

## **ADMINISTRATIVE PANEL DECISION**

Pixabay GmbH v. Transure Enterprise Ltd

Case No. DCO2022-0095

### **1. The Parties**

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

The Respondent is Transure Enterprise Ltd, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <pxabay.co> (“Domain Name”) is registered with Above.com Pty Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 15, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on December 20, 2022. 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 German company, founded in 2010, that operates an online platform at “www.pixabay.com” where its customers create and share copyright-free images, videos and music. The Complainant’s website is available in 26 languages, offers 2.7 million images, videos and music files and receives an average of more than 30 million visitors a month.

The Complainant is the owner of trade marks in various jurisdictions consisting of the word PIXABAY (the “PIXABAY Mark”), including an European Union registration for the PIXABAY Mark (Registration No. 018041811, registered September 20, 2019).

The Domain Name was registered on January 31, 2022. Since then, the Domain Name has resolved to a website offering pay-per-click advertisements that refer to image search and stock photo services.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s PIXABAY Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the PIXABAY Mark, having registered the PIXABAY Mark in the European Union and various other locations around the globe. The Domain Name consists of a minor misspelling of the PIXABAY Mark, removing the “i” and adding the “.co” country code Top-Level Domain (“ccTLD”).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the PIXABAY Mark nor is the Respondent commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Instead, the Domain Name resolves to a pay-per-click site that makes reference to the Complainant’s services as well as other sites that promote malware downloads. Such uses of the Domain Name cannot and do not constitute *bona fide* commercial use, sufficient to legitimize any rights and interests the Respondent might have in the Domain Name and therefore the Respondent has no rights or legitimate interests in the Domain Name under paragraph 4(a)(ii) of the Policy.

There is no plausible circumstance under which the Respondent could legitimately use the Domain Name, which consists of a minor misspelling of the PIXABAY Mark, other than in bad faith. By using the Domain Name to resolve to a website that offers links to competing services, the Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

To prove this element, the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the PIXABAY Mark, having a registration for the PIXABAY Mark as a trade mark in the European Union.

Disregarding the ".co" ccTLD as a necessary technical requirement of the Domain Name, the Domain Name is confusingly similar to the PIXABAY Mark since it wholly incorporates the PIXABAY Mark, other than deleting a "i" which creates a minor distinction that would be easy for an Internet user to overlook. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

To succeed on this element, a complainant may make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii) of the Policy:

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the PIXABAY Mark or a mark similar to the PIXABAY Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services. The use of the Domain Name for a parking page with pay-per-click links unrelated to a dictionary meaning of the Domain Name is not a *bona fide* offering of goods or services nor noncommercial. The Panel notes the statements in the [WIPO Overview 3.0](#) on the question of whether "parked" pages comprising pay-per-click links support respondent rights or legitimate interests. The section 2.9 of the WIPO Overview notes that:

"Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trade mark.”

In the present case, the Domain Name has no inherent meaning and hence the Respondent’s use of the confusingly similar Domain Name to host a parking page with pay-per-click links referring to the Complainant’s services does not, absent any further explanation, provide the Respondent with rights or legitimate interests in the Domain Name. The Panel also notes the evidence in the Complaint that the Domain Name may have also redirected to a site encouraging users to download malware and confirms that this use also does not provide the Respondent with rights or legitimate interests in the Domain Name.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights or legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registrations to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 Domain Name was registered well after the PIXABAY Mark was first used and registered. The Panel finds, on the balance of probabilities, that the Respondent would have been aware of the Complainant and its reputation in the PIXABAY Mark at the time the Respondent registered the Domain Name. The website at the Domain Name advertises services in direct competition with services offered by the Complainant and there is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name incorporating a minor misspelling of the PIXABAY Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the PIXABAY Mark.

The Domain Name has been used for a parking page with pay-per-click links for which the Respondent undoubtedly received some commercial gain. In these circumstances where the Respondent has offered no plausible explanation for the registration of the Domain Name, the Panel finds that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by

creating a likelihood of confusion with the PIXABAY Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. As such the Panel finds that the Domain Name is being used in bad faith pursuant to 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name <pxabay.co> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: January 3, 2023