

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-0957

1. The Parties

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

The Respondent is Domains By Proxy, LLC, United States of America / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <hmrc-refundtax-uk.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 22, 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 23, 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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2022.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on May 10, 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 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. It is formally known as “Her Majesty’s Revenue and Customs”, which is often shortened to “HM Revenue and Customs” or the initialism “HMRC”. In its present form and with its current name “The Commissioners for HM Revenue and Customs”, the Complainant was established in The Commissioners for Revenue and Customs Act, 2005.

More specifically, the Complainant is responsible for the administration and collection of direct taxes within the United Kingdom including income tax, corporation tax, capital gains tax and inheritance tax. It also collects indirect taxes including Value Added Tax, excise duties and Stamp Duty Land Tax and environmental taxes such as the climate change and aggregates levy and landfill tax. Other aspects of the Complainant’s responsibilities include the collections of National Insurance Contributions, the distribution of Child Benefit and some other forms of state support including the Child Trust Fund, payments of tax credits and enforcement of the national minimum wage.

As the United Kingdom Government’s tax authority, almost every United Kingdom individual and business is a direct customer of the Complainant and user of its services.

The Complainant owns at least two United Kingdom trademark registrations, namely:

- United Kingdom trademark No. UK00002471470 HMRC (word) filed on November 5, 2007, registered on March 28, 2008, for goods and services in Classes 9, 16, 35, 36, 41, and 45;
- United Kingdom trademark No. UK00003251234 HM REVENUE & CUSTOMS (fig.) filed on August 18, 2017, registered on December 29, 2017, for goods and services in Classes 9, 16, 35, 36, 41, and 45.

The Complainant also operates a website within the United Kingdom Government’s official portal at “<https://www.gov.uk/government/organisations/hm-revenue-customs>”. The site can also be accessed through the domain name <hmrc.gov.uk>.

The Complainant has already successfully disputed dozens of domain names under the UDRP, which all consisted of the element “hmrc” alongside other elements closely connected to the field of activities of the Complainant (Annex 04), e.g. <hmrcclaim-tax.com>, <hmrc-tax-claim.com>, <hmrc-taxrefundonline.com> and <hmrc-claim-refund.com>.

The disputed domain name <hmrc-refundtax-uk.com> was registered on May 17, 2021. The disputed domain name redirects to a website located at a different domain name. This website displays a message:

“Security Alert

You’ve visited illegal infected website

You have visited unsafe site with illegal content

Your PC is at risk of being infected by viruses

To continue browsing safely – perform an antivirus scan

Scan”.

Contrary to this alert message, the Complainant contends that accessing the website as such does, however, not result in a genuine antivirus scan.

The Complainant’s agent has addressed the Respondent with a letter dated March 8, 2022, asking it to outline its motivation for registering the disputed domain name and indicating its agreement to a transfer. The Respondent did not reply to the letter.

5. Parties’ Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4 (a) of the Policy is established in the present case:

(1) The Complainant argues that the disputed domain name is confusingly similar to the HMRC and HM REVENUE & CUSTOMS trademarks in which it enjoys rights, in particular since the trademark HMRC is contained in the disputed domain name in its entirety.

The element “hmrc” is the most prominent, dominant and distinctive element of the disputed domain name. The addition of the phrase “refund tax” and the initialism “uk” do not dispel but rather increase the potential for confusion among the Internet users, because these elements are – both singularly and together – inherently associated with the Complainant and its activities as the United Kingdom’s governmental tax authority.

The Complainant cites the analogous case of *The Commissioners for HM Revenue and Customs v. Withheld for Privacy Purposes*, WIPO Case No. [D2021-3048](#), which concerned the domain name <taxrefundhmrc.com> in which the panel held that that domain name was confusingly similar to its HMRC trademark.

The Complainant also asserts that the generic Top-Level Domain (“gTLD”) “.com” is required for technical reasons and, as usual in proceedings under the UDRP, can be disregarded when assessing confusing similarity. The same applies with regard to the hyphens featured in the disputed domain name, since they are also incapable of distinguishing the disputed domain name from the trademarks of the Complainant.

