

ADMINISTRATIVE PANEL DECISION

Aquent LLC v. Michael Nava, Domain Nerdz LLC
Case No. D2023-0878

1. The Parties

The Complainant is Aquent LLC, United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Michael Nava, Domain Nerdz LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <aquent.xyz> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 2023, 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, which was a privacy service (Privacyprotection.com, LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 2, 2023 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 March 2, 2023.

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 March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on April 12, 2023. 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 company was formed in 1986 and has been active since then in the business of providing staffing solutions for marketing and creative industries. It provides contract-to-hire services, direct-hiring services, resource on demand services and project deliverables, and operates in the United States, Canada, France, the United Kingdom, the Netherlands, Australia and Japan. It operates its official website at “www.aquent.com”, having registered the domain name on February 12, 1998. The Complainant’s website receives around 187,000 - 292,000 visits per month from Internet users around the world.

The Complainant carries out its business under the name and trademark AQUENT, which it has registered as a trademark in various territories, including the United States, Canada, the European Union and Australia. It referred in the Complaint to the following registrations:

- United States trademark registration No. 2289555 in Class 35, with a registration date of October 26, 1999;
- Canadian trademark registration No. TMA577817 in Classes 35, 36, 41 and 42 with a registration date of March 20, 2003;
- European Union trademark registration No. 832287 in Classes 35, 36 and 41 with a registration date of November 25, 1999; and
- Australian trademark registration No. 765711 in Classes 35, 36 and 41 with a registration date of June 25, 1998.

Details of these registrations were annexed to the Complaint.

The Complainant is active on social media websites including in particular Twitter, Facebook and LinkedIn, on which it has 21,800 followers, 12,000 likes and 523,000 followers, respectively.

The Complainant’s business under the AQUENT mark has met with commercial success. The Complainant has been recognised as the largest “Marketing/Creative Staffing Firm in the US” for 13 consecutive years, by the industry group Staffing Industry Analysts. The Complainant has experience serving clients in an array of industries, including Fortune 500 companies who own well-known brands.

The disputed domain name was registered on September 2, 2022. It does not resolve to a website, but rather directs visitors to the domain aftermarket website “www.dan.com” where the disputed domain name is advertised for sale for USD 1,988. This advertisement first appeared within the same month in which the disputed domain name was registered.

The Complainant sent a cease and desist demand to the Respondent by filing a Domain Holder Contact Request Form through the Respondent’s privacy service before bringing this Complaint. However, no response was received, and the Complainant brought this Complaint on February 27, 2023.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical to its registered trademark AQUENT. It submits that the only difference, namely the generic Top-Level Domain (“gTLD”) “.xyz”, is a standard registration requirement and should be disregarded.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has never been known as AQUENT, has no trademark rights in AQUENT and has

not been licensed by the Complainant to use the AQUENT trademark. The Respondent's advertisement of the disputed domain name for sale does not amount to use, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, nor does it constitute a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark at issue.

Finally, the Complainant contends that the disputed domain name was registered and has been used in bad faith. The Complainant first registered and started using its AQUENT trademark long before the disputed domain name was registered, and the Complainant submitted a screenshot of Google search results showing that a search for AQUENT lists the Complainant's website as its first, naturally occurring result. The Complainant contends that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name, pointing to the advertisement for sale on the aftermarket website "www.dan.com" for USD 1,988, and an advertisement on the platform "www.afternic.com" at the same price.

The Complainant also submits that the Respondent has engaged in a pattern of registering abusive domain names to prevent trademark holders from reflecting their marks in corresponding domain names, and offering those domain names for sale for costs in excess of its out-of-pocket costs related to the domain names. The Complainant refers to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.1.2, which indicates that a 'pattern of bad faith' conduct requires "more than one, but as few as two instances of abusive registration". The Complainant submits that the Respondent has been involved in at least 13 previous domain name disputes, all of which resulted in decisions against the Respondent; details of these prior decisions were annexed to the Complaint. The Complainant refers to the panel decision in *Automation Anywhere, Inc. Privacy Protection / Michael Nava, Domain Nerdz LLC* (WIPO Case No. [DIO2022-0050](#)), in which the Panel held that the same Respondent had repeatedly engaged in abusive domain name registration and use, amounting to a pattern of conduct preventing brand owners from reflecting their marks in corresponding domain names.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant has proved that it owns registered trademark rights in AQUENT.

The relevant comparison is between the Complainant's marks and the second-level portion of the domain name ("aquent"). The gTLD ".xyz" may be disregarded for this purpose ([WIPO Overview 3.0](#), section 1.11). The disputed domain name contains the Complainant's trademark AQUENT in its entirety, and nothing else apart from the gTLD.

The Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has never authorized the Respondent to use its trademarks, nor is there any evidence that the Respondent has ever been commonly known by the disputed domain name or has acquired any trademark rights in it.

The Respondent's advertisement of the disputed domain name for sale does not amount to use, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, nor does it constitute a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue. The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent has made no effort to rebut that case.

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

C. Registered and Used in Bad Faith

Para 4(b) of the Policy sets out a number of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b)(i), the Panel may find both registration and use in bad faith where there are circumstances indicating that the respondent registered or 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.

Under paragraph 4(b)(ii), the Panel may find both registration and use in bad faith where there is evidence that the respondent 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.

In this case, the Respondent registered the disputed domain name long after the Complainant had commenced use of its AQUENT mark, which the Complainant has shown is readily identifiable in a Google search for AQUENT. Within the same month that it registered the disputed domain name, the Respondent advertised it for sale for USD 1,988, which is likely to be substantially more than the Respondent's out-of-pocket costs associated with the disputed domain name. These factors together suggest that the Respondent was targeting the Complainant in registering the disputed domain name, and that it registered the disputed domain name primarily for the purpose of sale to the Complainant or a competitor of the Complainant. The Respondent did not respond either to the Complainant's cease and desist notice or to this Complaint and has made no effort to provide an alternative explanation for its conduct. The Panel finds that the disputed domain name was registered and is being used in bad faith under para 4(b)(i) of the Policy.

Moreover, the Respondent has engaged in a pattern of similar conduct and has been a respondent in at least 13 previous domain name disputes, all of which resulted in decisions against the Respondent. The Panel takes note of the comments of the panel in *Automation Anywhere, Inc. Privacy Protection / Michael Nava, Domain Nerdz LLC* (WIPO Case No. [DIO2022-0050](#)), that the “Respondent has repeatedly been found to have engaged in abusive domain name registration and use, evidencing a pattern of conduct to prevent the owners of trademarks or service marks from reflecting their marks in corresponding domain names”. The Respondent’s conduct in that case mirrors its conduct in the present case. The Panel also finds bad faith registration and use under para 4(b)(ii) of the Policy.

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, <aquent.xyz>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: April 26, 2023