

## **ADMINISTRATIVE PANEL DECISION**

DPDgroup International Services GmbH & Co. KG. v. Wise Web Creation Limited

Case No. D2022-3325

### **1. The Parties**

The Complainant is DPDgroup International Services GmbH & Co. KG., Germany, represented by Fidal, France.

The Respondent is Wise Web Creation Limited, Nigeria.

### **2. The Domain Name and Registrar**

The disputed domain name <dpdshipment.online> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 September 13, 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 September 13, 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 September 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 14, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on October 19, 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 an international parcel delivery service company.

The Complainant owns the following trademark registrations:

- European Union trademark registration for DPD (special script) No. 012722427, registered on August 14, 2014, in classes 9, 16, 35, 39 and 42; and

- International trademark registration for DPD & design No. 761146, registered on May 26, 2001, in classes 36 and 39.

The Complainant has also registered the domain name <dpd.com> in 1991.

The disputed domain name was registered on April 10, 2022.

At the time of filing of the Complaint, the disputed domain name resolved to a website impersonating the Complainant's trademarks in connection with a purported offer of shipping services.

#### **5. Parties' Contentions**

##### **A. Complainant**

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

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the DPD trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(i) the 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 such domain name; and

(iii) the domain name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid DPD trademark registrations, which precede the registration of the disputed domain name for several years.

The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the DPD trademarks with the addition of the term "shipment" which is related to the Complainant core activities.

The disputed domain name incorporates the Complainant's DPD trademark in its entirety. As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark.

The Panel finds the first element of the Policy has therefore been met.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

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

### C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the domain name in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent.

In the present case, the trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the trademarks of the Complainant has been confirmed by earlier UDRP panels (see *e.g. DPDgroup International Services GmbH & Co. KG v. Dealer Sub, DealerSub*, WIPO Case No. [D2021-0779](#); *DPDgroup International Services GmbH & Co. KG v. Whois Privacy Protection Foundation / Albert Lancken*, WIPO Case No. [D2019-2957](#)).

As indicated above, the Complainant's rights in the DPD trademark predate the registration of the disputed domain name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the disputed domain name, as the Complainant's DPD trademark was registered.

Thus, the Respondent could not reasonably ignore the reputation of the products and services this trademark identifies. The Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainant's trademark.

The disputed domain name is currently not being used by the Respondent. UDRP panels 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 (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). This Panel also finds so under the circumstances of this case, particularly considering the well-known status of the Complainant's prior registered DPD trademark.

The failure of the Respondent to formally answer the Complainant's Complaint also suggests, in combination with other factors, bad faith on the part of the Respondent (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and is using the disputed domain name 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 <dpdshipment.online> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: October 31, 2022