

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. J. Lindfors
Case No. D2022-0956

1. The Parties

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

The Respondent is J. Lindfors, Malta.

2. The Domain Name and Registrar

The disputed domain name <refundhmrc.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 18, 2022. On March 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 28, 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 amended Complaint on March 28, 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 April 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 22, 2022.

The Center appointed Christian Schalk as the sole panelist in this matter on April 29, 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.

The Panel has reviewed the record and confirms the Complaint's compliance with the formal requirements. The Complaint was properly notified to the Respondent in accordance with paragraph 2(a) and (b) of the Rules. The language of the proceeding is English.

4. Factual Background

The Complainant is the 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. Formally, the Complainant is known as "Her Majesty's Revenue and Customs" which acronym is "HRMC". Such a tax raising authority exists in the UK for centuries. The Complainant exists in its present form and under its current name since 2005. According to the Complainant, almost every UK individual and business is a direct customer of the Complainant and user of its services.

The Complainant is the proprietor of several UK trademarks such as No. 00002471470 for HRMC, filing date November 5, 2007, and covering goods and services in International classes 9, 16, 35, 36, 38, 41, and 45.

In addition, the Complainant explains that search results for the term HRMC in the Google search engine relate directly to the Complainant and its activities and that the Complainant has received a substantive press coverage in well-known newspapers such as The Times, Washington Post, and The Wall Street Journal.

The Respondent registered the disputed domain name on September 5, 2020. It resolves to a website which displays pay-per-click ("PPC") advertising links.

The Complainant's agent wrote to the Respondent on March 8, 2022, to which the Respondent never replied.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights. The Complainant contends in this context that the only difference between the Complainant's HRMC trademark and the disputed domain name is the addition of the generic word "refund" which is inherently associated with the Complainant and its activities. The Complainant argues further that viewed as a whole, the Complainant's mark is the most prominent and distinctive element of the disputed domain name and that the term "refund" does not dispel any possibility of confusion but instead increases the potential for confusion among internet users. In this context the Complainant refers to *The Commissioners for HM Revenue and Customs v. Domain Admin. Whois Privacy Corp.*, WIPO Case No. [D2017-0545](#), which concerned the domain name <hmrctax-refunds.com> and in which the panel held that the domain name was confusingly similar to the Complainant's mark.

The Complainant alleges also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant argues that there is no evidence that the Respondent has been commonly known by the names "hrmc" or "refund hrmc" prior to or after the registration of the disputed domain name and that the Respondent is neither a licensee of the Complainant nor has received any permission, consent or acquiescence from the Complainant to use its marks in association with the registration of the disputed domain name. The Complainant states also that nothing has been found that would suggest that the Respondent owns any trademarks that incorporate or are similar or identical to the terms "hrmc" or "refund hrmc" or that the Respondent had ever traded or operated as "hrmc" or "refund hrmc".

The Complainant asserts further that given the use of the disputed domain name for commercial purposes through its association with PPC advertising, the use of the disputed domain name cannot be construed as legitimate noncommercial or fair use. The Complainant is therefore, convinced that the disputed domain name uses the attractive force of Complainant's well-known marks to misdirect Internet users to third party advertising which does not and cannot confer any legitimate interests on the Respondent.

The Complainant adds also that the Respondent's non-response and failure to give explanations to the Complainant's contentions is similarly an admission of the Complainant's contentions and refers in this context to *The Great Eastern Life Assurance Company Limited v. Unasi Inc.*, WIPO Case No. [D2005-1218](#).

The Complainant alleges further that the disputed domain name was registered and is being used in bad faith because the Respondent intentionally attempted to attract, for commercial gain, web users to its website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of its web site in terms of Policy 4(b)(iv).

The Complainant argues in this context that in most circumstances the display of PPC advertising in association with a domain name that is confusingly similar to a complainant's trademark is sufficient on its own for a finding of registration and use in bad faith, regardless of whether it was directly placed by the registrant or registrar of record. The Complainant cites in this context WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.5, and adds that if the advertising was placed by the registration provider or other third party, the Respondent cannot disclaim responsibility for it being displayed on the website associated with the disputed domain name.

