

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Domain Administrator,
See PrivacyGuardian.org / Adam Ali
Case No. D2022-0920

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Adam Ali, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <hmrc-rebate-form.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 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 18, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on March 18, 2022.

The Center verified that the Complaint together with 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 March 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 14, 2022.

The Center appointed Ian Blackshaw as the sole panelist in this matter on April 28, 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 formally known as “Her Majesty’s Revenue and Customs”, which is often shortened to “HM Revenue and Customs” or the initialism “HMRC”.

The Complainant is a non-ministerial department of the United Kingdom (“UK”) Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes.

Whilst various tax-raising authorities have existed in the territory now known as the UK since before the Norman conquest, the Complainant can trace its predecessors through the Board of Taxes (founded in 1665 under Charles II) and the Board of Inland Revenue (created in 1849 through the Inland Revenue Board Act). 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 is the proprietor of several relevant UK trademarks, listed below, and copies of extracts from the relevant databases have been provided to the Panel.

Number	Mark	Jurisdiction	Filing date	Classes
2471470	HMRC	UK	November 05, 2007	9, 16, 35, 36, 38, 41 & 45
3251234	HM Revenue & Customs	UK	August 19, 2017	9, 16, 35, 36, 38, 41 & 45

The Complainant notes that its earlier mark pre-dates the registration of the disputed domain name by approximately 13 years.

The Complainant contends that it also enjoys unregistered rights in the initialism “HMRC”, being very wellknown in the UK and around the world as “HMRC”. In support of this, the Panel has been provided with screenshots of various websites.

The disputed domain name was registered on October 19, 2020 and does not resolve to an active website, evidence of which has been provided to the Panel.

The Complainant has successfully asserted its rights in previous UDRP cases and, again, evidence of them has been provided to the Panel.

The Complainant’s agent sent a letter to the Respondent on March 8, 2022 but did not receive any response. A copy of this letter has been provided to the Panel.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant makes the following assertions.

The disputed domain name is confusingly similar to its marks in that it only differs by the addition of the generic term “rebate form”. By virtue of it being the UK’s governmental tax authority, the Complainant contends that the term “rebate form” is inherently associated with the Complainant and its activities.

Viewed as a whole, the Complainant’s mark is the most prominent, dominant and distinctive element of the disputed domain name. When combined with the Complainant’s well-known mark, the adornment “rebate form” does not dispel any possibility of confusion but instead does the opposite and increases the potential for confusion among Internet users.

Furthermore, the Complainant has drawn the attention of the Panel to the analogous case of *The Commissioners for HM Revenue and Customs v. Adam Eve*, WIPO Case No. [D2021-3046](#), which concerned the domain name <hmrc-taxrebate-claim.com> and in which the panel held that the domain name was confusingly similar to the Complainant’s mark. The Complainant contends that the form of words seen in the disputed domain name in the present case is similar to those seen in the disputed domain name in the above cited case.

For completeness, the Complainant avers that the generic Top-Level Domain Name (“gTLD”) “.com” is required only for technical reasons and, as is common in UDRP proceedings, can be ignored – alongside the hyphens - for the purposes of comparison of the disputed domain name with the Complainant’s marks.

The Complainant, therefore, contends that the disputed domain name is confusingly similar to its marks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant 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 rights or legitimate interests in the disputed domain name.

Not known as HMRC and no prior use

The Complainant has found no evidence that the Respondent has been commonly known by the names “HMRC” or “HMRC rebate form” prior to or after the registration of the disputed domain name. The Respondent is not a licensee of the Complainant and has not received any permission, consent or acquiescence from the Complainant to use its marks or name in association with the registration of the disputed domain name or, indeed, any domain name, service or product.

The Complainant has found nothing to suggest that the Respondent owns any trademarks that incorporate or are similar or identical to the terms “HMRC” or “HMRC rebate form”. Equally, the Complainant has found no evidence that the Respondent has ever traded or operated as “HMRC” or “HMRC rebate form”.

Passive holding

As the Complainant has noted above, the disputed domain name does not resolve to an active website, which constitutes passive holding and, as such, has not been used in connection with a *bona fide* offering of goods or services.

In terms of passive holding and its relation to legitimate interests, the attention of the Panel has been drawn to *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#), in which Case the panel held: “The Respondent is not currently making an active use of the domain name. According to previous panel decisions under the UDRP, the passive holding of domain names has however not been deemed sufficient to establish legitimate interests or *bona fide* use of a domain name.”

