

## **ADMINISTRATIVE PANEL DECISION**

The Commissioners for HM Revenue and Customs v. valdineia martins  
Case No. D2023-0895

### **1. The Parties**

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

The Respondent is valdineia martins, United States of America.

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

The disputed domain name <access-form-hmrc.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2023. On February 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 1, 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 (Registration Private, Domains By Proxy, 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 3, 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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on April 14, 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 is a non-ministerial department of the UK responsible for the administration and collection of direct taxes within the UK.

The Complainant is the owner of two trademarks (hereinafter the “HMRC Trademarks”):

- the UK trademark HMRC No. UK00002471470 registered on March 28, 2008, for products and services in classes 9, 16, 35, 36, 41 and 45;
- the UK trademark HM Revenue & Customs No. UK00003251234 registered on December 29, 2017, for products and services in classes 9, 16, 35, 36, 41 and 45.

The Complainant is well known in the UK under the initialism HMRC which stands for “His Majesty Revenue and Customs”.

The Complainant’s services can also be accessed via the domain name <hmrc.gov.uk>.

The Disputed Domain Name was registered on November 23, 2022, and reverts to an active website which once loaded displays a warning message from the browser stating that this website has been flagged as a fraudulent phishing website.

#### **5. Parties’ Contentions**

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

First, the Complainant stands that the Disputed Domain Name is confusingly similar to its earlier HMRC Trademarks. The Complainant also points out that it owns unregistered rights in the initialism HMRC given that it is well known by this initialism in the UK and around the world.

Then, the Complainant considers that the Disputed Domain Name is confusingly similar to its HMRC Trademarks since it is composed of the HMRC initialism with the words “access” and “form” which are strongly associated with the Complainant and its activities. For the Complainant, the addition of these words does nothing to distinguish the Disputed Domain Name from its HMRC Trademarks and on the contrary only serves to increase the potential for confusion. The Complainant further explains that a previous panel decision has stated that the addition of the word “rebate” and “form” to its HMRC Trademarks did not prevent a finding of confusing similarity.

Secondly, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name since there is no evidence that the Respondent has been commonly known by the initialism HMRC or by the Disputed Domain Name prior to or after its registration. The Complainant explains that the Respondent was not licensed or authorized to use the HMRC Trademarks to register the Disputed Domain Name. Then, the Complainant submits that the Disputed Domain Name was potentially used for malicious or criminal purposes such as malware distribution or phishing. The Complainant considers that this is evidence that the Respondent never intended to use the Disputed Domain Name for a legitimate or fair use. The Complainant also considers that the Respondent’s lack of response to its letter is also an indicator of the absence of a right or legitimate interests in respect of the Disputed Domain Name.

Lastly, the Complainant considers that the Disputed Domain Name was registered and is being used in bad faith. The Complainant demonstrates that the Disputed Domain Name has been flagged by a reputable third party as having been used for malicious purposes such as trying to trick visitors to share personal information. The Complainant further explains that Disputed Domain Name was connected with MX email servers and may be used to send fraudulent emails as part of a phishing scheme. Finally, the Complainant points out that the Respondent has used a privacy service to mask its identity when registering the Disputed Domain Name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed 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 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**

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the HMRC Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the Disputed Domain Name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The mere addition of descriptive or geographical terms to a mark does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

Regarding the Disputed Domain Name, the Panel finds that it is composed of:

- the word "access";
- a hyphen;
- the word "form";
- a hyphen;
- the HMRC Trademarks; and
- the generic Top-Level Domain ("gTLD") ".com".

The gTLD in a domain name is viewed as a standard registration requirement and as such is usually disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Regarding the Disputed Domain Name, the Panel finds that it incorporates the HMRC Trademarks in their entirety and considers that the insertion of the words “access” and “form”, and of two hyphens, does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s HMRC Trademarks.

Therefore, the Panel holds that the Disputed Domain Name is confusingly similar to the Complainant’s HMRC Trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

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

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute to the respondent, the respondent’s 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
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is 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.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceeding is on the complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Indeed, it appears that the Respondent has not received any authorization to use the HMRC Trademarks in any manner, including in domain names.

Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Complainant has provided evidence demonstrating that the Disputed Domain has been used to distribute malwares or as part of a phishing

scheme. The Respondent has also configured MX servers with the Disputed Domain Name which is further evidence that the Disputed Domain Name may be used as part of a phishing scheme to trick users into divulging their personal data.

In any case, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

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

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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.

According to prior UDRP decisions, particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely known mark, or a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's area of activity or natural zone of expansion), (ii) the chosen top-level domain (e.g., particularly where corresponding to the complainant's area of business activity or natural zone of expansion), (iii) the content of any website to which the domain name directs, including any changes in such content and the timing thereof [...], (vii) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant (see section 3.2.1 of the [WIPO Overview 3.0](#)).

Prior panels have also held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. (In some such cases, the respondent may host a copycat version of the complainant's website.) (see section 3.4 of the [WIPO Overview 3.0](#)).

First of all, the Panel finds that it is established that the Complainant's HMRC Trademarks were registered and used before the registration of the Disputed Domain Name. Therefore, there is a presumption of bad

faith registration of the Disputed Domain Name given that it reproduces the Complainant's HMRC Trademarks entirely.

Moreover, the Panel points out that the Disputed Domain Name revolves to a website that has been flagged by a third party as a malicious website distributing malware or being used as part of a phishing scheme.

Accordingly, the Panel finds that the Complainant has provided evidence that the Disputed Domain Name was registered and used by the Respondent in an attempt to pass off as the Complainant or someone affiliated to the Complainant, to trick Internet users into divulging personal data and to possibly extort money from them.

Finally, the Respondent has not provided any formal response to the Complainant's contentions.

Considering all of the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the Disputed Domain Name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

## **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, <access-form-hmrc.com> be transferred to the Complainant.

*/Christiane Féral-Schuhl/*

**Christiane Féral-Schuhl**

Sole Panelist

Date: April 28, 2023