The Complainant states finally that the use of a privacy service by the Respondent is indicative of bad faith and refers to section 3.6 of the [WIPO Overview 3.0](#) to support this argument.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established trademark rights in the trademark HRMC. The disputed domain name is not identical to the Complainant's trademark. However, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

As it has been decided by previous UDRP panels, incorporating a trademark in its entirety can be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see for instance, *Yahoo! Inc. v. Blue Q Ltd., et al.*, WIPO Case No. [D2011-0702](#); *Casa Editorial El Tiempo, S.A. v. Montanya Ltd*, WIPO Case No. [D2009-0103](#); *Todito.com v. Francisco Gómez Ceballos*, WIPO Case No. [D2002-0717](#); *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#); *Compagnie Générale des Etablissement MICHELIN v. Lost in Space, SA*, WIPO Case No. [D2002-0504](#); *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); and *Eauto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.*, WIPO Case No. [D2000-0047](#)).

Furthermore, in accordance with many decisions rendered under the Policy, the addition of terms to a trademark does not prevent confusing similarity where the trademark remains recognizable within the domain name (see section 1.8 of the [WIPO Overview 3.0](#), and cases cited therein). Therefore, the addition of the term "refund" in the disputed domain name cannot avoid similarity.

Furthermore, the “.com” Top-Level Domain suffix in the disputed domain name does not affect the determination that the disputed domain name is confusingly similar with the HRMC trademark in which the Complainant has rights (see also *Compagnie Générale des Etablissements Michelin v. Trendimg*, WIPO Case No. [D2010-0484](#); *Köstrizer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#); and *Laboratoire Pharmafarm (SAS) v. M. Sivaramakrishan*, WIPO Case No. [D2001-0615](#) and cases cited therein).

For all these reasons, the Panel finds that the Complainant has fulfilled the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Based on the submissions and materials filed in this case, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

It is the consensus view of UDRP panels that once the complainant has made out a *prima facie* showing on this element, the burden of production shifts to the respondent (see also section 2.1 of the [WIPO Overview 3.0](#), and *Ustream.TV, Inc. v. Vertical Axis, Inc.*, WIPO Case No. [D2008-0598](#); *mVisible Technologies, Inc v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#); as well as *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)).

The Respondent has not provided any evidence of circumstances specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to rights to or legitimate interests in the disputed domain name. Specifically, the Panel finds no evidence that the Respondent has been or is commonly known by the disputed domain name. The Respondent is neither affiliated with the Complainant nor has a license to use its trademark. The Respondent has also not rebutted the Complainant’s allegations and has not provided the Panel with any explanations as to the Respondent’s rights or legitimate interests.

According to the printout of the websites forming part of the case file presented before the Panel, there are several links listed on the website to which the disputed domain name resolved. There is a strong likelihood that the Respondent gains some income by each click on these links by Internet users. Prior UDRP panels have generally recognized that use of a domain name to post parking and landing pages or pay-per-click (“PPC”) links may be permissible in some circumstances, but would not of itself confer rights or legitimate interests arising from a “*bona fide* offering of goods or services”. An example of such permissible use is, where domain names consisting of dictionary or common words or phrases support posted PPC links genuinely related to the generic meaning of the domain name at issue (see, for instance, *Trade Me Limited v. Vertical Axis Inc.*, WIPO Case No. [D2009-0093](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); and *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#)).

However, as it has been decided already by previous UDRP panels, that pay-per-click parking pages which are built around a trademark cannot constitute a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor do they constitute a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii), see *Ustream.TV, Inc. v. Vertical Axis, Inc*, WIPO Case No. [D2008-0598](#); *mVisible Technologies, Inc v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#); *Mobile Communication Service Inc v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *Gerber Products Co. v. LaPorte Holdings*, WIPO Case No. [D2005-1277](#); *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#); *Champagne Lanson v. Development Services/MailPlanet.com*, WIPO Case No. [D2006-0006](#); and *The Knot, Inc. v. In Knot we Trust Ltd.*, WIPO Case No. [D2006-0340](#). This is the case here, where the disputed domain name incorporates the Complainant’s trademark and the PPC links capitalize on the reputation and goodwill associated therewith.

