

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. Super Privacy Service LTD c/o Dynadot / Jiri Capcuch
Case No. D2022-1752

1. The Parties

The Complainant is Pixabay GmbH, Germany, represented by SafeNames Ltd., United Kingdom.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / Jiri Capcuch, Czech Republic.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2022. On May 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 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 May 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 amended Complaint on May 19, 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 May 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2022.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on June 22, 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 founded in 2010, is an online platform through which its customers create and share copyright free images, videos, and music.

The Complainant's main site is available in 26 languages and between December 2020 and May 2021, it garnered an average of 37.7 million site visits per month.

The Complainant is the owner of the following trademark registrations that comprise the term "pixabay":

- Australia: Trademark Registration No. 2004679, PIXABAY, registered on April 22, 2019, in classes 9, 42 and 45;
- India: Trademark Registration No. 4212079, PIXABAY, registered on June 20, 2019, in classes 9, 42 and 45;
- Mexico: Trademark Registration No. 2033884, PIXABAY, registered on August 28, 2019, in class 9;
- European Union: Trademark Registration No. 018041811, PIXABAY, registered on September 20, 2019, in classes 9, 42 and 45.

Moreover, the Complainant has also established a strong social media presence and uses the PIXABAY trademark to promote its services under this name, in particular on:

- Instagram: with 79 thousand followers;
- Facebook: with 650 thousand followers; and
- Twitter: with 66.5 thousand followers.

The disputed domain name was registered on July 27, 2019 and at the time of filing of the Complaint it resolves to a parked page comprising pay-per-click ("PPC") advertising links and it is on the domain marketplace platform Sedo for sale.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is almost identical to the Complainant's trademark PIXABAY which has become a distinctive identifier of its service offerings.

The Complainant argues that the only element of difference between the disputed domain name and the Complainant's trademark is only the reversal of the letter "x" and "a" within the term "pixabay"/"piaxbay" and the addition of ".com". This little element can mislead Internet users, due to the fact that the disputed domain name is virtually-identical to the Complainant's trademark. See *Pinsent Masons LLP v. Sunny Legend*, WIPO Case No. [D2021-1145](#).

Thus, the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed 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 in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

The Complainant has shown it owns trademark rights in the PIXABAY trademark.

The disputed domain name <piaxbay.com> is confusingly similar to the Complainant's trademark PIXABAY. The disputed domain name inverts the letter "x" and "a", which does not render the visual or phonetic characteristics of the disputed domain name materially distinct from the Complainant's trademark.

Thus, the Panel finds that this is a typical typosquatting case, since the disputed domain name reproduces the Complainant's trademark in its entirety but with a minor alteration of the letters, which does not change the overall impression that the disputed domain name is virtually the same as the Complainant's trademark.

[WIPO Overview 3.0](#) states in section 1.9:

"A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. [...]

Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers."

Therefore, the Panel concludes that the Complainant has satisfied the first requirement of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, previous UDRP panels have recognized that proving a respondent's lack of rights or lack of legitimate interests in a domain name may result in the often-impossible task of "proving a negative". As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or lacks legitimate interests in the use of the domain name similar or identical to the complainant's trademarks, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its 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.

In this case, the Complainant sent also a trademark infringement notice to the Respondent on December 6, 2021, and a follow-up notice on December 13, 2021, and the Respondent did not reply.

The Respondent is not in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating said trademarks.

The Complainant contends that there is no relationship with the Respondent that gives rise to any license, permit, or other rights to which the Respondent could enjoy such use of any domain name incorporating the Complainant's trademarks.

Moreover, the Panel finds no evidence that the Respondent has used, or has undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering its goods or services.

Likewise, no evidence has been adduced that the Respondent has commonly been 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 Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfills the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the Respondent registered and is using the disputed domain name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

The Panel considers, first of all, that the disputed domain name is virtually identical to the PIXABAY trademark differing only by the inverting letters "x" and "a" and this is not sufficiently distinguishable from the Complainant's PIXABAY trademark.

It is well settled that the practice of typosquatting constitutes obvious evidence of the bad faith registration of a domain name. See *Lexar Media, Inc. v. Michael Huang*, WIPO Case No. [D2004-1039](#) ("Typosquatting has been held under the Policy to be evidence of bad faith registration of a domain name"); *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2004-0816](#) ("[typosquatting] is presumptive of registration in bad faith"). The Panel finds that the misspelling of the Complainant's trademark in the disputed domain name signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Furthermore, the disputed domain name resolves to a PPC page and such use constitutes bad faith. In *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#) the panel found that "[w]hile the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use."

Finally, in the present case, the disputed domain name is advertised for sale on the domain marketplace platform Sedo, which requests interested buyers to submit offers for its purchase.

The fact that the disputed domain name has simply been listed for sale to the general public via the aftermarket provider SEDO but that there was no direct offer to the Complainant or one of its competitors, does not preclude a finding of bad faith. Even if one assumes that the Respondent's offer to sell the disputed domain name to the general public falls short of the specific requirements of paragraph 4(b)(i) of the Policy, and the other three stated examples of paragraph 4(b), the Panel is willing to make an inference of bad faith outside of the four stated examples of the Policy.

The instances of bad faith listed in Policy, paragraph 4(b) are expressly without limitation.

The Panel therefore accepts these allegations as undisputed facts and concludes that the Respondent registered and used the disputed domain name in bad faith.

For these reasons, the Panel holds that the Complainant has met its burden of showing that the Respondent registered and is using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy. The third element of the Policy has, therefore, been met.

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, <piaxbay.com> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: July 6, 2022