

## **ADMINISTRATIVE PANEL DECISION**

The Commissioners for HM Revenue and Customs v. Darren Olarsch, Hall  
Case No. D2023-4978

### **1. The Parties**

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

The Respondent is Darren Olarsch, Hall, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <ukgov-hmrc.org> 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 November 29, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Registration Private, Domains By Proxy, LLC) 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 8, 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 22, 2023.

The Center appointed Andrea Cappai as the sole panelist in this matter on January 30, 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, formally known as His Majesty's Revenue and Customs ("HMRC"), is a non-ministerial department of the UK Government. Its primary business revolves around the collection of taxes and the administration of certain state supports and regulatory regimes. HMRC has its historical roots stretching back to tax authorities existing before the Norman conquest. In its current form, HMRC was created in April 2005 by merging the Inland Revenue and HM Customs and Excise.

HMRC's responsibilities encompass administering and collecting direct taxes such as Income Tax, Corporation Tax, Capital Gains Tax, and Inheritance Tax. It also oversees the collection of indirect taxes, including Value Added Tax, excise duties, Stamp Duty Land Tax, and environmental taxes like the climate change levy and landfill tax. Beyond taxation, HMRC handles National Insurance Contributions, Child Benefit, the Child Trust Fund, payments of Tax Credits, and enforces the National Minimum Wage.

The Complainant holds ownership of the pertinent UK trademarks detailed below.

1. Trademark: HMRC  
Jurisdiction: UK  
Registration Number: UK00002471470  
Date of Registration: March 28, 2008  
International Classes: 9, 16, 35, 36, 38, 41, and 45.
2. Trademark: HM Revenue & Customs  
Jurisdiction: UK  
Registration Number: UK00003251234  
Date of Registration: December 29, 2017  
International Classes: 9, 16, 35, 36, 41, and 45.

The Complainant maintains an online presence through a designated website located on the UK Government's official portal, accessible via "[www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)". Additionally, this website is reachable through the domain name <hmrc.gov.uk>.

The Complainant asserts that it holds unregistered rights in the initialism HMRC, claiming widespread recognition and association with this designation. To support this assertion, the Complainant has submitted various pieces of evidence, suggesting a notable online and media presence linked to HMRC. According to the available record, the association of the Complainant with HMRC can be traced back to at least December 2005, based on references in third-party publications such as The Times and The LA Times, alongside digital engagement metrics from platforms like X (formerly Twitter) and LinkedIn.

The Complainant has presented evidence to illustrate its claim of unregistered rights through a range of online presence and media coverage and the materials submitted primarily serve to demonstrate recognition of the Complainant in various contexts under the sign HMRC. This includes references in articles discussing tax-related issues and digital interactions indicating a significant level of public engagement. The evidence provided shows a certain level of recognition and association with the sign HMRC in specific contexts.

The disputed domain name was registered on September 6, 2023. It directs to a pay-per-click ("PPC") advertising webpage, featuring third-party commercial advertising links that are related to the Complainant's operations.

As of the latest update, the website associated with the disputed domain name still displays a parking page containing links. This arrangement suggests that the primary use of the disputed domain name has not undergone significant changes.

No information about the Respondent is available, aside from the details furnished to the Registrar for the registration of the disputed domain name.

On September 20, 2023, the Complainant reached out to the Respondent through the registrar's contact form, but did not receive any reply.

## **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 makes several contentions regarding the disputed domain name that incorporates their trademark HMRC along with the letter string "ukgov". Here's a summary of the Complainant's contentions.

The Complainant has submitted certificates for two trademarks, evidencing the registration of the HMRC and HM REVENUE & CUSTOMS marks with the UK Intellectual Property Office. Furthermore, the Complainant claims rights to the same mark based on relative extensive use publicly and coverage in both national and international media.

The Complainant's HMRC mark pre-dates the registration of the disputed domain name.

The Complainant argues that the disputed domain name is confusingly similar to its trademarks, also due to the addition of "uk" and "gov", terms closely associated with the Complainant's governmental role. This similarity is contended to potentially mislead the public into associating the disputed domain name with the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It argues that there is no evidence to suggest the Respondent is commonly known by the name HMRC or has conducted legitimate business under this name, nor does it have any permission from the Complainant to use the trademark.

The Complainant further contends that given the disputed domain name's similarity to their mark, any use of the disputed domain name would not confer legitimate interests upon the Respondent. It argues that there's no plausible legitimate use for the disputed domain name that would not infringe on the Complainant's trademark rights.

The Complainant asserts that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. This assertion is based on the disputed domain name's use for PPC advertising, which the Complainant argues exploits its trademark's reputation.

The Complainant avers that the disputed domain name falsely suggests an affiliation with them, which could mislead Internet users. This is especially concerning according to the Complainant given the disputed domain name's setup allows for email communication, raising the risk of phishing or other fraudulent activities that could exploit the Complainant's reputation.

The Complainant observes that the Respondent did not reply to their attempts to resolve the issue, which it suggests might indicate a lack of good faith on the part of the Respondent.

