

ADMINISTRATIVE PANEL DECISION

Stunlock LLC v. Aarnav Paul, Arnav It Farm
Case No. D2023-4962

1. The Parties

The Complainant is Stunlock LLC, United States of America (“United States”), represented by Morrison Cooper LLP, United States.

The Respondent is Aarnav Paul, Arnav It Farm, India.

2. The Domain Name and Registrar

The disputed domain name <xqcmerch.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 (Unknown / Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 amended Complaint on December 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 December 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

On January 11 and 23, 2024 respectively, the Respondent sent two informal email communications to the Center expressing its willingness to settle. The Center sent an email communication to the Parties regarding possible settlement on January 19, 2024. On January 24, 2024, the Complainant requested the Center to proceed with panel appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 26, 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.

After the appointment of the Panel, further email communications were received from the Parties who attempted to reach settlement. In view of this, on January 31, 2024, the Panel issued the Procedural Order No.1, in which the Parties were provided with an opportunity to execute the settlement documents by February 4, 2024, and to confirm this to the Panel by February 6, 2024. Since the Parties did not confirm by February 6, 2024 that they had executed the settlement documents, on February 13, 2024 the Panel issued the Procedural Order No.2, in which the Complainant was invited to submit additional documents and information regarding inter alia its relationship with Félix Lengyel and a list of licensed marks according to the License Agreement between the Complainant and Félix Lengyel submitted as an annex to the Complaint, and the Respondent was invited to comment on the Complainant's submissions. The Complainant submitted the requested documents and information on February 17, 2024, and the Respondent made no comments on them within the time limit.

4. Factual Background

Félix Lengyel, better known as xQc, is a Canadian online personality and live streamer, and is a former professional Overwatch player. According to the Complainant, Félix Lengyel has used the brand XQC since 2016, when he started using this brand in connection with his esports career and streaming on the YouTube and Twitch platforms.

Félix Lengyel is the sole shareholder of Rainbow Road, Inc. and Rainbow Road, Inc. is the sole member of the Complainant, which functions as a holding company for Félix Lengyel's intellectual property rights. The Complainant has been licensed by Félix Lengyel to use and enforce his intellectual property rights, including the unregistered trademark XQC. The Complainant has filed a United States trademark application for XQC with application No. 98221846, dated October 12, 2023 for services in International Class 41.

The disputed domain name was registered on April 10, 2022. It is currently inactive. At the time of filing of the Complaint, the disputed domain name directed to a website that sold products that incorporated the image and likeness of Félix Lengyel.

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.

The Complainant submits that Félix Lengyel has been using the sign XQC since 2016 in connection with his esports career and streaming on YouTube and Twitch as an identifier for his goods and services. According to the Complainant, Félix Lengyel has made sales that are worth millions of US Dollars and has advertised extensively the XQC trademark on Twitch, YouTube, Instagram, and X (formerly known as Twitter), as a result of which the trademark has gained substantial public recognition. The Complainant adds that Félix Lengyel has strong online presence, shown by his over 17 million followers across several social media platforms, including over 11.9 million followers on Twitch, over 2.3 million followers on YouTube, over 1.5

million followers on X, over 596,000 followers on Instagram, and over 563,000 followers on Kick, and has become well known to the general public. The Complainant maintains that as a result of the above, the sign XQC has acquired a secondary meaning which consumers associate with the goods and services offered by Félix Lengyel, and the same has acquired unregistered trademark rights in this sign.

The Complainant states that the disputed domain name is confusingly similar to the unregistered trademark XQC, because it incorporates the trademark entirely. The Complainant notes that the addition of the word “merch” does not change this analysis, as it suggests the Complainant is selling, or has authorized the disputed domain name to sell, merchandise under the trademark XQC.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not affiliated to the Complainant and has not been authorized to register or use the disputed domain name incorporating the unregistered trademark XQC. The Complainant states that the Respondent is not commonly known by the disputed domain name or has no registered trademarks for it. In the Complainant’s view, the website associated with the disputed domain name impersonates Félix Lengyel and/or suggests sponsorship or endorsement by him due to the use of his image, likeness, and intellectual property.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that Félix Lengyel’s rights in the unregistered trademark XQC pre-date the registration of the disputed domain name.

