

## **ADMINISTRATIVE PANEL DECISION**

Amitkumar Ashokkumar Patel, Xclusive Boats Charter LLC v.  
Artur Rein, Fabulous Location Apartment  
Case No. D2024-3327

### **1. The Parties**

Complainant is Amitkumar Ashokkumar Patel, Xclusive Boats Charter LLC, United Arab Emirates, represented internally.

Respondent is Artur Rein, Fabulous Location Apartment, Estonia.

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

The disputed domain name <xclusiveychts.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 August 14, 2024. On August 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on August 16, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the amended Complaint on August 20, 2024.

The Center verified that the Complaint together with the 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 Respondent of the Complaint, and the proceedings commenced on August 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 19, 2024.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on September 27, 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.

On October 8, 2024, the Panel issued Administrative Panel Procedural Order No. 1, requesting that Complainant provide the Panel with a translation of its trademark registration found in Annex 6 of the Complaint by October 13, 2024, as well as submit sufficient evidence to demonstrate Complainant's authorization to file this Complaint or submit an amendment requesting the addition of the trademark owner as co-Complainant and providing sufficient grounds for consolidation of complainants.

On October 16, 2024, Complainant transmitted by email to the Center a translation into English of the Trademark Certificate. On October 17, 2024, Complainant transmitted an email to the Center confirming that Amitkumar Ashokkumar Patel is authorized to file this UDRP complaint as the manager and representative of Xclusive Boats Charter (L.L.C), supported by a copy of the commercial license Xclusive Boats Charter (L.L.C). Respondent did not submit any response.

#### **4. Factual Background**

Complainant is a well-established provider of yacht rental services based in Dubai, United Arab Emirates. Since establishing the original domain <xclusivelyachts.com> on April 24, 2007, Complainant has developed a significant online presence and reputation associated with this domain. Since its establishment in 2008, Complainant has accrued more than 12,000 Google reviews, 18,420 TripAdvisor reviews and has served over 10 million clients.

According to the evidence submitted, Complainant has registered the trademark XCLUSIVE YACHTS (device) in United Arab Emirates, registration date December 11, 2014, registration number 196499, hereinafter referred to as the "Trademark".

The disputed domain name was registered on July 26, 2024, and it does not resolve to an active website. However, before the Complaint was filed, the disputed domain name resolved to a website in which Complainant's Trademark and logo were reproduced, pretending to be a Complainant's official website.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name <xclusivelyachts.com> is confusingly similar to the Trademark as it incorporates the Trademark in its entirety, with the only difference being the omission of the letter "a" in "yachts" and the retention of the generic Top-Level Domain (TLD) ".com". This minor variation does not prevent the disputed domain name from being confusingly similar to the Trademark.

Respondent, to the best of Complainant's knowledge, has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent has used, or made preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, Respondent has engaged in egregious intellectual property violations by directly cloning Complainant's website. This includes copying the website layout, style, content, and graphical elements, creating a website that is nearly identical to that of Complainant's, thus falsely presenting itself as Complainant's business.

Respondent has not been authorized by Complainant to use the Trademark, nor is there any relationship between Complainant and Respondent that would give rise to any license, permission, or other rights by which Respondent could legitimately own or use the disputed domain name.

The registration of the disputed domain name appears to be primarily aimed at disrupting the business of Complainant. By creating a disputed domain name that mimics Complainant's established domain name and using it to host a website that clones Complainant's site, Respondent has created a direct competition with Complainant's business. This not only diverts customers but also potentially tarnishes Complainant's brand reputation by associating it with potentially inferior services or unauthorized activities.

Respondent's operation under the disputed domain name has resulted in actual consumer confusion, as evidenced by feedback from clients who mistakenly interacted with Respondent's site under the impression that it was associated with Complainant. Such confusion indicates that the domain name was registered primarily to impersonate Complainant's business, thereby attracting customers for commercial gain.

Further demonstrating the bad faith use of the disputed domain name, Respondent has set up a fraudulent payment gateway on the cloned website that directly mimics Complainant's booking interface. This payment portal asks for sensitive financial details from customers, including credit card information, under the pretense of booking yacht services purportedly offered by Complainant. This deceptive practice not only aims to mislead consumers but also exposes them to potential financial fraud, significantly escalating the severity of Respondent's bad faith actions.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 in bad faith.

The burden of proof of each element is borne by Complainant. Respondent's default does not by itself mean that Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.3.

### **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 3.0](#), section 1.7.

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 Trademark is a figurative mark. The dominant part of the Trademark is the textual element "XCLUSIVE YACHTS".

The non-textual elements of the Trademark do not detract in any way from the prominence of the textual element of the mark, that is the most prominent element. The Panel finds the Trademark is recognizable within the disputed domain name as it incorporates the Trademark in its entirety, with the only difference being the omission of the letter “a” in “yachts”. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 reproduces the Trademark with the omission of the letter “a” in “yachts”. This omission is hardly noticeable. The typo squatting nature of the disputed domain name therefore carries a high risk of misleading the consumers and diverts them to Respondent’s website, in order to create commercial gain for himself which cannot amount to fair use nor confer rights or legitimate interests upon Respondent.

Before the Complaint was filed the disputed domain name resolved to a website in which Complainant’s Trademark and logo were reproduced, pretending to be a Complainant’s official website.

Panels have held that the use of a domain name for illegal activity, here 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.

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.

In the present case, the Panel notes that given that the disputed domain name consists of a misspelling of the Trademark (i.e. typo squatting), Respondent was more likely than not aware of Complainant’s Trademark

at the time of the registration of the disputed domain name. (See section 3.1.4 of the [WIPO Overview 3.0](#) that states that “the mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.)

It is well accepted that impersonation is clear evidence of bad faith registration and use. The disputed domain name’s website is clearly designed to impersonate Complainant and betrays Respondent’s prior knowledge of Complainant. The website mimics Complainant’s website “xclusiveyachts.com” in design, layout, and content.

This, combined with the composition of the disputed domain name, makes it clear that Respondent’s intention was to impersonate Complainant upon registration of the Domain Name and subsequently through its use.

Further, Panels have held that the use of a domain name for illegal activity (here, claimed phishing personal and credit card data) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy.

The Panel finds that 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 <xclusiveychts.com> be transferred to Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: October 24, 2024