

ADMINISTRATIVE PANEL DECISION

Brixmor Property Group, Inc. v. Domain Admin, Hush Whois Protection Ltd.
Case No. D2024-4415

1. The Parties

The Complainant is Brixmor Property Group, Inc., United States of America (“United States”), represented by Neal, Gerber & Eisenberg LLP, United States.

The Respondent is Domain Admin, Hush Whois Protection Ltd., Seychelles.

2. The Domain Name and Registrar

The disputed domain name <brixmore.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2024. On October 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 the Complainant on November 1, 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 November 5, 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 November 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 26, 2024.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 2, 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 owns and operates shopping and retail facilities around the United States and holds the domain name <brixmor.com> which hosts its main website.

The Complainant owns several trademark registrations, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
BRIXMOR	United States	4,269,899	January 1, 2013	36, 37
BRIXMOR PROPERTY GROUP	United States	4,385,614	August 13, 2013	36

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on January 27, 2013.

According to the evidence submitted with the Complaint, the disputed domain name does not resolve to an active website.

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 as follows:

The disputed domain name is confusingly similar to the BRIXMOR trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the letter "e" constitutes an intentional misspelling ("typosquatting") and as such is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark BRIXMOR has been extensively used to identify the Complainant and its services. The Respondent has not been authorized by the Complainant to use this trademark, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods and services. Because the disputed domain name is passively held, the Complainant fears that the disputed domain name may be used to perpetrate phishing scams.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had at least constructive knowledge of both the Complainant and its well-known trademark BRIXMOR at the time it registered the disputed domain name.

The Respondent is using the disputed domain name in bad faith, by passively holding the domain name. Furthermore, the Respondent has engaged in a pattern of registering third parties' trademarks as domain names, as evidenced by the fact that the Respondent has been the respondent in fifteen prior UDRP proceedings. In each of those proceedings, the transfer of those domain names was ordered.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 Panel finds the entirety of the mark is reproduced within the disputed domain name.

The addition/omission of the letter "e" to the disputed domain name is considered an intentional misspelling of the Complainant's mark and does not prevent a finding of confusing similarity under the Policy. [WIPO Overview 3.0](#), section 1.9

The addition of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is a standard registration requirement and as such may be disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

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 for a complainant to prove that 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.

Based on the available record, 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 view of the Panel, considering that the Complainant's trademark is well-known and predates the registration of the disputed domain name, the Respondent must at least have had constructive knowledge of the Complainant's trademark when it registered the disputed domain name. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name does currently not resolve to an active website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use.

Therefore, the Panel finds that in the circumstances of this case the passive holding of these disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

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 <brixmore.com> be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: December 13, 2024