Therefore, the only reason for the Respondent to register the disputed domain name was, on balance, to capitalize on the Complainant’s goodwill by redirecting Internet traffic intended for the Complainant away from it to third parties’ websites. Such behaviour cannot constitute a *bona fide* or legitimate use of the

disputed domain names.

For all these reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and therefore, the requirement of paragraph 4(a)(ii) of the Policy is met.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain names in bad faith. The Policy, paragraph 4(b) sets forth four non-exclusive circumstances, which evidence bad faith registration and use of domain names:

- (i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the Respondent has registered the disputed 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 the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

According to the materials brought before the Panel, the Panel finds that the disputed domain name has been registered and is used by the Respondent in bad faith in accordance with paragraph 4(b)(iv) of the Policy.

It is a principle considered under prior UDRP decisions (see, for instance, *Carolina Herrera, Ltd. v. Alberto Rincon Garcia*, WIPO Case No. [D2002-0806](#); *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#)) and under the Policy (see paragraph 2), that a domain name registrant represents and warrants to the concerned registrar that to its knowledge, the registration of the disputed domain name will not infringe the rights of any third party.

The Panel finds that the Respondent must have been aware of the Complainant's trademark and its products when it registered the disputed domain name. The Complainant is a well-known public entity which has received a broad press coverage not only in the UK but also abroad. Furthermore, a simple search in a search engine such as Google or Bing reveals many references to the Complainant already on the first two pages of such a search list and would have made the Respondent immediately aware of the Complainant. Moreover, considering that the added term "refund" is associated with the Complainant's services, the composition of the disputed domain name further reinforces the Respondent's awareness of the Complainant and its intent to mislead Internet users through the confusingly similar disputed domain name. Therefore, the Panel is convinced that the Respondent was aware of the Complainant when registering the disputed domain names.

The Panel finds further, that the Respondent is also using the disputed domain names in bad faith.

The use, to which the disputed domain name is put, namely a PPC page featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely PPC or referral revenue

achieved through the visitors to the site clicking on the sponsored advertising links. Even if visitors arriving at the website to which the disputed domain name resolves become aware that the website is not such of the Complainant, the initial interest confusion has already misled said users to the detriment to the Complainant and the operator of this website will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links (see also *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#)). The Respondent remains responsible for such use even if such advertising links served up to visitors on the website associated with the disputed domain name are automated (see also *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#)). It does also not matter in this context, whether the Respondent itself or a third party reaps the profits from such products or services (see *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#)) because the reason for such profits would be always the registration of the disputed domain name by the Respondent.

Therefore, the Panel is convinced that the Respondent's main purpose was to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Other circumstances found to be indicative of bad faith include, for instance, the complainant having a well-known trademark and no response to the complaint having been filed (see section 3.3 of the [WIPO Overview 3.0](#)). The Complainant is a well-known public institution. All individuals gaining income in the UK or having business in this country have to deal with it. The Respondent did not reply to the letter sent by the Complainant's agent and also did not take part in the present proceedings.

Furthermore, the Respondent has apparently also provided inaccurate contact details when it registered the disputed domain name or failed at least to correct such false contact details. The Center has used the contact details given in the Whois record for the disputed domain name and those provided by the Registrar when it tried to send communications to the Respondent. The delivery of the Center's written notice failed because the contact details including the Respondent's alleged physical address were not accurate. Therefore, the Panel notes that the Respondent may have given incorrect contact details to frustrate or at least to delay this proceeding (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Accordingly, in light of the circumstances, the Panel finds that the Respondent has engaged in the bad faith registration and use of 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 <refundhmrc.com> be transferred to the Complainant.

/Christian Schalk/

Christian Schalk

Sole Panelist

Date: May 13, 2022