

ADMINISTRATIVE PANEL DECISION

Nicholas Paul Andrew Galea v. Daniel C Denson, Denson Technologies
Case No. D2023-2192

1. The Parties

The Complainant is Nicholas Paul Andrew Galea, Cyprus, represented by Alice Karlson, Cyprus.

The Respondent is Daniel C Denson, Denson Technologies, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <fuck3cx.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 June 1, 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 June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. The Respondent did not submit any response. The Center received the Respondent’s communications by email on June 1, 2023 and June 6, 2023. On June 23, 2023, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 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 is the owner of International Registered Trademark Number 922156 for the figurative mark 3CX, registered on March 12, 2007 in Class 9. The Complainant does not provide any information regarding the nature of its business or its commercial activities. Based on the goods and services in respect of which the said mark is registered, together with a reference on the website associated with the disputed domain name to “a PBX system”, it appears that the Complainant may supply computer based telephone systems and software.

The disputed domain name was registered on January 11, 2023. Little is known regarding the Respondent, which has not participated in the administrative proceeding, other than that it appears to be a private individual and/or a business named “Denson Technologies” with an address in Billings, Montana, US. According to a screenshot produced by the Complainant, the website associated with the disputed domain name is headed “an opinion site” [*sic*]. Below a reproduction of the second level of the disputed domain name, the website contains the sub-heading “MY PERSONAL JOURNEY / with 3CX and accounts from compadres”. This material appears to be critical of the Complainant and/or its alleged business practices.

5. Parties' Contentions

A. Complainant

The Complaint is extremely brief and need not be summarized. Accordingly, the Complainant contends as follows (subject to minor amendment to correct abbreviations and typographical errors):

Identical or confusingly similar

The disputed domain name combines the word “fuck” and the Complainant’s registered trademark 3CX and is at least confusingly similar to its 3CX mark.

Rights and legitimate interests

The Respondent is not offering any goods or services. The Respondent is not using the website to sell trademarked services. The website itself does not accurately disclose the Respondent’s relationship with the Complainant, the trademark owner; and the Respondent is trying to “corner the market” in all relevant domain names, thus depriving the Complainant, the trademark owner, of the ability to reflect its own mark in a domain name. Based on the above the Complainant concludes that the other party has no rights or legitimate interests in the disputed domain name.

Registered and used in bad faith

By using the disputed domain name, the Respondent intentionally attempted to attract for financial gain, Internet users to the Respondent’s website or other on-line 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. The disputed domain name has been registered and is being used in bad faith. Given the above, the Complainant believes that the disputed domain name is abusive under the UDRP.

B. Respondent

The Respondent did not file a formal Response and did not reply formally to the Complainant's contentions. However, in its email of June 1, 2023, the Respondent contended that the website associated with the disputed domain name was "an opinion site and is protected speech in the US where it is hosted." The Respondent added: "I do not believe the complainant has a valid intellectual property complaint as their trademark is not being used to compete or confuse."

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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

The first element of the Policy is typically addressed in a two part process. First, the Complainant must show that it has UDRP-relevant rights in a trademark. Secondly, the Panel undertakes a comparison process in which such trademark is compared to the disputed domain name, typically in a straightforward side-by-side analysis in which the corresponding Top-Level Domain is disregarded, being required for technical reasons only. In general, identity may be found if the trademark is alphanumerically identical to the disputed domain name, while confusing similarity may be found if the trademark is recognizable within the disputed domain name, whether or not accompanied by other terms.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in the registered trademark 3CX, more particularly described in the factual background section above. The mark is figurative but consists principally of a textual component, being a number and two letters, such that there is no graphical element to excise before comparison other than a slightly stylized typeface (see section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Comparing the textual component of such mark to the disputed domain name, the Panel notes that this term is incorporated in its entirety at the end of the Second-Level Domain, following the dictionary word or expletive "fuck". The Complainant's mark is therefore recognizable in the disputed domain name, and that is sufficient for a finding of confusing similarity under the Policy. The fact that the additional word may be regarded as negative or pejorative is of no significance to the first element analysis (see section 1.13 of the [WIPO Overview 3.0](#)").

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and that the Complainant has carried its burden with regard to the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your 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
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

Broadly speaking, the Complainant’s case on this aspect asserts that the Respondent would be unable to demonstrate rights or legitimate interests in terms of paragraph 4(c)(i) or paragraph 4(c)(ii) of the Policy. However, the Complainant has not addressed itself to the issue of whether the Respondent may be 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 in terms of paragraph 4(c)(iii) of the Policy. For its part, the Respondent describes its use of the disputed domain name as being for “an opinion site”, asserting that this constitutes protected free speech. The Panel takes this to mean that the Respondent is making a case in terms of paragraph 4(c)(iii) of the Policy.