On this analysis, the Complainant asserts that the Respondent cannot obtain or derive any rights or legitimate interests through its passive holding of the disputed domain name.

No response to letter

Finally, the Complainant observes that the Respondent did not reply to the letter, mentioned above, which was sent by the Complainant’s agent. On this point, the attention of the Pnael is drawn to *The Great Eastern Life Assurance Company Limited v. Unasi Inc.*, WIPO Case No. [D2005-1218](#), which notes:

“By operation of a commonsense evidentiary principle, the Panel finds that the Respondent’s failure to counter the allegations of the cease and desist letter amounts to adoptive admission of the allegations.”

The Complainant asserts that 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.

In all these circumstances, taken singly or cumulatively, the Complainant contends that it has established a *prima facie* case along the lines anticipated by section 2.1 of the [WIPO Overview 3.0](#) that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

The Complainant contends that domain name was registered and is being used in bad faith for the following reasons:

Passive holding

The Complainant notes that the website associated with the disputed domain name is “passively held” and asserts that such holding constitutes bad faith. The Complainant has referred to section 3.3 of the [WIPO Overview 3.0](#) which notes:

“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.”

In terms of each of these points, the Complainant notes:

- (i) the degree of distinctiveness or reputation of the complainant's mark

As outlined above and evidenced in the Annexes to the Complaint, the Complainant is very well known both in the UK and beyond and its marks have been used for many years prior to the registration of the disputed domain name.

- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use

The Complainant notes that the Respondent did not respond to the Complainant's letter and has, therefore, put forward no evidence of any 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),

The Respondent has redacted, or allowed the redaction, of its details from the public Whois.

- (iv) the implausibility of any good faith use to which the domain name may be put.

Given the fame, widespread use and reputation of the Complainant, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without the Complainant's marks in mind and with good-faith intentions. This is especially so given the inclusion of the adornment "rebate form" which, in this context, could only reasonably relate to the Complainant and its activities when incorporated into a domain name that also includes the Complainant's well-known name and marks.

Use of privacy service

The Complainant argues that the use of a privacy service by the Respondent is indicative of bad faith. The Complainant refers to section 3.6 of [WIPO Overview 3.0](#), which asks, "How does a registrant's use of a privacy or proxy service impact a panel's assessment of bad faith?" and answers:

"There are recognized legitimate uses of privacy and proxy registration services; the circumstances in which such services are used, including whether the respondent is operating a commercial and trademark-abusive website, can however impact a panel's assessment of bad faith."

Considering that the disputed domain name is confusingly similar to the Complainant's marks and that there are other *indicia* of bad faith, the Complainant cannot see how the use of a privacy service can be legitimate in this case. Therefore, the Complainant contends that the use of a privacy service by the Respondent is further indication of bad faith registration and use of the disputed domain name.

For all these reasons, taken singly or cumulatively, the Complainant contends that there are reasonable grounds to conclude that the disputed domain name is, on balance, likely to have been registered and used in bad faith in terms of the Policy.

B. Respondent

The Respondent, having been duly notified of the Complaint and of these proceedings, did not reply to the Complainant's contentions or take any part in these proceedings.

6. Discussion and Findings

To qualify for cancellation or transfer of the disputed domain name, the Complainant must prove each of the following elements of paragraph 4(a) of the Policy, 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.

In accordance with paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

In accordance with paragraph 14(a) of the Rules, in the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the Complaint; and under paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

In accordance with paragraph 10(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

In previous UDRP decisions in which the respondents failed to file a response, the panels' decisions were based upon the complainants' reasonable assertions and evidence, as well as inferences drawn from the respondents' failure to reply. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); and *Köstritzer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#).

Nevertheless, the Panel must not decide in the Complainant's favor solely based on the Respondent's default. See *Cortefiel, S.A. v. Miguel García Quintas*, WIPO Case No. [D2000-0140](#).

In the present case, the Panel must decide whether the Complainant has introduced elements of proof, which allow the Panel to conclude that its allegations are true.

A. Identical or Confusingly Similar

It is well established in previous UDRP decisions that, where the disputed domain name incorporates a complainant's registered trademark, this may be sufficient to establish that the disputed domain name is identical or confusingly similar for the purposes of the Policy. See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#).

In the present case, the disputed domain name incorporates the Complainant's HMRC registered trademark in its entirety and this makes the disputed domain name confusingly similar to the Complainant's HMRC registered trademark. Section 1.7 of the [WIPO Overview 3.0](#).

