

ADMINISTRATIVE PANEL DECISION

DX Network Services Limited v. Fang Jennifer Case No. D2022-3331

1. The Parties

The Complainant is DX Network Services Limited, United Kingdom, represented by Howes Percival LLP, United Kingdom.

The Respondent is Fang Jennifer, Thailand.

2. The Domain Name and Registrar

The disputed domain name <dxfreightservices.com> is registered with NameCheap, Inc. (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 7, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 amendment to the Complaint on October 3, 2022.

The Center verified that the Complaint together with the amendment to the 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 October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 3, 2022.

The Center appointed Wallberg, Knud as the sole panelist in this matter on November 8, 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 provider of parcel exchange and delivery services. The Complainant has been in business for over 40 years, and in addition to domestic delivery services, the Complainant operates an international delivery service in partnership with other distribution and delivery companies.

The Complainant owns United Kingdom trademark registration number UK00900151928 for the word mark DX that has a registration date of May 25, 1999. The Complainant also owns the European Union Trade Mark registration number 000151928 for the word mark DX with registration date of May 25, 1999. Both registrations cover services in Classes 38 and 39.

The Complainant also owns United Kingdom trademark registration number UK00912957189 for the word mark DX DELIVERY with the registration date of October 31, 2014. The Complainant also owns the European Union Trade Mark registration number 012957189 for the word mark DX DELIVERY with a registration date of October 31, 2014. Both registrations cover goods and services in Classes 9, 38 and 39.

The disputed domain name was registered on April 22, 2021.

The disputed domain name resolves to a website reproducing the Complainant's trademark DX and appears to offer freight services under the trade name "DX Freight Delivery Services".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the DX trademark. The only difference is that the disputed domain name includes the additional term "freight services".

The Complainant further contends that the Respondent does not have any rights in or legitimate interests in the disputed domain name. There is thus no evidence that the Respondent has traded under the mark DX, DX DELIVERY or "DX Freight" prior to the registration of the disputed domain name, nor has it been commonly known by the disputed domain name or any signs that are similar to the Complainant's marks. Furthermore, the Complainant has not licensed or authorized the Respondent to use the Complainant's trademarks DX and DX DELIVERY.

The Complainant finally contends that the Respondent has registered and is using the disputed domain name in bad faith. The reputation of the Complainant and of the Complainant's DX and DX DELIVERY marks is such that it is almost impossible that the Respondent was unaware of the Complainant's business and its use of these marks at the time of registration of the disputed domain name. Furthermore, the disputed domain name is being used to mislead customers into thinking that it is some way connected with the Complainant's services and therefore to either attract customers or to seek to defraud customers.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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

- (i) that the disputed domain name registered by the Respondent 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 has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered DX mark.

The disputed domain name consists of the Complainant's DX mark in its entirety. The addition of the term "freight services" does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. Similarly, the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement, and as such is generally disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy is therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the composition of the disputed domain name, including the Complainant's trademark DX and the descriptive term "freight services", carries a risk of implied affiliation with the Complainant's trademark. Moreover, the use of the confusingly similar disputed domain name to offer competing services cannot confer upon the Respondent rights or legitimate interests, nor does such use qualify as a *bona fide* noncommercial offering.

The Respondent has not produced any evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's trademark DX, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. This is substantiated by the fact that the Respondent appears to be operating a business within the same sector as the Complainant and the disputed domain name reproduces the Complainant's trademark DX. The Panel therefore finds that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Moreover, noting the Respondent's competitive operations it is also likely that the Respondent registered the disputed domain name with the intent of disrupting the business of the Complainant.

Noting that the disputed domain name incorporates the Complainant's distinctive trademark DX, that no Response has been filed, and that there does not appear to be any conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: November 23, 2022