(2) Further, the Complainant is of the opinion that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

First, 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](#)”), and submits that it is generally sufficient for the Complainant to provide *prima facie* evidence that the Respondent lacks rights or legitimate interests.

The Complainant then puts forward that it has found no evidence that the Respondent has been commonly known by the names “hmrc” or “hmrc refund tax” prior to or after the registration of the disputed domain name. Moreover, the Respondent is neither a licensee of the Complainant nor has received any other permission, consent, or acquiescence from the Complainant to use its marks or name in association with the registration of the disputed domain name or any domain name, service, or product.

Furthermore, it is likely that the disputed domain name has been used to distribute malware or other malicious software. The Complainant contends that it is highly unlikely that the Respondent intended to use the disputed domain name for any legitimate or fair use.

The Complainant avers that use of the disputed domain name for criminal activity, such as malware distribution, could never give the Respondent a legitimate interest in the disputed domain name.

Apart from this, the Complainant submits that the Respondent failed to reply to the letter of the Complainant's agent in which the Respondent was asked to outline its motivation for registering the disputed domain name. The Respondent's non-response and failure to give an explanation in reply to the Complainant's contentions is similar to an admission of the Complainant's contentions.

(3) The Complainant finally contends that the disputed domain name was registered and is being used in bad faith.

The Complainant's cites *The Commissioners for HM Revenue and Customs v. Calvin Bonsu*, WIPO Case No. [D2020-1075](#), and contends that attempting to deceive Internet users in order to distribute malware cannot constitute *bona fide* use and that any such use must be abusive to or take unfair advantage of the Complainant's rights.

Further, the Complainant contends that the use of a privacy service by the Respondent is indicative of bad faith, in particular because the disputed domain name has been used for potentially criminal activities.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (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 the following, the Panel will discuss in consecutive order whether each of these requirements are met.

A. Identical or Confusingly Similar

The test for identity or confusing similarity under paragraph 4(a)(i) of the Policy is limited in scope to a direct comparison between the Complainant's trademarks and the textual string which comprises the disputed domain name. In this case, the Complainant has demonstrated registered trademark rights in the marks HMRC and HM REVENUE & CUSTOMS (fig.), which predate the registration of the disputed domain name.

The disputed domain name consists of the term "hmrc-refundtax-uk" and the gTLD ".com", which is generally disregarded when assessing confusing similarity (*cf. Vodafone Group Plc v. Orcun Ozyurt*, WIPO Case No. [D2015-1424](#)).

The Complainant's trademark and acronym HMRC is entirely incorporated in the disputed domain name. The Panel accepts that neither the additional element "refundtax" nor "uk" prevents a finding of confusing similarity.

It is the consensus view of UDRP panels that the mere addition of terms does not prevent a finding of confusing similarity (see, e.g., [WIPO Overview 3.0](#), section 1.8).

For these reasons, the Panel concludes that the additional terms cannot change the overall impression of the disputed domain name. The disputed domain name wholly incorporates the distinctive trademark HMRC and the additional terms do not prevent the Complainant's HMRC mark from being recognizable in the disputed domain name.

Therefore, the Panel has no doubt that the disputed domain name is confusingly similar to at least the Complainant's mark HMRC.

In view of the above, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

However, it is the consensus view of UDRP panels that it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see, e.g., *Credit Agricole S.A. v. Dick Weisz*, WIPO Case No. [D2010-1683](#); *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO Case No. [D2005-1094](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)).

The Panel notes that with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent, before any notice of the dispute, used or prepared 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.

The Panel further notes that with respect to paragraph 4(c)(ii) of the Policy, there is no evidence that indicates that the Respondent has ever been commonly known by the disputed domain name or has acquired trademark rights in a name corresponding to it.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, or 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 at issue.

On the contrary, the disputed domain name redirects to a website on which the visitor is confronted with an alert message that its computer is at risk of being infected by a virus and that it is necessary to perform an antivirus scan in order to be able to continue browsing safely. The message ends with a green "Scan" button which, in the view of the Panel, can only be understood as indicating that clicking on the button starts or downloads the alleged antivirus software.