The Complainant highlights its concern over frequent phishing, online scams, and other criminal activities targeting it and its customers, a common issue for tax authorities worldwide. It points out that domain names used for such malicious purposes often share specific traits. These traits typically involve the incorporation of the Complainant's trademarks with generic terms closely linked to their operations, like "tax", "gov", or "uk", and terms prompting action such as "login" or "refunds". Additionally, these domain names may mimic the Complainant's official domains through typographical errors or use deceptive contact details, including stolen identities. The presence of Mail Exchange ("MX") records for email communication and the use of domain name for misleading or fraudulent purposes are particularly noted as indicators of bad faith registration.

The Complainant argues that domain names exhibiting one or more of these characteristics are likely registered and used with malicious intent. The more these features are matched, the higher the probability of such bad faith. The assertion is supported by evidence, including articles demonstrating the extent of this issue. Moreover, the disputed domain name's setup for email, indicated by MX and Sender Policy Framework ("SPF") records, further supports their claim of bad faith usage according to the Complainant.

In essence, the Complainant's position is that the disputed domain name's registration and use by the Respondent are in bad faith, given the potential for confusion, lack of legitimate interests, and the absence of any authorization for the Respondent to use the Complainant's trademarks.

## **B. Respondent**

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

## **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 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 Panel finds the mark is recognizable 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 the letter string "ukgov" 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 disputed domain name consists of the Complainant's acronymic trademark along with the terms "uk" and "gov", which are descriptive of the Complainant's role as a governmental entity for the very geographic term appended to the Complainant's trademark, and as such, the composition of the disputed domain name is such to carry a risk of implied affiliation to the Complainant, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

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 given the recognition of the Complainant's trademark among Internet users and the Complainant's significant role as the tax authority in the UK, which places it at the heart of multiple interactions with entities conducting business in or with the UK, it is reasonable to conclude that the Respondent was fully aware of the Complainant when registering the disputed domain name. The inclusion of a string of letters evoking the country code (UK) of the Complainant's jurisdiction, coupled with the term "gov" (for "government"), further reinforce this conclusion.

Under the Policy, it is well-established that if a respondent has, for commercial gain, intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the complainant's mark, this alone is sufficient to determine that the disputed domain name was registered in bad faith.

Regarding the use of the domain name, the Panel observes that it is linked to a PPC site. Within this framework, reference is drawn to section 3.5 of the [WIPO Overview 3.0](#), which poses the question as to whether material from third parties, appearing "automatically" on a website associated with a domain name, may serve as grounds for a determination of bad faith. It has been consistently adjudged by panels that a respondent cannot disclaim responsibility for the content on its domain name's website, including PPC links generated "automatically". The generation of such links by a third party, be it a registrar or an auction platform, or the absence of direct profit for the respondent, does not obviate the possibility of a finding of bad faith.

The disputed domain name leads to a webpage featuring PPC advertising with links related to the Complainant's activities and prominently incorporates the Complainant's trademark. Regardless of whether the PPC advertising was placed by the registrar or another third party, the Respondent cannot deny responsibility for its presence on the website associated with the disputed domain name. The display of PPC advertising, in association with a domain name that closely resembles a complainant's trademark, is sufficient for a finding of registration and use in bad faith, irrespective of the direct involvement of the respondent or registrar.

Moreover, the Panel finds it relevant to examine the configuration of the disputed domain name for email purposes, as evidenced by MX and SPF records. Although there is no direct evidence of fraudulent use, the existence of these elements indicates a possibility of illicit activities. This perspective is corroborated by the decision in *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-3924](#).

Similar to this case, it was noted in the above mentioned case that the disputed domain name was set up with MX records, enabling email communication through addresses that bear a striking resemblance to the Complainant's trademark (in that instance, "ARNOLD CLARK"). This issue was compounded by the Respondent's arrangement of a SPF record, designed to reduce the likelihood of emails being classified as spam. Such an action demonstrated a deliberate attempt to ensure that emails from the domain name are not summarily marked as spam. Despite the absence of concrete evidence of phishing or fraudulent actions by the Respondent, the setup of mail servers and SPF records significantly heightened the risk of such malfeasance. Coupled with the domain name's marked similarity to the Complainant's trademark, these measures strongly suggested that the usage of the mail servers was not in good faith. This array of factors led to an inference of the Respondent's bad faith, as delineated in the decision.

Whilst previous decisions under the Policy do not set precedent, especially in terms of factual determinations, the Panel in this instance agrees that the principle outlined in the aforementioned decision is relevant to the disputed domain name, particularly its current technical setup as identified by the Complainant.

In this instance as well, despite the lack of direct evidence of phishing or fraudulent activities by the Respondent, the presence of MX and SPF records, the choice of a domain name closely resembling the Complainant's trademark, the existence of further elements within the disputed domain name that imply its legitimacy and that of its associated content, coupled with the disputed domain name holder's conduct — from employing a privacy service to the absence of any response or corrective action following notification — though not individually determinative of bad faith in use, cumulatively point towards the existence of such bad faith.

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 <ukgov-hmrc.org> be transferred to the Complainant.

*/Andrea Cappai/*

**Andrea Cappai**

Sole Panelist

Date: February 13, 2024