The Panel agrees with the Complainant, for the reasons mentioned above, that the addition of the terms "rebate form" and the use of hyphens do not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name. Section 1.8 of the [WIPO Overview 3.0](#).

Furthermore, the addition of the gTLD “.com” is irrelevant in determining whether the disputed domain name is confusingly similar to the Complainant’s HMRC registered trademark; this being a standard registration requirement of domain names. See *Blue Sky Software Corp. v. Digital Sierra Inc.*, WIPO Case No. [D2000-0165](#).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s HMRC registered trademark.

The first element of the Policy, therefore, has been met.

B. Rights or Legitimate Interests

In order to determine whether the Respondent has any rights or legitimate interests in respect of the disputed domain name (paragraph 4(c) of the Policy), attention must be paid to any of the following circumstances, in particular, but without limitation:

- whether there is any evidence of 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 before any notice to the Respondent of the dispute;
- whether 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;
- whether 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.

There is no evidence before the Panel to show that the Respondent was acting in pursuance of any rights or legitimate interests with respect to the disputed domain name. On the contrary, if the Respondent had any such rights or legitimate interests, the Respondent would have reasonably been expected to assert them, which the Respondent clearly has not done so, by not replying to the Complaint or taking any part in these proceedings. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

There is no evidence before the Panel that the Respondent has been authorized or licensed by the Complainant to use the Complainant’s well-known and widely used HMRC registered trademark. In fact, in the view of the Panel, the adoption by the Respondent of a domain name confusingly similar to the Complainant’s well-known and widely used HMRC registered trademark, which the Panel considers, as asserted above by the Complainant, would appear not to be by mere chance but by design, inevitably leads to confusion on the part of Internet users and consumers seeking information about the Complainant and its products and services. The inclusion of the terms “rebate form” increases the potential for confusion amongst Internet users.

Further, the Panel finds that the Respondent is consequentially trading unfairly on the Complainant’s well-known and widely used HMRC registered trademark and also the valuable goodwill that the Complainant has established in that trademark through the Complainant’s prior commercial use, without any rights or justification for doing so.

Also, the Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with any *bona fide* offering of goods or services. The use of the confusingly similar disputed domain name to resolve to a holding page does not constitute a *bona fide* offering of goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

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. Therefore, for all the above reasons, the Panel concludes that the Respondent has neither rights nor legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Regarding the bad faith requirement, paragraph 4(b) of the Policy lists four examples of acts, which constitute *prima facie* evidence of bad faith. However, this list is not exhaustive, but merely illustrative. See *Nova Banka v. Iris*, WIPO Case No. [D2003-0366](#).

The Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. Section 3.3 of the [WIPO Overview 3.0](#).

The Panel will look at the totality of circumstances in the present case: (i) the degree of distinctiveness or reputation of the Complainant's trademark, (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.

Based on the evidence provided on the record, the Panel considers that the Respondent, by registering the disputed domain name confusingly similar to the Complainant's well-known and widely used HMRC registered trademark intended to somehow take unfair advantage of the Complainant's valuable goodwill established in such trademark.

Also, the composition of the disputed domain name is likely to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Complainant and its business

Again, in the absence of any explanation to the contrary by the Respondent, of which none is forthcoming on the record, the Panel agrees with the Complainant's contention that the Respondent did not register and use the disputed domain name by chance; but, as noted above, the Respondent appears to have been – or, at least, should have been – fully aware of the notoriety of the Complainant and its worldwide activity, as well as its well-known and widely used HMRC registered trademark and its prior commercial use.

Moreover, the Panel agrees with the Complainant, for the reasons mentioned above, that the failure of the Respondent to answer the letter of the Complainant, referred to above, also constitutes bad faith.

Also, the Panel agrees that the use of a privacy service by the Respondent is indicative of bad faith in the particular circumstances of this case.

Finally, the failure of the Respondent to answer the Complaint or take any part in the present proceedings, again, in the view of the Panel, is another indication of bad faith on the part of the Respondent in the circumstances of this case. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Therefore, taking all these particular facts and circumstances into account, and for all the above-mentioned reasons, as well as the arguments advanced by the Complainant in its contentions, as set out above, and also based on the previous UDRP cases cited by the Complainant, the Panel concludes that the Respondent has registered and is used the disputed domain name in bad faith.

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, <hmrc-rebate-form.com>, be transferred to the Complainant.

/Ian Blackshaw/

Ian Blackshaw

Sole Panelist

Date: May 10, 2022