

ADMINISTRATIVE PANEL DECISION

AXA SA v. David Joel Claude Zachara, I Visa Services Co Ltd.
Case No. D2023-4701

1. The Parties

The Complainant is AXA SA, France, represented by Selarl Candé - Blanchard - Ducamp, France.

The Respondent is David Joel Claude Zachara, I Visa Services Co Ltd., Mauritius.

2. The Domain Name and Registrar

The disputed domain name <axasantepius.com> is registered with Instra Corporation Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 13, 2023. On November 13, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 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 November 16, 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 November 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. The Respondent sent an email communication to the Center on November 17, 2023. The Center sent the email to the Parties regarding possible settlement on November 17, 2023. However, the Complainant did not request a suspension.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on January 9, 2024. 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 in the field of insurance, savings and asset management and has been operating under the tradename AXA since 1985. The Complainant owns many trademark registrations for AXA worldwide such as the following:

1. International Trademark Registration No. 490030, registered on December 5, 1984;
2. European Trademark Registration No. 008772766, registered on September 7, 2012; and
3. French Trademark Registration No. 1270658, registered on October 12, 1984.

The Complainant also has many domain names which contain the trademark AXA such as <axa.com>, <axa.fr> and <axa.info>.

The disputed domain name was registered on January 14, 2023, and currently redirects to the website "www.google.fr". At the time of filing the Complaint, the disputed domain name redirected to a website which seemed to offer quotes for health insurance on comparative basis and services in competition with the Complainant.

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 disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant's trademark is considered well-known and is distinctive as it has no dictionary meaning. The disputed domain name contains the Complainant's trademark in its entirety. The addition of the generic terms "sante" and "plus" does not diminish the likelihood of confusion. It might add to the confusion as disputed domain name may be considered the Complainant's website given that "sante" means health in French and the Complainant is known for healthcare insurance.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant did not authorize the Respondent to use its trademark. There is no noncommercial or fair use of the disputed domain name as it redirected to a page, which offers services competing with the Complainant at the time of filing the Complaint.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent must have had knowledge of the Complainant's trademark as it is well-known. The Respondent used the Complainant's trademark in its entirety in order to take advantage of its reputation. The disputed domain name redirected to a page with links to websites which offer services competing with the Complainant. The Complainant's trademark was used in the hope of attracting Internet users for commercial gain.

B. Respondent

In its email of November 17, 2023, the Respondent explains the reasons for the creation of the disputed domain name, informs the Complainant that the disputed domain name has been redirected to “www.google.fr”, and offers to transfer it to the Complainant for free.

6. Discussion and Findings

The parties to this proceeding have not been able to settle the dispute using the “standard settlement process” as the Complainant wished to proceed with the Complaint. In such instances, a panel may still proceed with an assessment of the three elements of paragraph 4(a) of the Policy. Considering all the circumstances of the present case and particularly the absence of the Complainant’s consent to simply record a decision of transfer, the Panel will proceed to review the facts of the case and subsequently decide on the merits.

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “sante” and “plus” may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 fact, in his response, the Respondent did not claim to have any rights or legitimate interests in the disputed domain name. On the contrary, the Respondent offered transferring the disputed domain name to the Complainant. Furthermore, the Respondent's use of the disputed domain name to redirect to a website allegedly offering services in competition with the Complainant cannot confer rights or legitimate interests upon the Respondent.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent must have been aware of the Complainant's trademark as the disputed domain name was registered almost forty years after the registration of the Complainant's trademark, the Complainant's trademark is not a dictionary word in English or French and is well known, the disputed domain name redirected to a website offering quotes for health insurance, which is the same activity the Complainant is famous for.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

One such circumstance is when the domain name is being used in order to attract, for commercial gain, Internet users, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement. The Panel finds that the Respondent's use of the Complainant's trademark in the disputed domain name reflects the aforementioned scenario.

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 <axasantepus.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: January 12, 2024