

ADMINISTRATIVE PANEL DECISION

TMD Swiss AG v. Dmytro Bondar
Case No. DCC2024-0023

1. The Parties

The Complainant is TMD Swiss AG, Switzerland, represented by Merk-Echt B.V., Netherlands (Kingdom of the).

The Respondent is Dmytro Bondar, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <xxx-love.cc> is registered with NameSilo, 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 (PrivacyGuardian.org 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 amendment to the Complaint on August 20, 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 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 20, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 30, 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. Further Procedural Issue – Location of the Respondent

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent is reportedly located in Ukraine, which is subject to an international conflict at the date of this decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The disputed domain name was registered (and used) recently – showing a clear ability to communicate and engage online. The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, NameSilo, LLC is in the United States of America. It is moreover noted that, for the reasons which are set out later in this decision, the Panel believes that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark and misleading consumers.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding should take place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is in the business of distributing adult content over the Internet. It owns the trademark XXXLOVE which it has registered in Canada (see Canadian Reg. No. TMA850466, registered on May 8, 2013).

According to the Whois records, the disputed domain name was registered on January 23, 2024. The Respondent has used the disputed domain name to set up a website providing services identical in nature to the ones provided by the Complainant.

6. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. 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. *Id.* This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the XXXLOVE mark by providing evidence of its trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name is confusingly similar to the Complainant's mark. The disputed domain name differs from the Complainant's mark only by containing a dash within it.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

The Complainant asserts that it has not given the Respondent permission to use a disputed domain name that is highly similar to the Complainant's mark (merely splitting the mark into two components by adding a hyphen), nor is the Respondent's use a noncommercial or fair use.

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing, and nothing in the record otherwise tilts the balance in the Respondent's favor. Moreover, the Panel finds it probative that the website at the disputed domain name prominently displays the identical Complainant's "XXXLOVE" mark (without the hyphen found in the disputed domain name), but then uses "XXX-Love" (including the hyphen found in the disputed domain name) in less prominent positions.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark

as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

The Complainant emphasizes that the Respondent is a competitor of the Complainant and the Respondent intentionally profits from the risk of confusion arising from the use of the disputed domain name to offer identical services, resulting in attracting the Complainant's customers to their website for financial gain. The Panel agrees with this characterization of the Respondent's registration and use of the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied this third element under 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 <xxx-love.cc> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: October 15, 2024