

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. jun yin
Case No. D2024-4253

1. The Parties

The Complainant is Pixabay GmbH, Germany, represented by SafeNames Ltd., United Kingdom.

The Respondent is jun yin, China.

2. The Domain Name and Registrar

The disputed domain name <pixabay.net> is registered with NameCheap, 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 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) 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 amended Complaint on October 18, 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 October 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2024.

The Center appointed John Swinson 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

The Complainant was founded in 2010 and operates a business that makes available online more than 2 million stock images, video, and music files. In 2019, the Complainant was acquired by Canva Pty Ltd, the operator of a popular online graphic design platform.

The Complainant holds several registrations for the mark PIXABAY including, for example, Australian Trademark No. 2004679, registered in classes 9, 42, and 45, on April 22, 2019.

The Complainant owns the domain name <pixabay.com>, where it has operated its e-commerce website since 2010.

The disputed domain name was registered on May 17, 2015.

The Respondent did not file a Response, so little information is known about the Respondent. According to the Registrar's records, the Respondent is purportedly located in China.

At one time, the disputed domain name resolved to a website that included Pay-Per-Click ("PPC") links advertising various products and services. This website also stated that the disputed domain name "may be for sale for 1,500".

At the present time, the disputed domain name does not resolve to an active website.

The Respondent did not respond to a cease-and-desist notice sent by the Complainant's representative on June 12, 2024.

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 being used to direct Internet users to PPC advertisement links that redirect users to third-party offerings. Such use does not confer a bona fide offering of goods or services, since the disputed domain name utilizes the Complainant's PIXABAY brand to capitalize on the reputation and goodwill of the Complainant.

The Complainant contends that offering the disputed domain name for sale for USD 1,500 takes unfair commercial advantage of the Complainant's brand and this cannot constitute a bona fide offering of goods or services. This use suggests the Respondent intended to generate undue profit based on the disputed domain name's value as it comprises the PIXABAY mark in its entirety.

The Complainant also submits the Respondent has also been subject to numerous past UDRP proceedings, concluding the Respondent has registered and used third-party trademarks in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The onus of proving these elements is on the Complainant.

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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Currently, the disputed domain name is not being used. This non-use does not demonstrate that the Respondent has rights or legitimate interests in the disputed domain name.

At one time, the disputed domain name was being used to host a website with PPC links. This use of the disputed domain name to generate PPC revenue for the Respondent does not demonstrate rights or legitimate interests and does not constitute a noncommercial or fair use of the disputed domain name. 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.

Also, the Panel considers that the composition of the disputed domain name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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.

The Complainant's PIXABAY trademark is well-known in the online creative community.

While the Complainant's trademark PIXABAY was registered in 2019 after the disputed domain name (which was registered in 2015), the Panel notes that the Complainant was doing business since 2010 using the domain name <pixabay.com>. Under these specific circumstances, and noting the disputed domain name is identical to the Complainant's trademark, the Panel finds more likely than not that the Respondent was aware of the Complainant when it registered the disputed domain name.

In the present case, at one time the Respondent used the disputed domain name to host a website with PPC links, and that also listed the disputed domain name for sale. Use of a well-known trademark to host a website with PPC links is evidence of bad faith. See *Patrick Roehrman v. WhoisGuard Protected / hu huaijin*, WIPO Case No. [D2020-3387](#). The listing of the disputed domain name for sale also substantiates an attempt to generate commercial gain, as the advertised price is in excess of registration costs for the disputed domain name.

While the offer for sale has not been made directly to the Complainant, given the distinctiveness and reputation of the PIXABAY mark, the Panel concludes that the Respondent can only plausibly be targeting the Complainant given the disputed domain name's identical composition to the Complainant's mark. Where a domain name is offered for sale for the purposes of capitalizing on the value of a complainant's trademark, this demonstrates bad faith.

Currently, the disputed domain name is not being used to host an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and that disputed domain name is identical to the Complainant's mark and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Complainant asserts that the Respondent has been an unsuccessful respondent in prior UDRP decisions under the Policy and provides a list of such decisions. The Panel does not need to rely upon such circumstances to reach a decision against the Respondent in this case.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The Panel finds the third element of the Policy has been established.

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 <pixabay.net> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: November 28, 2024