

ADMINISTRATIVE PANEL DECISION

Driver Hire Group Services Limited v. David Conway
Case No. D2023-4241

1. The Parties

The Complainant is Driver Hire Group Services Limited, United Kingdom (“U.K.”), represented by Murgitroyd & Company, U.K.

The Respondent is David Conway, U.K.

2. The Domain Name and Registrar

The disputed domain name <driverhire.app> (the “Disputed Domain Name”) 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 October 11, 2023. On October 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 13, 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 the same October 13, 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 October 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. Aside from several informal communications (see further below), the Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 16, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on November 22, 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

In the absence of a Response challenging any of the facts asserted in the Complaint, the Panel accepts the following facts as accurate.

The Complainant describes itself as “the largest specialist logistics recruiter in the United Kingdom”. It was founded in 1983 in West Yorkshire, England, U.K., initially supplying temporary drivers to local transport firms. The Complainant has traded under the name “Driver Hire” since 1983. In or around 1986, the Complainant introduced the following logo which has been used in association with its business since that date:



This logo is described as the “DRIVER HIRE” logo in this decision.

The Complainant launched its first franchised office in Newcastle-upon-Tyne, England, U.K., in 1987. The Complainant grew during the 1990s by growing its network of franchised offices. This allowed the Complainant, by 1997, to begin offering national account services, whereby the Complainant contracts with companies and organisations throughout the United Kingdom, and is able to offer services to those businesses anywhere in the country via its local franchised office. By 2002, the Complainant had over 100 offices throughout the United Kingdom and was recognised, by Ernst & Young, as the number one transport recruiter in the United Kingdom.

The Complainant launched its international business in, or around, 2012 with the opening of “Driver Hire” in Australia.

The Complainant has received numerous accreditations and awards. By way of example the Complainant has been a finalist in the British Franchise Association Franchisor of the Year Awards in 13 of the last 15 years, and has achieved 6 awards including twice being named “Franchisor of the Year” in 2006 and 2019.

The Complainant operates a number of websites at “www.driverhire.co.uk”, “www.driverhirefranchise.co.uk”, “www.driverhiretraining.co.uk”, “www.driverhire.com.au”, and “www.driverhire.com”. It has had a presence on social media since around 2009.

The Complainant has a number of registered trademarks in respect of the DRIVER HIRE logo – for example European trademark Registration No. 009384355, registered on March 1, 2011, and International trademark Registration No. 1095404, registered on September 20, 2011. These trademarks are referred to as the “DRIVER HIRE logo trademark” in this decision.

The Complainant also owns UK registered trademark UK00003556889 for the words “Driver Hire” registered on February 4, 2022. The official register entry for this trademark records that “The trade mark was inherently non-distinctive, but evidence was submitted to show that, by the date of application, the mark has in fact acquired a distinctive character as a result of the use made of it”. This trademark is referred to as the “DRIVER HIRE word trademark” in this decision.

The Disputed Domain Name was registered on August 14, 2023. There is no evidence it has ever been used.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the term DRIVER HIRE is very well known particularly in the U.K., and the Respondent must have known of it and had it in mind when he registered the Disputed Domain Name.

B. Respondent

No formal Response has been filed. However, the Respondent sent the emails described below to the Center, which are set out here *verbatim*. The Panel will consider the various arguments the Respondent advances in its findings, below.

On October 13, 2023, the Respondent sent an email to the Center which read as follows:

"Confused by this, I own the domain name & it doesn't infringe any IPO Registered Trademark. I haven't yet set up the Website for that domain name so don't understand how anyone with a basic understanding of Trademark Law can think there is an issue or infringement of any kind."

In a subsequent email, on the same day he wrote:

"Hope you're well, just to advise you driver hire is a generic term and can't be trademarked. A third party who have a trademark for a logo with that term driverhire doesn't mean my www.driverhire.app contravenes any such logo trademark in any way. I have not attempted to infringe on any trademark nor do I intend to. No person or organisation has the exclusive rights to generic terms as this would contravene laws & be a restraint of trade & I would be in contact with the monopolies & merger commission to investigate any ruling restricting my use of the name www.driverhire.app. I will not accept any such suggestion or ruling & will instruct my legal team if any such decision is made. Everyone is welcome to purchase any domain name they choose & nobody & no organisation has any legal jurisdiction / legal mandate to force an unauthorised change in ownership. As the purchaser & owner of www.driverhire.app there are no trademarks for www.driverhire.app & as the copyright owner of www.driverhire.app I will defend my right to protect my copyright & domain name. I sincerely hope that you bear in mind the phrase 'Mark Details. Disclaimer Registration of this mark shall give no right to the exclusive use of the words 'Driver Hire'. I look forward to hearing from you. Many thanks."

On October 26, 2023 the Respondent sent a further email to the Center saying:

"Hope you're well, I am unable to open either attachments can you please explain the contents. I haven't infringed any trademark nor do I intend to & I have a copyright on my www.driverhire.app Domain Name. Please explain to whoever instigated this that I will not accept any individual or company trying to hijack my www.driverhire.app Domain Name under any circumstances & will instruct my legal team to act if this continues. Anyone wishing to purchase a Domain Name is free to do so as the purchaser & legal owner & copyright owner of www.driverhire.app I will not under any circumstances be forced to give up my ownership. If anyone wants to email or call me to discuss this they are welcome to."

