

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Domain Privacy,
Above.com Domain Privacy
Case No. D2024-3143

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Domain Privacy, Above.com Domain Privacy, Australia.

2. The Domain Name and Registrar

The disputed domain name <refund-hmrcrepayments.com> 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 31, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 14, 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 August 15, 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 10, 2024.

The Center appointed Petra Pecar as the sole panelist in this matter on September 25, 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 officially recognized as His Majesty's Revenue and Customs, referred to as "HMRC". The Complainant is a non-ministerial department of the Government of the United Kingdom (hereinafter referred to as "UK"), established in April 2005 through the Commissioners for Revenue and Customs Act 2005, following the merger of Inland Revenue and HM Customs and Excise. The Complainant is responsible for the collection of taxes, including direct taxes such as Income Tax and Corporation Tax, as well as indirect taxes like Value Added Tax and excise duties. Furthermore, the Complainant manages National Insurance contributions, state benefits, and enforces regulations such as the National Minimum Wage.

The Complainant holds two relevant UK trademark registrations that serve as the basis for the Complaint. The first is UK trademark No. UK00002471470 for the word mark HMRC, registered on March 28, 2008, for goods and services in Classes 9, 16, 35, 36, 41, and 45. The second is UK mark No. UK00003251234 for the figurative mark HM REVENUE & CUSTOMS, registered on December 29, 2017, also for goods and services in Classes 9, 16, 35, 36, 41, and 45.

The Complainant operates online through its official domain name, <hmrc.gov.uk>.

The disputed domain name was created on June 5, 2024, and at the time of the Complaint's filing it resolved to a parked webpage comprising pay-per-click advertising containing commercial advertising links related to the Complainant and its activity.

The Complainant's agent contacted the Respondent through the Registrar's "Domain Holder Contact Request Form" on July 10, 2024, but did not receive a response.

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 its mark, with the only differences being the addition of the generic terms "refund" and "repayments", which are closely related to the Complainant's role as the UK tax authority. The Complainant argues that its mark is the dominant element of the disputed domain name and that the added descriptive terms increase the likelihood of confusion among Internet users. Additionally, the Complainant asserts that the generic Top-Level Domain ("gTLD") ".com" and the hyphen in the disputed domain name are irrelevant for comparison purposes.

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not known by or authorized to use the names "HMRC" or "Refund HMRC Repayments" and has no marks or prior use of these terms. The disputed domain name falsely implies affiliation, using terms related to the Complainant's services, while pay-per-click ads exploit the Complainant's reputation. The Complainant notes that the disputed domain name is technically configured for email communication, as its DNS zonefile contains MX and SPF records, suggesting potential use for email communications. Additionally, the disputed domain name is listed for sale on the webpage at "www.above.com", with a link available through the pay-per-click webpage. The Respondent's failure to reply to communications further supports the Complainant's claim.

The Complainant argues the disputed domain name was registered and used in bad faith. The Respondent was likely aware of the Complainant's well-known name and marks, causing confusion among users searching for the Complainant and instead being directed to the Respondent's site for commercial gain. The use of pay-per-click advertising, even if managed by third parties, supports the claim of bad faith, as the Respondent is responsible for the content displayed. Additionally, the disputed domain name's email configuration raises the risk of misleading communications, potentially impersonating the Complainant.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

"A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable", as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

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 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 other terms as "refund", "repayments" and a hyphen may bear on assessment of the second and third elements, the Panel finds the addition of such descriptive 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.

Furthermore, it is well accepted practice by UDRP panels that a "gTLD", such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark (see section 1.11.1 of the [WIPO Overview 3.0](#)). For that reason, the Panel accepts not to take gTLD ".com" when assessing confusing similarity of the disputed domain name.

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.

According to the Complainant, it seems that the Respondent is not associated or connected with the Complainant in any way, and the Complainant has not granted the Respondent any license or authorization to use or register any domain name that includes the Complainant’s mark. The Respondent has further failed to provide a response to the Complaint, thereby failing to present any information or factors that could potentially justify prior rights or legitimate interests in the disputed domain name. Additionally, there appears to be no evidence of the Respondent engaging in any legitimate or genuine use of the disputed domain name, whether for noncommercial or bona fide activities, since the disputed domain name, at the time of the Complaint filing, falsely implies affiliation with the Complainant by incorporating the HMRC mark entirely and the terms “refund” and “repayments” related to the Complainant’s services (Section 2.5.1 of the [WIPO Overview 3.0](#)), while the pay-per-click ads on the website at the disputed domain name exploit the Complainant’s reputation by including links that refer to the Complainant or its activities. The Complainant has provided evidence that the disputed domain name is also technically configured for email communication, as shown by its DNS zone file containing MX and SPF records, indicating potential misuse for email purposes. Additionally, the disputed domain name is listed for sale on the website at “www.above.com”, further supporting the Complainant’s claim. The Respondent’s failure to reply to the Complaint reinforces the argument that the disputed domain name is being used for illegitimate purposes.

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 observes that the disputed domain name was registered by the Respondent 16 years after the registration of the Complainant’s HMRC mark and consists of the term “refund,” a hyphen, the Complainant’s HMRC mark, and the additional term “repayments”, which are closely related to the Complainant’s business. The Complainant also maintains an online presence through the domain name <hmr.gov.uk>, which provides information about its activities. The registration of the disputed domain name, which includes the Complainant’s HMRC mark along with descriptive terms such as “refund” and “repayments” indicates that the Respondent was aware of the Complainant and its HMRC mark.

Regarding bad faith at the time of registration, the Panel concludes that the Respondent was more likely than not aware of the Complainant's rights and reputation in the HMRC mark when the disputed domain name was registered. This is particularly evident given that the disputed domain name resolved to a pay-per-click parking page with various links related to the Complainant itself or its activities. The Panel, therefore, finds that the Respondent's use of the disputed domain name, which incorporates the Complainant's well-known and recognizable HMRC mark, was intended to attract and mislead Internet users searching for the Complainant's website, redirecting them to third-party websites likely generating commercial revenue for the Respondent.

Moreover, the Complainant has provided evidence that MX records were set up for the disputed domain name, enabling the Respondent to send emails using the disputed domain name, which could easily be confused with the Complainant's mark. In these circumstances, there is a significant risk that the disputed domain name could be used for fraudulent phishing emails.

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 <refund-hmrcrepayments.com> be transferred to the Complainant.

/Petra Pecar/

Petra Pecar

Sole Panelist

Date: October 9, 2024