However, taking into account form and content of the website, the Panel deems it highly likely that the disputed domain name has been or is being used for the distribution of malware or other malicious software – even if the Complainant was unable to put forward direct evidence that it received malware by accessing such website.

In that regard, the Panel points out that a complainant must prove its case in all cases under the Policy on the balance of probabilities (see, e.g., *Total S.A. v. Gustavo Cerda*, WIPO Case No. [D2011-2073](#); *Credit Agricole S.A. v. Dick Weisz*, WIPO Case No. [D2010-1683](#)). Accordingly, it is not necessary that the Complainant irrevocably establishes that the disputed domain is in fact used for the distribution of malware.

Therefore, the Panel finds that the Complainant has provided sufficient evidence to hold that it is highly likely that the disputed domain name was and is used for dishonest purposes incapable of conferring any right or legitimate interest in holding the domain name to the Respondent (*cf.*, e.g., *The Commissioners for HM*

Revenue and Customs v. Tyrone Jackson, WIPO Case No. [D2018-0298](#)).

This finding is supported by the fact that the Respondent failed to respond to the Complainant's letter before the action and to file a response within the proceedings before the Panel. As far as failure to file a response is concerned, it is for a complainant to prove its case and there may be good reasons why an honest respondent may decide not to prepare and file such a document. But where allegations are made which are as serious as those levied by the Complainant in the Complaint, one would expect any honest respondent to positively deny those allegations (*cf. The Commissioners for HM Revenue and Customs v. Tyrone Jackson*, WIPO Case No. [D2018-0298](#)).

Against the above, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant has to establish that a respondent registered and used the disputed domain name in bad faith.

The Panel notes that the disputed domain name was registered many years after the Complainant's mark HMRC was registered and accepts that the disputed domain name was chosen by reference to this mark and commonly known acronym of the Complainant. As the Complainant is the official United Kingdom tax authority, the Panel has no doubt that the trademark is at least well-known among the public of the United Kingdom and that the Respondent knew or should have known of the Complainant's HMRC mark and, thus, that the registration of the disputed domain name would infringe upon the Complainant's rights.

Furthermore, the addition of the terms "refundtax" and "uk" in the disputed domain name appear to be designed to mislead Internet users into believing that not only does the disputed domain name come from the Complainant, but that it also relates to a fiscal policy which enables the users to claim tax refunds (*cf. also The Commissioners for HM Revenue and Customs v. Calvin Bonsu*, WIPO Case No. [D2020-1075](#)).

In light of the uncontested submissions of the Complainant, the Panel concurs with the Complainant that it is highly likely that the disputed domain name has been and is still being used for the distribution of malware. According to section 3.4 of the [WIPO Overview 3.0](#), use of a domain name for purposes other than to host a website may constitute bad faith. It is the consensus view of UDRP panels that such purposes include *inter alia* malware distribution (*cf., e.g., BJ's Wholesale Club v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 64382986619850 Whois Privacy Services Pty*, WIPO Case No. [D2015-1601](#); *DivX, LLC v. PrivacyProtect.org / Gerente de Dominia, CSRUS Enterprises*, WIPO Case No. [D2011-0600](#); *Spoke Media Holdings, Inc. v. Andrey Volkov*, WIPO Case No. [D2010-1303](#)).

Moreover, the Panel finds that in these circumstances the Respondent's efforts to conceal its identity through the use of a Whois proxy service and the fact that the Respondent has not participated in these proceedings can be construed as further evidence that the disputed domain name was registered and is being used in bad faith (see also *Confederation Nationale du Credit Mutuel v. WhoisGuard Protected, WhoisGuard, Inc. / Jean Duca*, WIPO Case No. [D2021-0977](#); *TTT Moneycorp Limited. v. Diverse Communications*, WIPO Case No. [D2001-0725](#); *The Commissioners for HM Revenue and Customs v. Calvin Bonsu*, WIPO Case No. [D2020-1075](#)).

There is also no conceivable use of the disputed domain name by the Respondent that could be legitimate. Therefore, there is no basis for the Panel to conclude that the Respondent's use of the disputed domain name is justified.

For all of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has satisfied the requirement of 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 <hmrc-refundtax-uk.com> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: May 24, 2022