The Complainant notes that Félix Lengyel was already well known before the date of the registration of the disputed domain name. According to the Complainant, it is therefore inconceivable that the Respondent was unaware of his existence when it registered the disputed domain name. The Complainant points out that the website at the disputed domain name actively sold products that incorporated the image and likeness of Félix Lengyel and used his name and protected material. According to the Complainant, the Respondent’s use of the unregistered trademark XQC is intended to disrupt the Complainant’s business and attract consumers to the website at the disputed domain name for the Respondent’s own commercial gain.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions.

In informal email communications to the Center submitted in the course of the present proceeding, the Respondent only made statements that he was ready to sign the necessary documents for the settlement of the dispute. Although the Respondent signed the Standard Settlement Form, it did not appear to have signed other settlement documents as requested by the Complainant. As mentioned above, the Panel gave the Parties another opportunity to settle by issuing the Procedural Order No.1, the Panel has however not been informed by the Parties that such documents have indeed been signed.

6. Discussion and Findings

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 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 Panel finds the Complainant has established unregistered trademark rights in the sign XQC for the purposes of the Policy. As discussed in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. The 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.

In the present case, the Complainant has submitted evidence showing that Félix Lengyel has used the sign XQC since 2016 in connection with the creation and publication of online content on Twitch, YouTube, Instagram, X, and other platforms, has become one of the top streamers on Twitch for the last three years and has attracted over 17 million online followers across several major media platforms. This is sufficient to support a finding that Félix Lengyel's brand XQC has achieved significance as a source identifier and has acquired a secondary meaning which consumers associate with the entertainment services offered by Félix Lengyel. The Panel also notes that the website at the disputed domain name clearly targeted Félix Lengyel and the sign XQC by claiming to be "Offical Xqc Merch", apparently offering for sale T-Shirts displaying the sign XQC. Taking this into account, the Panel accepts that the Complainant has established that Félix Lengyel has unregistered trademark rights in the sign XQC for the purposes of the Policy.

As to the Complainant itself, it has provided evidence that it has been licensed by Félix Lengyel to use and enforce the intellectual property rights of the same, including the XQC trademark, and that it is affiliated to Félix Lengyel. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel considers that this approach is applicable here, and on this basis concludes that the Complainant has rights in the unregistered trademark XQC for purposes of the Policy.

The Panel finds that the trademark XQC is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark XQC for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term (here, "merch" - a common abbreviation for "merchandise"), may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

The Complainant has submitted evidence that the disputed domain name previously resolved to a website apparently selling merchandise under Xqc Merch, including T-Shirts displaying the sign XQC. The website stated: "Who is xQc? Félix 'xQc' Lengyel is one of the most well known gaming characters on Twitch and YouTube. [..]", continued with "XQc's official product is all sold through xqcmerch.com [..]", and then made a "Limited Time Offer" of a "Special Edition" of "Official Xqc Merch". These statements clearly show that the Respondent's website targeted Félix Lengyel and the trademark XQC in an attempt to sell what was falsely presented as official XQC merchandise. The Complainant maintains that there is no connection of Félix Lengyel or of the Complainant with the Respondent and that the Respondent's website has not been authorized by them, and the Respondent does not claim otherwise in this proceeding. Considering this, the Panel finds that the Respondent has registered and used the disputed domain name to attract Internet visitors in an attempt to sell them goods, misleading them that the associated website has been authorized by Félix Lengyel and that the goods offered on it represent official merchandise of Félix Lengyel. Such activity is not bona fide and cannot give rise to rights or legitimate interests of the Respondent in the disputed domain name. Moreover, based on the available record, the Respondent is not commonly known by the disputed domain name.

Therefore, 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.

As already discussed, the disputed domain name is confusingly similar to the trademark XQC in which the Complainant has rights, and the evidence shows that it was used for a website that displayed the same trademark and referred to Félix Lengyel at the time of filing of the Complaint. This makes it clear that the Respondent was well aware of Félix Lengyel and his online activities conducted under the XQC trademark when registering the disputed domain name. The Respondent's website offered for sale what was described as official XQC merchandise, without disclosing the lack of relationship with Félix Lengyel. The Complainant denies having authorized the Respondent to do so, and the Respondent has not brought forward any argument in defense of its conduct. Taken together, the above supports a conclusion that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the trademark XQC as to the affiliation with or endorsement by Félix Lengyel/the Complainant of the Respondent's website and of the goods offered through it. This supports a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy. The current non-use of the disputed domain name does not prevent a finding of bad faith given the circumstances of the case.

The Panel therefore 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 <xqcmerch.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: February 26, 2024