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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 respect of the Disputed Domain Name;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. In this regard the DRIVER HIRE word trademark is registered and subsisting and the Panel does not find it strictly necessary to consider the Complainant's alternative case in regard to the DRIVER HIRE logo trademark. In principle, similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question and are not overtaken by the design elements of the device mark – see [WIPO Overview 3.0](#), section 1.10. However, the Respondent has drawn attention to the wording of a disclaimer – “Registration of this mark shall give no right to the exclusive use of the words ‘Driver Hire’”. This disclaimer appears in relation to at least some of the registrations for the DRIVER HIRE logo trademark. It may be that such a disclaimer means that the scope of protection afforded to the mark is effectively limited to its stylized elements and may negate the Complainant's ability to rely on the trademarks concerned. The Panel does not however find it necessary to reach a conclusion on this issue given that the DRIVER HIRE word trademark was granted on the basis of evidence of acquired distinctiveness and does not contain any such disclaimer.

The Panel finds the entirety of the DRIVER HIRE word trademark is reproduced within the Disputed Domain Name. The space between the two words is omitted but spaces cannot form part of a domain name for technical reasons. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. It is well established that the generic Top-Level Domain (“gTLD”), in this case “.app”, is not generally taken into account for the purpose of determining whether a domain name is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 a *prima facie* case that the 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise. In particular, whilst the Respondent has advanced a number of arguments based upon his understanding of U.K. trademark law, he has not provided any details or explanation of why he chose the term "driverhire", or what he intended to do with the Disputed Domain Name, beyond merely qualifying the combination of terms as "generic". While the Respondent mentions in two of his communications that interested parties may purchase the Disputed Domain Name, the Disputed Domain Name does not resolve to any "offer for sale" page and there is no indication from the Respondent that it could be listed for sale on other third-party websites. While domain name re-sale may be *bone fide* depending on the circumstances, there is nothing to indicate that the Respondent has engaged in a practice of aggregating and holding domain names of similar composition for resale. [WIPO Overview 3.0](#), section 2.1 and 2.10. Moreover, given the Panel's findings below regarding bad faith registration and the notoriety of the Complainant's trademark due its extensive use, particularly in the U.K. where the Respondent is reportedly located, the Panel does not find that the Respondent has rights or legitimate interests in the Disputed Domain Name. Accordingly, he has not therefore rebutted the inference the Complainant has established.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

In the present circumstances, although the DRIVER HIRE trademark comprises two ordinary English words, and is at least arguably descriptive when used in relation to the types of service the Complainant offers, it is clear that the very extensive use the Complainant has made of that term for some 40 years has led to that term acquiring distinctiveness. That was the finding of the UK Intellectual Property Office in relation to the DRIVER HIRE word trademark. The identical nature of the Disputed Domain Name to the DRIVER HIRE word trademark (see above), and the lack of any explanation from the Respondent as to why he registered the Disputed Domain Name, or what his knowledge of the Complainant was, or as to what searches he carried out prior to effecting the registration, all lead the Panel to conclude the registration and use was in bad faith. In the present case, the Panel concludes that it is manifestly unlikely that the Respondent selected the Disputed Domain Name independently and without knowledge of the Complainant or its services and in any event the Respondent has not advanced any case to this effect, either by way of a proper Response or in his emails to the Center.

There is no evidence that the Respondent has used the Disputed Domain Name since registering it. In the circumstances of this case the Panel adopts the approach set out in the [WIPO Overview 3.0](#) at section 3.3:

"Can the 'passive holding' or non-use of a domain name support a finding of bad faith?"

From the inception of the UDRP, panelists 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.

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."

In this case, the Panel cannot readily identify any credible use for the Disputed Domain Name that did not involve an attempt to trade off the Complainant's reputation and it is more likely than not that this would have been apparent to the Respondent when registering the Disputed Domain Name. Again, no alternative case has been advanced by the Respondent. It does not matter that the Respondent has not as yet used the Disputed Domain Name for such a purpose. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); and *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#). Accordingly, and applying the principles in the above noted UDRP decisions, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

The Panel would add that the various arguments advanced by the Respondent appear to be based on the premise that the Complaint should be determined as a matter of trademark law. That is not correct. Whilst at least some of the Respondent's assertions are in any event incorrect (notably his apparent belief that the term "driver hire" could not be a trademark) more fundamentally this Complaint falls within the scope of the Policy. It is true that a complainant has to establish it has trademark rights and that the domain name in issue is identical or confusingly similar to the relevant trademark. In the present case the Complainant has done this (see above). Once that is established, the remaining elements a complainant has to establish are determined in accordance with the Policy (see above).

Accordingly based on the available record, and for the reasons explained above, the Panel finds that the Complainant has established the third element 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 <driverhire.app> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: December 6, 2023