

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Nikita Belyi Case No. D2023-2171

1. The Parties

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

The Respondent is Nikita Belyi, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <payhmc.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 3, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on July 13, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The Respondent's address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel considers appropriate to render the following Decision on the basis of the Complainant's contentions and other evidence submitted by the Complainant. The Respondent confirmed in the reply to the communication made by the Complainant's agent on February 16, 2023, that the disputed domain name was bought by mistake and expressed willingness to transfer the disputed domain name to the Complainant and asked for instructions. The Panel finds that this case is similar to the cases in which the panels may order the remedy requested by the Complainant solely on the basis of the Respondent's consent. See, section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In this case, however, the Panel decides, just to be sure, that all the requirements should be reviewed.

The Panel notes that the courier was not able to deliver the written notice to the address which the Respondent had provided in Ukraine. The Panel also considered that the Complaint together with the amendment to the Complaint were delivered to the Respondent's email address provided by the Registrar. The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a non-ministerial department of the United Kingdom Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes. The Complainant, in its present form and with its current name, was created by the merger of the Inland Revenue and HM Customs and Excise in April 2005 and was established in The Commissioners for Revenue and Customs Act, 2005. As the UK Government's tax authority, almost every UK individual and business is a direct customer of the Complainant and user of its services.

During the reign of Elizabeth II, the Complainant was formally known as "Her Majesty's Revenue and Customs. Since the accession of Charles III, the Complainant is known as "His Majesty's Revenue and Customs". In both cases, the name was or is often shortened to "HM Revenue and Customs" or the initialism "HMRC".

The Complainant operates a website within the UK Government's official portal site, which can be accessed through the domain name <hmrc.gov.uk>.

The Complainant is the proprietor of several UK trademarks, some of which are as follows:

- UK Registration No. 00002471470 for HMRC, registered on March 28, 2008;
- UK Registration No. 00003251234 for HM Revenue & Customs, registered on December 29, 2017.

The disputed domain name <payhmrc.com> was created on December 6, 2022 and resolves to an inactive website.

On February 16, 2023, the Complainant's agent wrote to the Respondent. The Respondent replied confirming that the disputed domain name was bought by mistake and expressed willingness to transfer the disputed domain name to the Complainant and asked for instructions. The Complainant's agent provided instructions for transferring the disputed domain names. However, The Complainant received no further communication from the Respondent.

6. Parties' Contentions

The Complainant's contentions are divided into three parts as follows:

First, the Complainant contends that the disputed domain name is confusingly similar to its HMRC trademark in that it only differs by the addition of the dictionary word "pay." By virtue of it being the United Kingdom's governmental tax authority, the Complainant contends that the dictionary word "pay" is inherently associated with the Complainant and its activities. Viewed as a whole, the Complainant's mark is the most prominent, dominant and distinctive element of the disputed domain name. When combined with the Complainant's well-known mark, the adornment "pay" does not dispel any possibility of confusion but instead does the opposite and increases the potential for confusion among Internet users.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that, if the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production of evidence to the contrary should shift to the Respondent. The Complainant confirms that the Complainant has found no evidence that the Respondent has been commonly known by the names "Hmrc" or "Pay Hmrc" prior to or after the registration of the disputed domain name; the Respondent is not a licensee of the Complainant and has not received any permission, consent or acquiescence from the Complainant to use its marks or name in association with the registration of the disputed domain name; nothing to suggest that the Respondent owns any trademarks that incorporate or are similar or identical to the terms "Hmrc" or "Pay Hmrc"; the Complainant has found no evidence that the Respondent has ever traded or operated as "Hmrc" or "Pay Hmrc"; and the disputed domain name's zone file is configured with MX and SPF records, which means that the disputed domain name can be effectively used for email communication. On the other hand, the Complainant confirms that the Respondent did not reply to the communication sent by the Complainant's agent.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. With regard to the bad faith registration, the Complainant asserts that the Respondent's passive holding of the disputed domain name constitutes bad faith. Especially, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without the Complainant's marks in mind and with good-faith intentions. Since the disputed domain name is configured with MX and SPF records and is therefore capable of effective email communication, the Complainant asserts that there is a risk for anyone receiving an email originating from the disputed domain name would reasonably assume that it was sent from the Complainant.

B. Respondent

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

7. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case 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. The Respondent has not made any substantive arguments in this case.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) The disputed domain name is identical or confusingly similar to a trade mark 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

The Panel finds that the Complainant has rights in the HMRC trademark and the Complainant is known in the UK and around the world as “HMRC”.

The disputed domain name includes the term “hmrc”, which is same as the Complainant’s HMRC trademark. Such inclusion is, in principle, by itself enough to have the disputed domain name to be confusingly similar to the Complainant’s HMRC trademark. The fact that there is the term “pay” before the term “hmrc” does not prevent the above finding. The element “.com” which represents one of the generic Top-Level Domains is irrelevant in the determination of the confusing similarity under the first element of the Policy.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence that shows the Respondent is commonly known by the name “payhmrc.” The Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant’s HMRC trademark.

In accordance with section 2.1 of the [WIPO Overview 3.0](#), since the Respondent did not reply to the Complainant’s contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

With regard to the requirement that the disputed domain name has been registered in bad faith, in consideration of the public status and popularity of the Complainant, it is highly unlikely that the Respondent would not have known of the Complainant’s right in the HMRC trademark at the time of registration of the disputed domain name. Therefore, it is found that the Respondent registered the disputed domain name in bad faith. In addition, the Panel finds that the Respondent’s selection of the term “pay” shows that the Respondent targeted the Complainant’s HMRC trademark at the registration of the disputed domain name.

On the other hand, with regard to the requirement that the disputed domain name is being used in bad faith, it should be noted that the disputed domain name is just passively held by the Respondent. However, such passive holding of the disputed domain name does not prevent the Panel from finding the bad faith use. According to section 3.3 of the [WIPO Overview 3.0](#), the Panel should look at, among others, the following factors: (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, and (iv) the implausibility of any good

faith use to which the domain name may be put. In this case, in consideration of these factors as a whole, and since the Respondent did not reply to the Complaint, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith. In addition, the Panel finds that the fact that the disputed domain name is configured with MX and SPF shows potential risk for anyone receiving an email originating from the disputed domain name would reasonably assume that it was sent from the Complainant.

Therefore, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

8. 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, <payhmrc.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: July 24, 2023