

ADMINISTRATIVE PANEL DECISION

Online Media IP holding Ltd v. Host Master, 1337 Services LLC
Case No. D2024-4243

1. The Parties

The Complainant is Online Media IP holding Ltd, Antigua and Barbuda, represented by Constantinos Zamas, Cyprus.

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <xhamsterdownloader.net> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 15, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 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 amendment to the Complaint on October 16, 2024.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on December 5, 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 company that, together with its affiliates, provides entertainment services in the sphere of digital media and adult entertainment content. Since 2007, the Complainant has been using <xhamster.com> domain name for its services.

The Complainant owns several trademark registrations for its XHAMSTER trademark, such as:

- the Benelux registration No. 0986331 for the XHAMSTER mark, registered on December 3, 2015;
- the European Union registration No. 018255445 for the XHAMSTER Mark, registered on October 31, 2020.

The Respondent registered the disputed domain name on June 21, 2021. The disputed domain name directs to a website offering a “XHamster Video Downloader Online”, which allows users to find and download their favorite xHamster videos. The website provides no information about its owner except for referring to it “xhamsterdownloader.com”. The website features the following statements: “Download XHamster Videos and More!”, “XHamsterDownloader-Best Online XHamster Downloader!”.

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 XHAMSTER trademark, as it incorporates the trademark in full. The Complainant further argues that the inclusion of the generic term “downloader”, does not mitigate the likelihood of confusion between the disputed domain name and its trademark. Additionally, the Complainant contends that the presence of the generic Top-Level Domain (“gTLD”) “.net” does not eliminate the confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name because (i) the Respondent’s is neither affiliated or has been authorized by the Complainant to use its well-known XHAMSTER trademark in the disputed domain name or in any other form; (ii) there is no evidence that the Respondent is commonly known by the disputed domain name; and (iii) the Respondent is not using the disputed domain name for a bona fide offering of goods or services or for a legitimate, noncommercial purposes because the disputed domain name, which is similar to the Complainant’s domain name and its trademark, falsely suggests an affiliation with the Complainant.

The Complainant asserts that the Respondent registered the disputed domain name in bad faith because it was registered with the Complainant’s well-known trademark in mind. The Complainant argues that it is a famous provider of adult content, whose website has more than 1 billion visits per month. The Complainant claims that its “www.xhamster.com” website is widely known in its sector of business, so it is unlikely that the Respondent did not know about the Complainant’s mark at the time of the disputed domain name’s registration. The Complainant contends that the Respondent’s use of the disputed domain name constitutes bad faith, since the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to its disputed domain name by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the disputed domain name:

- (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 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 trademark 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. The inclusion of the gTLD ".net" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, "downloader", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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

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.

The evidence on record shows that the Respondent is not commonly known by the disputed domain name. The Respondent has not been authorized by the Complainant to use the Complainant's trademark in a domain name. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name or uses it for bona fide offering of goods or services, because the disputed domain name directs to a

website that purports to allow users to download videos from the Complainant's website, which reinforces the false sense of association or ownership of the disputed domain name by the Complainant.

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 registered the disputed domain name incorporating the Complainant's XHAMSTER trademark and many years after the Complainant's first trademark registration. Taking into account that the Respondent uses the disputed domain name for a website purportedly allowing unauthorized download of videos from the Complainant's website, it is evident that the Respondent registered the disputed domain name with the full knowledge of the Complainant's trademark to exploit reputation of its trademark. As a result, the disputed domain name was registered in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to source, sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (vi) absence of any conceivable good faith use". [WIPO Overview 3.0](#), section 3.1.4.

Here, the Respondent, who has no rights to or legitimate interests in the disputed domain name, registered the disputed domain name that fully incorporates the Complainant's trademark to direct Internet users to a website that offers users a tool for unauthorized downloading of videos from the Complainant's website. The only information about the owner of the website is that it is "xhamsterdownloader.net". The website displays the following information: "Download XHamster Videos and More!", "XHamsterDownloader-Best Online XHamster Downloader!". Taken together, the website creates an impression of a website connected to the Complainant. Therefore, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location, or of a product or service on the Respondent's website or location.

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 <xhamsterdownloader.net> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: December 16, 2024