

ADMINISTRATIVE PANEL DECISION

Boxhub ApS v. De Dote, DeDote
Case No. D2024-3369

1. The Parties

The Complainant is Boxhub ApS, Denmark, represented by USA Denmark Law, Denmark.

The Respondent is De Dote, DeDote, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <boxhubcargocontainers.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 August 16, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 19, 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 21, 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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 18, 2024.

The Center appointed Adam Taylor 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.

4. Factual Background

The Complainant's group of companies sells shipping containers, and provides related shipping and logistics services, under the mark BOXHUB.

The Complainant owns the following trade marks for BOXHUB, both filed on August 31, 2020, in class 6:

- United States trade mark No. 6,467,022, registered on August 31, 2020; and
- European Union trade mark No. 018299291, registered on December 22, 2020.

The Complainant operates a website at "www.boxhub.com".

The disputed domain name was registered on May 11, 2020.

When reviewed by the Panel on October 10, 2024, the disputed domain name resolved to a website that was branded "BOXHUB CARGO CONTAINERS" and operated by "BoxHub Cargo Containers Trading LLC" (referred to below as "the LLC"), with Dubai contact details, which described itself as "one of the largest cargo container trading companies based in the Middle East". The site offered a range of goods/services relating to containers including sale and purchase, as well as container conversion.

The Complainant sent a cease and desist to the LLC on March 25, 2024. There was no 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 Complainant has used the name BOXHUB worldwide, including in the United States, "since 2020";
- the Respondent is using a materially identical domain name and name to sell products and services that are confusingly similar to those of the Complainant;
- the Respondent's use of the disputed domain name "in a parallel industry" to that of the Complainant cannot qualify as a legitimate interest as it infringes the Complainant's intellectual property rights;
- the Respondent has engaged in typical cybersquatting by capitalising on the Complainant's goodwill;
- the Respondent has "no prior history" of operating under the BOXHUB mark;
- the Respondent registered the disputed domain name through a privacy service to conceal its identity;
- the Respondent registered and used the disputed domain name in bad faith in order to create a likelihood of confusion with the Complainant's mark as shown by (a) the fact that the Respondent runs a business in an industrial sector parallel to Complainant and uses the name "Box Hub" on its website; (b) the Respondent website copies text from that of the Complainant, rendering the websites similar; and (c) is selling products to people who might otherwise have bought the Complainant's products but have arrived at the Respondent's website by mistake.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

Default – Preliminary Issue

While a panel may draw appropriate inferences from a respondent's default (e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent), a respondent default is not necessarily an admission that the complainant's claims are true. In cases involving wholly unsupported and conclusory allegations advanced by a complainant, or where a good faith defence is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. 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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced 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 (here, "cargo" and "containers") 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 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

It is not necessary for the Panel to consider this element in light of the Panel's conclusion under the third element below.

C. Registered and Used in Bad Faith

Except for limited circumstances involving registration of a domain name to capitalise on nascent trade mark rights, panels will not normally find bad faith on the part of the respondent where a respondent registers a domain name before the complainant's trade mark rights accrue. [WIPO Overview 3.0](#), section 3.8.1.

Here, the Panel will treat May 11, 2020, as the relevant date for the purpose of assessing registration in bad faith as this was the date when the disputed domain name was registered, and the Panel has not been provided with any evidence indicating that the Respondent was a later transferee of the disputed domain name.

The Complainant's registered trade marks were both filed on August 31, 2020, and so they post-date registration of the disputed domain name.

As regards common law rights, a complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. [WIPO Overview 3.0](#), section 1.3.

Here, the Complainant simply says is that is has used the mark BOXHUB "since 2020".¹ The Complainant does not specify an exact start date, despite this being the same year when the Respondent registered the disputed domain name. Furthermore, the Complainant supplies no evidence of trading activity/reputation in respect of this mark either before or after May 11, 2020.

Accordingly, the Complainant has failed to establish the existence of unregistered rights, let alone that they arose before the Respondent registered the disputed domain name.

This is fatal to the Complainant's case – because the Complainant is required to prove both registration and use in bad faith.

The Panel further notes the following.

First, the Complainant has provided no evidence in support of its assertion that the Respondent copied text from the Complainant's website. The Complainant invokes its cease and desist letter in this connection but that letter does not include any evidence of copying, or indeed mention the issue at all.

Second, the Panel is mindful that the Respondent is apparently engaged in the same industry as the Competitor, albeit in a different geographic region, and that the mark BOXHUB comprises a combination of two dictionary words that, to the Panel, is not an entirely obvious one. However, the Panel does not consider that this point assists the Complainant in light of its failure to demonstrate rights in BOXHUB predating the Respondent's acquisition of the disputed domain name, particularly bearing in mind that the Complainant is required to prove its case on the balance of probabilities. [WIPO Overview 3.0](#), section 4.2.

Third, the Complaint makes no mention of the fact that the name of the LLC, the company operating the website at the disputed domain name plus the apparently genuine underlying business, and to which the Complainant had addressed its cease and desist letter, corresponds closely to the disputed domain name. For example, the Complainant has not contended that the adoption of the name of the LLC was part of some sort of illicit scheme, along with the disputed domain name, to target the Complainant's rights. The Complainant should at least have considered this aspect in connection with the second and/or third elements.

Fourth, the Complainant invokes the Respondent's use of a privacy service. However, there are recognised legitimate uses of privacy services and the disclosure of the name and contact details of the operator of the website at the disputed domain name indicates that the Respondent did not employ the privacy service merely to avoid being notified of a UDRP proceeding. [WIPO Overview 3.0](#), section 3.6.

¹ The Panel would add that is has disregarded the apparently conflicting, and unsupported, assertion in the Complainant's cease and desist letter of March 25, 2024, that the Complainant has used the BOXHUB mark for "more than seven years".

Fifth, to the extent that the Complainant relies on infringement of intellectual property rights, the Panel would observe that this is a matter for a court. Rather, under the third element of the Policy, the issue for the Panel is whether or not the Respondent registered and used the disputed domain name in bad faith, involving assessment of the Respondent's likely motive, based on the record before the Panel.

In conclusion, for all the above the reasons, especially the Complainant's failure to establish prior rights in the mark BOXHUB and the lack of any evidence that the Respondent deliberately set out to target the Complainant, and despite the Respondent's default, the Panel considers that the Complainant has failed to prove on the balance of probabilities that the Respondent registered and used the disputed domain name in bad faith.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: October 11, 2024