

ADMINISTRATIVE PANEL DECISION

DX Network Services Limited v. Mike Ross

Case No. D2024-1492

1. The Parties

The Complainant is DX Network Services Limited, United Kingdom, represented by Howes Percival LLP, United Kingdom.

The Respondent is Mike Ross, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <dxdeliveryusa.com> (the “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 April 9, 2024. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 9, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 16, 2024, 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 April 22, 2024.

The Center verified that the Complaint [together with the amendment to the Complaint/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 April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 18, 2024.

The Center appointed Gregor Vos as the sole panelist in this matter on June 3, 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, and its predecessor, has operated its business since the mid-1970s and is active in the field of domestic and international delivery services.

The Complainant is the owner of inter alia the following trademark registrations (the “Trademarks”):

- European Union Trade Mark registration with No. 000151928 for the mark DX, registered on May 25, 1999;
- European Union Trade Mark registration with No. 011471042 for the mark **DX**, registered on June 25, 2013;
- European Union Trade Mark registration with No. 012957189 for the mark DX DELIVERY, registered on October 31, 2014.

The Domain Name was registered on September 9, 2022 and currently resolves to a website that appears to create the impression that it is operated by 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 Domain Name.

Notably, the Complainant first contends that the Domain Name is confusingly similar to the Trademarks, since it incorporates the Trademarks in their entirety with the mere addition of, depending on the Trademark concerned, the descriptive term “delivery” and the geographical term “usa”.

Second, the Complainant states that the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received authorization from the Complainant to use the Trademarks in the Domain Name and is not commonly known by the Domain Name.

Finally, according to the Complainant, the Respondent was undoubtedly aware of the Trademarks when registering the Domain and is using the Domain Name for a website for commercial gain by attempting to impersonate the Complainant.

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 entirety of the Trademarks is reproduced within the Domain Name. Accordingly, the 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, “delivery” and “usa” 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 Domain Name and the Trademarks 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 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 Domain Name such as those enumerated in the Policy or otherwise.

Further, the Domain Name carries a high risk of implied affiliation by incorporating the Trademarks in their entirety with the mere addition of the terms “delivery” and “usa”. This is reinforced by the fact that the Respondent uses the trademarks on the website to which the Domain Name resolves. The nature of the Domain Name thus tends to suggest sponsorship or endorsement by the Complainant. [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 Trademarks are registered by the Complainant and have been used for many years. The Complainant’s rights to the Trademarks predate the registration date of the Domain Name. Due to the fact that the Respondent uses the trademarks on the website to which the Domain Name resolves and appears to mimic the Complainant, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant’s activities and its Trademarks under which the Complainant is doing business.

Further, in light of the absence of any legitimate interest in the Domain Name and the fact that the Respondent has not rebutted the prima facie case established by the Complainant, the Panel finds that the Respondent is using the Domain Name with the intent to attract Internet users for commercial gain.

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 Domain Name <dxdeliveryusa.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: June 12, 2024