

## **ADMINISTRATIVE PANEL DECISION**

### The Commissioners for HM Revenue and Customs v. Product K Case No. D2022-4165

#### **1. The Parties**

Complainant is The Commissioners for HM Revenue and Customs, United Kingdom, represented by Demys Limited, United Kingdom.

Respondent is Product K, United Kingdom.

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

The disputed domain name <tax-hm-rc-rebate.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 November 3, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 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 Complainant on November 4, 2022, providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 1, 2022.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on December 5, 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**

Complainant is the United Kingdom's tax agency, a non-ministerial department of the United Kingdom Government responsible for the collection of taxes and National Health contributions, payment of some forms of state support, and administration of other regulatory regimes, including minimum wage enforcement.

Since the 2005 merger of the United Kingdom's then-existing Inland Revenue with its HM Customs and Excise agencies, Complainant has commonly been known by the name "HM Revenue and Customs" or the acronym "HMRC".

Complainant owns United Kingdom Trademark No. 2471470 for the HMRC mark, registered in International Classes 9, 16, 35, 36, 41, and 45 on March 28, 2008.

Nearly every resident and national of the United Kingdom, including pensioners, working people, and businesses have contact with Complainant, as direct customers and/or users of its services. In recent years, Complainant's HMRC mark has often been the target of abusive domain name registrations, including in a variety of phishing, spamming, or other fraudulent schemes. These abusive domain name registrations have culminated in Complainant bringing dozens of successful UDRP proceedings.

Complainant in 2021 won an order of transfer in consolidated UDRP proceedings against the current Respondent; the disputed domain names in those proceedings also included Complainant's trademark and the terms "rebate" or "rebates".<sup>1</sup>

The disputed domain name was registered on November 2, 2020, and does not route to an active webpage.

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

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

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's HMRC trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

Complainant avers that the disputed domain name is configured with MX records and therefore may be used for email communications. Complainant avers that anyone receiving an email originating from the confusingly similar disputed domain name reasonably would assume that the email was sent from Complainant.

Complainant also notes that on October 19, 2022, its agent sent a communication to Respondent demanding an explanation for Respondent's use of the disputed domain name and requesting its immediate transfer to Complainant. Complainant alleges that Respondent did not reply to that demand letter.

On the above grounds, Complainant requests transfer of the disputed domain name.

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<sup>1</sup> *The Commissioners for HM Revenue and Customs v. Withheld for Privacy Purposes*, Privacy service provided by Withheld for Privacy ehf / Product K, Racks Jw, Idrees Khan, Name Redacted, Denz Renz, WIPO Case No. [D2021-1248](#).

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### A. Substantive Matters

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

### B. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's HMRC mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. See, e.g., *HUK-COBURG haftplicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#); *VAT Holding AG v. Vat.com*, WIPO Case No. [D2000-0607](#); *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Omitting the ".com" TLD from the disputed domain name, the Panel notes that the entire HMRC mark is included in the disputed domain name, adding only the words "tax" and "rebate" plus three hyphens. The Panel finds that the addition to Complainant's HMRC mark of these two words and the hyphens does not prevent a finding of confusing similarity.

The Panel therefore rules that the disputed domain name is confusingly similar to Complainant's mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 (UDRP panels often determine that disputed domain names are confusingly similar to a complainant's marks where the disputed domain names fully incorporate a complainant's marks).

The Panel concludes that the first element of paragraph 4(a) of the Policy is established.

### C. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts the Complaint's undisputed allegations that Respondent has no relevant trademark rights (whether by registration or prior use) and has no authorization or license to use Complainant's trademark in the disputed domain name. The Panel also accepts the Complaint's averment that Respondent is not commonly known by the disputed domain name.

Since the record indicates that the disputed domain name does not route to an active webpage, the Panel also agrees with Complainant that Respondent is not making a *bona fide* use of the disputed domain name.

In light of the evidence and allegations of the Complaint, the Panel holds that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and that the Complaint establishes a *prima facie* case. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of the Policy is established.

#### **D. Registered and Used in Bad Faith**

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

UDRP panels may draw inferences about bad faith in light of the circumstances, including passive holding, failure to respond to a complaint and other circumstances. See, e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.2.1.

Respondent obviously knew of Complainant and its inherently distinctive HMRC mark and services. Respondent's choice of a domain name including the HMRC mark and the term "rebate" was even found in prior UDRP proceedings between the same parties to violate the UDRP. *The Commissioners for HM Revenue and Customs v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Product K, Racks Jw, Idrees Khan, Name Redacted, Denz Renz, supra*. Here, Respondent combined Complainant's HMRC mark with the terms "tax" and "rebate", terms commonly describing Complainant's functions and used in Complainant's public communications, which suggests an awareness of Complainant and its activities, and increases the likelihood of Internet user confusion.

This renders beyond dispute that Respondent sought to exploit Complainant's mark through registration of the confusingly similar disputed domain name and the Panel so finds. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. See e.g., [WIPO Overview 3.0](#), sections 3.2.1 and 3.3.

Respondent's setting of an MX record to create an email address using the disputed domain name and enable it to receive email, its passive holding of the disputed domain name, and Respondent's provision of false or incomplete contact details, in violation of Respondent's agreement with the Registrar, support a finding of Respondent's use in bad faith in these circumstances. *Id.*

Accordingly, the Panel concludes that paragraph 4(a)(iii) of the Policy is satisfied.

## **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 <tax-hm-rc-rebate.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: December 19, 2022