

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. salman khan
Case No. D2022-2478

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom (“UK”), represented by Demys Limited, United Kingdom .

The Respondent is salman khan, UK.

2. The Domain Name and Registrar

The disputed domain name <govuk-hmrc-claimrefund.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2022. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 5, 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 August 5, 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 August 5, 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 August 8, 2022. The Center received an informal communication from a party on August 9, 2022 who, as discussed below, is likely to have been the Respondent. On August 10, 2022, the Center sent a communication to the Parties and the party who responded, requesting clarification of the position but did not receive a reply. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on September 9, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on September 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.

4. Factual Background

The Complainant is a non-ministerial department of the UK Government and its responsibilities include the administration and collection of both direct and indirect taxes on behalf of the government. The Complainant is formally known as “Her Majesty’s Revenue and Customs”, but it is frequently referred to by the acronym “HMRC”. The Complainant is the owner of UK trade marks for both its full name and its commonly known acronym. Its UK trade mark for HMRC is registration number 2471470, which was registered on March 28, 2008, in classes 9, 16, 35, 36, 38, 41 and 45. The Complainant’s services can be accessed through the website of a domain name corresponding to this mark, namely <hmrc.gov.uk>.

The disputed domain name was registered on February 9, 2022. It does not presently appear to resolve to an active website. Attempts to see if it does so generate deceptive website warnings, the exact content of which vary according to, by way of example, the Internet browser which is being used to conduct the search. For example, a warning is generated by Google’s Safe Browsing service that the Respondent’s website contains harmful content that may try to trick Internet visitors into sharing personal information or downloading software. Use of a Safari web browser generates a warning that “This website may try to trick you into doing something dangerous, like installing software or disclosing personal or financial information, like passwords, phone numbers or credit cards”¹.

The Complainant’s representative wrote to the Respondent on June 21, 2022, requesting that he transfer the disputed domain to the Complainant, but did not receive a reply.

5. Parties’ Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to a trade mark in which it has rights. It refers to its UK mark for HMRC and says that the disputed domain name incorporates its mark in full. Whilst it also includes the terms “govuk” and “claim refund”, the “hmrc” component is the most prominent, dominant and distinctive element of the disputed domain name and the additional terms do not distinguish it from the Complainant’s mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has found no evidence that the Respondent is commonly known by the disputed domain name, nor by any component part of it. The Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its marks, whether for the purpose of the registration of the disputed domain name or otherwise. It is likely on balance that the disputed domain name has been used for criminal purposes, such as malware distribution or phishing, and such activities could never give the Respondent rights or a legitimate interest in it.

The Complainant says finally that the disputed domain name was registered and is being used in bad faith. The disputed domain name has been flagged by reputable third parties as having been used for malicious purposes. Any attempt to use the disputed domain name in order to deceive Internet users cannot be a

¹ As explained at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) UDRP panels may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly sought to establish if the disputed domain name resolves to an active website in order to understand what use is being made of it.

bona fide use and must be abusive or take unfair advantage of the Complainant's rights. The disputed domain name is passively held and such passive holding constitutes bad faith. Moreover, it is inconceivable that the Respondent could have registered the disputed domain name without the Complainant's mark in mind and with good faith intentions. In the circumstances of the Respondent's registration, his use of a privacy service to shield his identity tends to affirm his bad faith intent.

B. Respondent

The Respondent did not provide a substantive reply to the Complainant's contentions. However, on August 9, 2022, the Center received an email from a Salman Khan stating "Hello dont recognise this case and can you stop sending me letters through post thank you". The Respondent's contact email address suggests that his first name is "Salman". However, having regard to the fact that the information provided to the Center by the Registrar states that the Respondent's name is "salman khan" and that the sender had evidently received the hard copy of the Complaint, Amended Complaint and Annexes, which had been sent by the Center the previous day, it is reasonable to assume that the email was sent by the Respondent.

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a substantive response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

The Complainant has provided details of the registered trade mark it owns for HMRC, as set out above. This establishes its rights in HMRC.

As a technical requirement of registration, the generic Top-Level Domain (that is ".com" in the case of the disputed domain name) is disregarded when assessing confusing similarity. The disputed domain name contains the entirety of the Complainant's HMRC mark. Its additional components comprise the prefix "govuk" and the suffix "claimrefund", these terms each being separated from the mark by hyphens. For the purpose of the comparison under the first element, the hyphens are of negligible significance and the additional terms do not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

The Complainant's HMRC trade mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a genuine offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate non-commercial or fair use of the domain name.

Due to the existence of the website warnings described above, which are generated when attempts are made to visit any website to which the disputed domain name resolves, it is unclear what, if any, use is presently being made by the Respondent of it. However, the three component parts of the disputed domain name, namely the term “govuk”, which is closely associated with the “gov.uk” domain used by many UK Government websites, the term “claimrefund”, which Internet users will associate with the process of seeking tax refunds and the Complainant’s HMRC mark, associate it very closely with the Complainant. Accordingly, it is not possible to conceive of any use which the Respondent might make of the disputed domain name which would not be misleading to Internet users. Moreover, the obvious connection to the Complainant suggests that the Respondent’s likely objective has been to use the disputed domain name for the purpose of some form of deceptive activity. As section 2.13.1 of the [WIPO Overview 3.0](#) explains; “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. In this respect, the Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant’s assertion that he is using, or intending to use, the disputed domain name for dishonest purposes; see *The Commissioners for HM Revenue and Customs v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-0957](#).

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; so far as can be established, the circumstances suggest that any use the Respondent has made, or contemplates making, of the disputed domain name is, or will be, noncommercial in character.

The Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent; see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). In the absence of any substantive response from the Respondent to the Complaint, he has failed to satisfy that burden.

C. Registered and Used in Bad Faith

As at the date of registration of the disputed domain name, the use by the Complainant of its HMRC mark was both well-established and very extensive. Having regard to the additional terms within the disputed domain name which are associated with the Complainant, coupled with the failure of the Respondent to provide any explanation which might provide a good faith justification for his registration of it, it is evident on at least a balance of probabilities, that the Respondent was aware of the Complainant’s HMRC mark as at the date of his registration of the disputed domain name and that it was registered in order that he might profit unfairly in some manner from its registration. Registration of a domain name by an unconnected third party with the knowledge of a complainant’s trade mark registration and with an intention to mislead consumers amounts to bad faith; see, for example, *Hike Limited v. Jamsheer Abdullah*, WIPO Case No. [D2016-0459](#). The Panel therefore finds the Respondent’s registration of the disputed domain name to have been in bad faith.

The inactive status of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding. In this respect, see section 3.3 of the [WIPO Overview 3.0](#), which explains that; “[f]rom 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”. The factors that are typically considered when 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 concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *The Commissioners for HM Revenue and Customs v. Whois Privacy, Private by Design, LLC / reco wow*, WIPO Case No. [D2022-1585](#).

Applying these factors to the current circumstances: (i) the Complainant makes extensive use of its HMRC mark and it is widely recognized in the UK; (ii) the Respondent has not provided a substantive response to the Complaint, nor provided any evidence of actual or contemplated good faith use of the disputed domain name; and (iii) finally, having regard to the fact that the disputed domain name is so clearly referable to the Complainant, it is not possible to conceive of any plausible good faith use to which it could be put by the Respondent. Accordingly, the circumstances of the Respondent's holding of the disputed domain name support a finding of bad faith under the doctrine of passive holding.

The Panel therefore finds that the disputed domain name has been 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 <govuk-hmrc-claimrefund.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: October 10, 2022