The use of a domain name for noncommercial free speech can in principle support a legitimate interest under the Policy (see section 2.6 of the [WIPO Overview 3.0](#)). To support such fair use, a respondent’s criticism must not be a pretext for cybersquatting, commercial activity, or tarnishment. Where the domain name concerned is not identical to the complainant’s trademark but (as here) comprises the mark plus a derogatory term (e.g., “<trademarksucks.tld>”) panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false.

Panels may consider a respondent’s domain name itself, in the context of whether this carries a risk of implied affiliation, noting that certain critical terms (e.g., “<trademarksucks.tld>”) tend to communicate, *prima facie* at least, that there is no such affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). Furthermore, panels would in such cases typically consider the circumstances beyond the disputed domain name, such as for example, any website content and any apparent commercial activities, in order to determine whether a domain name has been registered and is being used for legitimate purposes and not as a pretext for commercial gain or other such purposes inhering to the respondent’s benefit (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In the present case, the disputed domain name consists of a clearly expletive term coupled with the Complainant’s trademark. On an objective view of this composition, the Panel considers that it communicates to the English-speaking Internet user that there is no affiliation between the Respondent and the trademark owner. Given the pejorative associations of the expletive when accompanying the Complainant’s trademark, this is not a composition that would ordinarily be used by the Complainant itself or on its behalf. Such composition signals that there is likely to be material on the associated website that may be critical of the trademark owner. On the whole, therefore, the Panel considers that Internet users viewing the disputed domain name and related website would understand that it is very unlikely to be owned, sponsored, or endorsed by the Complainant.

The content of the website associated with the disputed domain name, as shown on the Complainant’s screenshot, describes the Respondent’s “personal journey with 3CX” and is critical of certain business practices in which the Complainant is alleged to have engaged, particularly with partner organizations. Links are included to various threads on a discussion website which (although the Panel did not visit these and was not provided with the threads in evidence) seem by the link descriptions to relate to the alleged business practices. As far as the screenshot is concerned, this appears to the Panel to consist of noncommercial nonpretextual criticism of the Complainant. The Complainant has produced neither submissions nor evidence tending to show that the criticism concerned is commercial in nature and/or is a pretext for cybersquatting.

The Panel notes for completeness that it does not require to assess whether the claims on the Respondent's website are accurate, merely that 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 (see, for example, the comments of the panel in *MUFG Union Bank, N.A. v. William Bookout*, WIPO Case No. [DME2014-0008](#)). At the same time, to the extent any content at a *prima facie* legitimate criticism site were proved to be false (and not merely asserted to be false) this could signal to the panel that the site (and the claimed criticism) was pretextual, and not therefore likely to benefit from the Policy's fair use safe harbor.

In all of these circumstances, the Panel finds that the Complainant has failed to carry its burden in terms of the requirements of paragraph 4(a)(ii) of the Policy. The Complaint therefore fails.

C. Registered and Used in Bad Faith

The Complaint has failed on the issue of rights and legitimate interests. It is not therefore strictly necessary for the Panel to conduct an analysis in terms of the third element of the Policy. However, the Panel notes for completeness that the disputed domain name has been registered and is being used to criticize the Complainant's (alleged) business practices, and the Panel has found that the composition of the disputed domain name along with the related website signals unequivocally to Internet users that they are likely to find critical material on the associated website, so that there is no deception inherent in the disputed domain name itself. In signaling the criticism by way of the expletive, the disputed domain name *prima facie* passes the "impersonation test" (see e.g., *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#)).

The content of the associated website, insofar as placed into evidence, has the appearance of genuine, noncommercial criticism. In these circumstances, the Complainant's submission based upon paragraph 4(b)(iv) of the Policy falls to be rejected. There is no evidence before the Panel that the disputed domain name has been registered and is being used in bad faith within the meaning of the Policy. Insofar as the Complainant may disagree with the website content, it may have other remedies in an alternative (court) forum. As the panel noted in *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#), "Claims sounding in commercial libel must be brought in other legal venues."

In all of the above circumstances, the Panel finds that the Complainant has not proved that the disputed domain name was registered and used in bad faith. The Panel therefore finds that the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: July 26, 2023