

ADMINISTRATIVE PANEL DECISION

Tsunami Axis Limited v. Repossessed by Go Daddy
Case No. D2023-1846

1. The Parties

The Complainant is Tsunami Axis Limited, United Kingdom (“UK”), represented by Buckles Solicitors LLP, UK.

The Respondent is Repossessed by Go Daddy, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <tsunamiaxis.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 5, 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 amendment to the Complaint on May 9, 2023.

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 May 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Respondent did not submit any response. The Center notified the commencement of Panel appointment process on May 31, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 7, 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 operates, since 1999, a business specializing in designing, planning and installing workspaces for commercial businesses trading under the name “Tsunami Axis”, counting with offices in London, Manchester, Edinburgh, Glasgow, Luxembourg and Frankfurt and having as official webpage the one available at the domain name <tsunami-axis.com>.

The disputed domain name was registered on December 22, 2022 and presently does not resolve to an active webpage. In the past, the disputed domain name has been initially used in connection with pay-per-click (“PPC”) links and later in connection with a webpage recommending and reproducing information on a relevant competitor of the Complainant (Annex 4 to the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant asserts to have owned and operated since 1999 a business specializing in designing, planning and installing workspaces for commercial business, having had a turnover of GBP 48 million and an average of 79 employees, thus obtaining significant trading goodwill and reputation in the UK attached to the name “Tsunami Axis”.

The Complainant contends that the disputed domain name is identical to the name “Tsunami Axis” as well as to the Complainant’s prior domain name <tsunami-axis.com> and thus confusingly similar, in spite of insignificant differences.

Furthermore, the Complainant sustains that the disputed domain name was likely registered by a former employee, under the use of a privacy protection service, who has used the disputed domain name initially to host PPC links to the Complainant’s competitors and later in connection with a webpage that reproduced images from a relevant competitor of the Complainant as well as the telephone number of that competitor.

Representatives for the Complainant have contacted the competitor company which has confirmed that it did not purchase the disputed domain name nor created the website that resolved therefrom.

The Complainant thus contends that the Respondent does not have rights or legitimate interests in the disputed domain name which has been registered and used in bad faith to deceive the public and/or prospective customers of the Complainant into a mistaken belief that the products and services offered at the website available at the disputed domain name would be in fact those offered by the Complainant, what is not true and will injure the Complainant’s business and goodwill, also causing damages to the Complainant.

Lastly, the Complainant points out that the disputed domain name is being passively held by the Complainant what could be changed at any time to cause difficulty, distress and to disrupt the Complainant’s business.

B. Respondent

The Respondent did not reply to the Complainant’s contentions in the Complaint, but did state that they were “willing to turn over the domain name to [Complainant] with a properly executed standard settlement agreement.”

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights over the unregistered TSUNAMI AXIS name which has become a distinctive identifier of the services provided by the Complainant since 1999, and lead the Complainant to a turnover of GBP 48 million.

In addition to that, “[t]he fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier” (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.3).

The disputed domain name reproduces, in its entirety, the TSUNAMI AXIS unregistered trademark and has been used in connection with a webpage that clearly sought to harm the Complainant referring and recommending the services of a relevant competitor to the Complainant.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent’s rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate,

pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent whom has used the disputed domain name firstly in connection with PPC links targeting the Complainant's competitors and then to harm the Complainant's business, what clearly does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

The Registrar's repossession of the disputed domain name due to the use in connection with PPC links targeting the Complainant's competitors and then to harm the Complainant's business further supports a finding of lack of rights or legitimate interests in the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv), in view of the website that used to be available at the disputed domain name, which creates a likelihood of confusion with the Complainant's goodwill unlawfully harm the Complainant's business.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; and (ii) the choice to retain a privacy protection service so as to conceal the Respondent's identity.

Presently, the disputed domain name does not resolve to an active webpage. 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. Having reviewed the record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes, and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Lastly, the Registrar's repossession of the disputed domain name affirms a finding that the disputed domain name was registered and used in bad faith.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The third element of the Policy has therefore been met.

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

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 21, 2023