

ADMINISTRATIVE PANEL DECISION

Associated Newspapers Limited v. Pradeep Kumar
Case No. D2024-3600

1. The Parties

Complainant is Associated Newspapers Limited, United Kingdom (“UK”), represented by Adlex Solicitors, UK.

Respondent is Pradeep Kumar, India.

2. The Domain Name and Registrar

The Disputed Domain Name <thedailymailnewstoday.com> is registered with One.com A/S (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2024. On September 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 9, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on September 11, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 12, 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”).

The Center received email communications from Respondent on September 11 and September 12, 2024. On September 12, 2024, Complainant requested suspension of the proceeding to explore settlement options. The Parties did not settle, and Complainant requested that the proceeding be reinstated. The Center reinstated the proceeding on October 18, 2024.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on October 18, 2024. In accordance with the Rules, paragraph 5, the due

date for Response was November 7, 2024. Respondent did not submit a formal response. Pursuant to paragraph 6 of the Rules, the Center informed the Parties that it would proceed to Panel Appointment on November 8, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on November 14, 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

Complainant was incorporated in the UK on April 1, 1905, and is the management company and publisher of a range of publications in the UK, including two national newspapers: the Daily Mail and The Mail on Sunday. The first edition of the Daily Mail was published in 1896.

Complainant owns numerous trademark registrations for the DAILY MAIL Mark, including but not limited to the following:

UK Registration No. 1207666 dated November 22, 1983, for DAILY MAIL; and European Union Registration No. 193433 dated April 1, 1996, for DAILY MAIL.

The Daily Mail's average UK newspaper readership from July 2019 to June 2021 was over 2 million per issues (source: the Publishers Audience Measurement Company "PAMCo").

The Daily Mail's average UK newspaper circulation in September 2021 was approximately 920,000 per issue (source: Audited Bureau of Circulations "ABC"). Complainant's website at "www.dailymail.co.uk" (also known as "MailOnline" and "Daily Mail Online") is one of the most visited websites in the world.

An extract from "www.pressgazette.co.uk" shows that Complainant's website was the most-read online UK newspaper brand in 2021, with 518 million page views and 4.1 million average daily visitors in July 2021.

As of September 4, 2024, MX records had been set up for the Disputed Domain Name to enable email communication.

The Disputed Domain Name was registered on January 23, 2023, and, at the time of the Complaint filing, resolves to a website which displays news articles in competition with Complainant and is prominently branded "The Daily Mail", with words "New Today" appearing in smaller letters underneath.

5. Parties' Contentions

A. Complainant

Complainant contends that, in addition to its trademark registrations listed above, it has common law rights in the DAILY MAIL Mark by virtue of its extensive trading and marketing activities outlined above and because of its status as a major UK newspaper. Complainant further contends that it has acquired substantial reputation and goodwill in the name "Daily Mail" such that it is recognized by the public as distinctive of Complainant's newspaper and related business.

Complainant further contends that the Disputed Domain Name is confusingly similar to the DAILY MAIL Mark because the Disputed Domain Name includes the entirety of the DAILY MAIL Mark with only the addition of the generic words "The" and "News Today". Complainant further contends that these terms are descriptive and do not dispel the confusing similarity.

Complainant alleges that it has no association with Respondent and has never authorized or licensed Respondent to use the DAILY MAIL Mark.

Complainant further alleges that the Disputed Domain Name includes the DAILY MAIL Mark plus related terms, which suggests sponsorship or endorsement by Complainant.

Complainant further alleges that Respondent has used the Disputed Domain Name to confuse and profit from Internet users seeking Complainant. Such use of the Disputed Domain Name cannot be said to be bona fide.

Complainant further alleges that Respondent has never been commonly known by the Disputed Domain Name.

Complainant further alleges that Respondent's only use of the Disputed Domain Name has been to attract, confuse and profit from Internet users seeking Complainant which not a legitimate noncommercial or fair use.

Complainant submits that Respondent has been found to have registered and used a domain name in bad faith in at least one UDRP case, see *Oracle Corporation, Oracle International Corporation v. Registration Private, Domains By Proxy, LLC / pradeep Kumar, Oracleappstechnical.com*, WIPO Case No. [D2022-3022](#). Complainant further submits that the Pradeep Kumar cited as respondent in the prior case is Respondent in the current proceeding.

Complainant further submits that Respondent also owns another domain name reflecting a well-known media trademark plus the word "today", namely <nyposttoday.com>.

Complainant further submits that such activities are in violation of paragraph 4(b)(iv) of the Policy.

Complainant further submits that Respondent is using the Disputed Domain Name for fraudulent purposes, namely that email MX records have been configured for the Disputed Domain Name, and that the Disputed Domain Name is uniquely referable to the distinctive DAILY MAIL Mark. Complainant further submits that the website is connected with phishing or other illicit enterprise.

Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the three essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Paragraph 4(a) of the Policy directs that Complainant must prove each of the three following elements:

i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the DAILY MAIL Mark in which Complainant has rights;

- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

[WIPO Overview 3.0](#), section 1.2.1, states that registration of a trademark is prima facie evidence of having trademark rights for purposes of standing to file a UDRP case. Therefore, Complainant has enforceable rights in the DAILY MAIL Mark.

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 DAILY MAIL Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

Complainant has shown rights in respect of the DAILY MAIL 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 DAILY MAIL Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “the” and “news today”, 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 DAILY MAIL 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

Paragraph 4(c) of the Policy provides a non-exhaustive list of circumstances in which Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the DAILY MAIL Mark.

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 disputed domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, 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 consists of the entirety of Complainant's famous trademark and resolves to a website offering identical services to those of Complainant while displaying "The Daily Mail" as the prominent website header, deceptively reinforcing the impression that the Disputed Domain Name is somehow associated with or endorsed by Complainant.

Panels have held that the use of the Disputed Domain Name for illegitimate activity, here claimed as impersonation or other types of fraud can never confer rights or legitimate interests on 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 forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the DAILY MAIL Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of the DAILY MAIL Mark from reflecting it in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the DAILY MAIL Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

Complainant has shown that Respondent's only use of the Disputed Domain Name has been to attract, confuse, and profit from Internet users seeking Complainant, for commercial gain. The existence of active MX records, despite no evidence of actual current use for sending or receiving emails, represents an implied ongoing threat to Complainant given the likelihood of confusion found in the composition of the Disputed Domain Name.

The Panel finds such activities to be bad faith under paragraph 4(b)(iv) of the Policy.

Panels have held that the use of the Disputed Domain Name for illegitimate activity, here claimed as impersonation or other types of fraud 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 Name 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 <thedailymailnewstoday.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: November 25, 2024