

ADMINISTRATIVE PANEL DECISION

Pexels GmbH v. Rick Sorentos, GoldDay Corporation
Case No. D2022-1774

1. The Parties

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

The Respondent is Rick Sorentos, GoldDay Corporation, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <pexels.com> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2022. On May 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 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 23, 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 the same date.

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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on July 26, 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 language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to the un rebutted information in the Complaint, the Complainant is a German-based company founded in 2014, operating as a media provider for online downloads, maintaining a library that contains over 3.2 million photos and videos. The Complainant's services provide authenticated stock photography and stock footage to consumers. The Complainant partners with photographers from 170 countries, with the top user having over 3.35 billion views using the Complainant's platform. The Complainant predominantly operates from its main website at "www.pexels.com", averaging over 30 million monthly visits and offers its services in multiple languages, including but not limited to English, Spanish, German, French and Italian.

The Complainant has registered several trademarks consisting of PEXELS including the European Union trademark No. 017913932 registered on September 19, 2018 and the US trademark No. 5860074 registered on September 17, 2019.

The disputed domain name was registered on December 1, 2018 and resolves to a website with pay-per-click ("PPC") links related *inter alia* to the photography industry.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its trademarks as it represents a typosquatting of its PEXELS trademarks. The repeated letter "l" is not sufficient to distinguish the disputed domain name from the Complainant's trademark.

As regards the second element, the Complainant contends that the Respondent does not have any trademark rights to the term PEXELS and that the Respondent has not received any license from the Complainant to use domain names featuring the PEXELS trademark. The disputed domain name is used for a PPC advertising page which features some links directly competitive to the Complainant's brand and services. The Respondent is not commonly known by the distinctive term PEXELS, nor is he offering any genuine goods or services by the term "pexells". Therefore, there is no plausible reason for the registration and use of the disputed domain name, other than for taking advantage of the goodwill and reputation attached to the PEXELS brand.

As regards the third element, the Complainant argues that the Respondent both registered and is using the disputed domain name in bad faith. The Complainant's earliest trademark registration predates the creation date of the disputed domain name and substantial goodwill has accrued in the "Pexels" name since the Complainant's establishment in 2014. As regards the use, the Respondent has engaged in 'typosquatting', targeting the Complainant in hopes of catching Internet users that misspell the Complainant's main platform at <pexels.com>. The use of PPC links by the Respondent on the disputed domain name constitutes a clear attempt to generate commercial gain by misleading online users, and subsequently redirecting these online users to third-party websites. Moreover, the Respondent has been involved in three other domain name dispute resolution proceedings, all of them resulting in the transfer of the domain names and the Respondent has other typosquatting domain names in its portfolio, targeting third-party brands, which is indicative of a pattern of bad faith. Also, the Respondent has failed to respond to the Complainant's cease and desist letter.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the PEXELS trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to [section 1.7](#) of the [WIPO Overview 3.0](#), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Here the disputed domain name consists of the obvious misspelling of the PEXELS trademark of the Complainant. This misspelling in the disputed domain name also referred to as typosquatting, does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating 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 section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark PEXELS and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Rather, according to the unrebutted evidence put forward by the Complainant, the disputed domain name is used to host a parked page comprising PPC links to competing services. According to section 2.9 of the [WIPO Overview 3.0](#), “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. In this case, the PPC links are related to the Complainant’s trademark PEXELS and generate search results with competing services to those offered by the Complainant. In this Panel’s view, such use does not confer rights or legitimate interests on the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

The disputed domain name was registered after the Complainant had obtained registration of its PEXELS trademark and used it in commerce. The website associated with the disputed domain name contains PPC links related to the products and services offered by the Complainant. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark and that it targeted that trademark. The typosquatting nature of the disputed domain name further supports this inference.

As regards the use of the disputed domain name, from the evidence put forward by the Complainant and not rebutted by the Respondent, it results that the disputed domain name redirects Internet traffic to a website displaying PPC advertisements for Complainant-related services. Given the confusing similarity between the Complainant’s PEXELS trademark and the disputed domain name, and that the PPC links operate for the commercial gain of the Respondent or of the operators of those linked websites, or both, the Panel considers that the disputed domain name is intended to attract Internet users by creating a likelihood of confusion with the Complainant’s PEXELS trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites or other online location or of a service offered on such other online location within the terms of paragraph 4(b)(iv) of the Policy.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the un rebutted evidence in the case file shows that the Respondent was involved in other UDRP proceedings where similar factual situations caused the concerned UDRP panels to decide in favor of the complainants (see e.g., *Flutter Entertainment plc and Rational Intellectual Holdings Limited v. Rick Sorentos, GoldDay Corporation*, WIPO Case No. [D2022-0296](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering “the 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 you have engaged in a pattern of such conduct”.

Further, the Respondent’s failure to respond to the Complainant’s cease-and-desist letter is additional evidence of bad faith. Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainant’s contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and is being used 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, <pexels.com>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: August 9, 2022