Moreover, the Complainant registered and is using various domain names containing AXA e.g. <axa.com>, <axa.fr>, <axa.net> or <axa.info> long before the registration of the disputed domain name.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark AXA entirely.

Moreover, the disputed domain name contains the term "wealth", which in fact even strengthens the impression that the Respondent must have known the mark AXA when registering the disputed domain name, since the suffix "wealth" refers to a relevant business and service of the Complainant, which is providing casualty insurance and life insurance to individuals and to business companies.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Although there is no evidence that the disputed domain name is being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#);

Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. [D2002-0131](#)).

This Panel also concludes that the present passive holding of the disputed domain name, constitutes bad faith use, putting emphasis on the following:

- the Complainant's trademark AXA is famous with a high distinctiveness and is well-known globally;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name but rather wanted only to sell the disputed domain name to the Complainant;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);
- the disputed domain name moreover contains the suffix "wealth" which refers to a service and business of the Complainant; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <axa-wealth.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: May 3, 2022