

ADMINISTRATIVE PANEL DECISION

DX Network Services Limited v. Mike Ross

Case No. D2024-3014

1. The Parties

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

The Respondent is Mike Ross, United States of America.

2. The Domain Name and Registrar

The disputed domain name <dxdelivery.express> 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 July 24, 2024. On July 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2024, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 amended Complaint on July 29, 2024.

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 August 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 27, 2024.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on September 2, 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 is a provider of parcel exchange and delivery services. In addition to domestic delivery services in the UK, it operates an international delivery service in partnership with other distribution and delivery companies. It has operated its services since around 2004. According to public records, its annual revenues for the financial year 2023 totaled GBP 456.1 million.

The Complainant owns, amongst others, the following trademarks (Annex 4):

- European Union ("EU") trademark registration no. 000151928 for DX (word), registered on May 25, 1999, for services in Classes 38 and 39;
- UK trademark registration no. 00900151928 for DX (word), registered on May 25, 1999, for services in Classes 38 and 39;
- UK trademark registration no. 00912957189 for DX DELIVERY (word), registered on October 31, 2014, for goods and services in Classes 9, 38, and 39; and
- EU trademark registration no. 011471042 for DX (logo with stylized letters in blue and white), registered on June 25, 2013, for goods and services in Classes 9, 20, 38, 39, and 40.

The Complainant operates its main website under the domain name <dxdelivery.com>, where it advertises its services. This website displays the Complainant's "DX" logo with stylized letters in blue and white (Annex 5).

The disputed domain name was registered on July 11, 2024. Before the start of the present UDRP proceeding, it resolved to a website claiming to originate from "DX Delivery Services" and advertising logistics, distribution, and packaging services while displaying a prominent "DX" logo with stylized letters in blue and white (Annex 6) identical to the Complainant's.

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, on the first element, the Complainant contends that it owns rights in the trademarks DX and DX DELIVERY. The disputed domain name comprises the DX mark, which is clearly recognizable in the disputed domain name, as well as the DX DELIVERY mark in its entirety. In addition, according to the Complainant, it is well established that the Top-Level Domain ("TLD"), in the present case the TLD ".express" can be disregarded. For these reasons, there is confusing similarity.

On the second element, the Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name. To the best of the Complainant's knowledge, the Respondent has no rights in the relevant marks, nor has the Complainant licensed or authorized the Respondent to use them. There is, so the Complainant claims, no evidence that the Respondent has ever traded under DX or DX DELIVERY marks. Given the creation of the disputed domain name only on July 11, 2024, the Complainant concludes that the Respondent registered the disputed domain name in full knowledge of the Complainant's existence, which conclusion is reinforced by the use of a logo identical to the one of the Complainant, which cannot be innocent or accidental. The Respondent, moreover, uses the disputed domain name for offering the same type of services and apes the branding of the Complainant, which indicates that the Respondent aims to take advantage of the Complainant's marks for commercial gain.

On the third element, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. As to registration in bad faith, it points to the fact that the Complainant's trademarks, which it considers reputed, by far predate the creation of the disputed domain name. According to the Complainant, the Respondent was undoubtedly aware of the Complainant and its marks, as the same Respondent registered a domain name comprising the DX and/or DX DELIVERY marks already prior to the present disputed domain name, which was subject of the decision *DX Network Services Limited v. Mike Ross*, WIPO Case No. [D2024-1492](#) on the domain name <dxdeliveryusa.com> dated June 17, 2024, being almost a month before the registration of the incumbent disputed domain name. From these facts, the Complainant deducts that the Respondent registered the disputed domain name in an attempt to continue infringing upon the Complainant's rights. As to use in bad faith, the Respondent, according to the Complainant, hosts a fraudulent website purporting to deliver identical services to those of the Complainant. The Complainant assumes that this use is intended for scam and phishing activities, or at the very least to divert consumers to the disputed domain name for commercial gain. Finally, the Complainant points to other cases in which the Respondent has been involved being indicative of a pattern of conduct.

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 Complainant's DX DELIVERY mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical in its second level domain to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Respondent has registered the disputed domain name long after the Complainant has registered its trademarks, and, most notably, only about a month after a transfer decision on a parallel domain name held by the same Respondent incorporating the Complainant's DX DELIVERY mark had been issued. The Respondent uses the disputed domain name to resolve to a website imitating the website of the Complainant and copying its "DX" logo in stylized blue and white lettering.

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.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. It is clear to the Panel, that the Respondent has, upon registration as well as use of the disputed domain name, targeted the Complainant and its trademarks in order to divert Internet users to his website 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 disputed domain name <dxdelivery.express> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: September 11, 2024