

ADMINISTRATIVE PANEL DECISION

Dell Inc. v. Rabosh Aleksey
Case No. DUA2023-0005

1. The Parties

The Complainant is Dell Inc., United States of America (“United States”), represented Baker McKenzie Ukraine B.V, Ukraine.

The Respondent is Rabosh Aleksey, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <dell.kiev.ua> is registered with SE Khylyuk Petro (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2023. On September 19, 2023, the Center transmitted by email to the Registrar a request for Registrar verification in connection with the disputed domain name. On September 20, 2023, 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 (not published) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 2023, 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 September 22, 2023.

The Registrar also indicated that the language of the registration agreement (the “Registration Agreement”) is Ukrainian. On September 21, 2023, the Center sent an email communication to the Parties in both Ukrainian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Ukrainian; or submit a request for English to be the language of the administrative proceedings.

The Complainant filed a request for English to be the language of the proceedings on September 22, 2023. The Respondent did not comment on the language of the proceedings.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of .UA Domain Name Dispute Resolution Policy (the “.UA Policy”), the .UA Rules for .UA

Domain Name Dispute Resolution Policy (the “.UA Rules”), and the WIPO Supplemental Rules for .UA Domain Name Dispute Resolution Policy (the “WIPO Supplemental Rules”).

In accordance with the .UA Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint in both Ukrainian and English, and the proceedings commenced on October 2, 2023. In accordance with the .UA Rules, paragraph 5(a), the due date for Response was October 22, 2023.

The Respondent has not substantively replied to the Complainant’s contentions. Despite being duly notified of the Complaint, the Respondent’s communication was limited to two brief messages to the Center on September 21, 2023, stating, “Good evening. We are working on resolving the issue. We’ll fix it soon. Thank you. Sincerely, Alexei.” No further elaboration or formal response was provided by the Respondent. The Center did not receive any formal response or documentation from the Respondent that would substantiate or clarify the intention behind this message.

Accordingly, the Center notified the Parties that it would proceed to panel appointment on October 24, 2023.

The Center appointed Anton Polikarpov as the sole panelist in this matter on October 27, 2023. 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 .UA Rules, paragraph 7.

4. Factual Background

The Complainant is a United States based technology company which was founded in 1984 by Michael Dell that offers products and services related to technology, software, security and more. It is one of the largest computer manufacturers well known by consumers around the world.

The Complainant holds registrations for the trademark DELL and its variations, in over 100 jurisdictions around the world, including the following:

- United States Trademark No. 1616571 for DELL registered on October 9, 1990 covering goods in Class 9;
- United States Trademark No. 5510370 for  registered on July 10, 2018 covering goods and services in Classes 2, 9, 36, 37, 40, 41, and 42;
- European Union Trademark No. 000083295 for DELL registered on August 6, 1998 covering goods in Classes 9 and 16;
- European Union Trademark No. 006420641 for  registered on November 4, 2008 covering goods and services in Classes 9, 16, 25, 35, 36, 37, 38, 40, 41, and 42;
- Ukrainian Trademark No. 16045 for DELL registered on September 15, 2000 for goods in Class 9;
- Ukrainian Trademark No. 16875 for  registered on November 15, 2000 for goods in Class 9.

Additionally, the Complainant claims that it owns several domain names comprising the DELL mark, including <dell.com> (registered on November 22, 1988), <delltechnologies.com> (registered on April 5, 2004), <dell.ua> (registered on August 14, 2003), <dell.com.ua> (registered on February 1, 2001) and many other domain names incorporating the DELL mark.

The trademark registrations above, including registrations in Ukraine, obtained protection prior to the registration date of the disputed domain name, which was registered on May 11, 2023.

The website associated with the disputed domain name as of the date of filing the Complaint, reproduced the Complainant’s trademarks and was offering for sale the Complainant’s products as well as third-party competing products. At the date of this Decision, the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that all three cumulative requirements as provided for in paragraph 4(a) of the .UA Policy are satisfied in this case.

B. Respondent

The Respondent has not substantively replied to the Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Ukrainian. Paragraph 11(a) of the .UA Rules provides that unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement (which shall be in English, Russian or Ukrainian), subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In particular, it is established practice to take paragraphs 10(b) and (c) of the .UA Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of a cost-effective and swift avenue for resolving domain name disputes.

The Panel notes the following from *Alticor Inc. v. Alex Istreamco*, WIPO Case No. [DUA2021-0026](#):

"In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs."

The Complainant filed the Complaint in English and requested English to be the language of this proceeding referring to the encouraging fair and expeditious resolution of this dispute, and to the fact that eliminating translation of the Complaint to Russian or Ukrainian in the situation where the Respondent understands English will conserve resources of the Parties. The Complainant argued that the website at the disputed domain name featured English terms "use", "dell" and "technologies" and that the Respondent translated all product descriptions and product information presented at the website from the Complainant's original website in English into Russian.

The Center has afforded both Parties the chance to comment on the language of the proceeding by sending both Parties a Language of Proceedings notification, as well as all other communications in both Ukrainian and English.

The Panel further pays attention to the fact that the Complainant has provided submissions regarding the proper language of proceedings, while no objection was made by the Respondent to the proceeding being conducted in English nor any request made that the proceedings be conducted in Ukrainian, the language of the Registration Agreement. This was despite the Center notifying the Respondent in Ukrainian and English that (1) the Respondent is invited to present his objection to the request that the proceedings being held in English and (2) if the Center did not hear from the Respondent by a certain date, the Center would proceed on the basis that the Respondent had no objection to the Complainant's request that English be the language of the proceedings. The Respondent had the opportunity to raise objections or make known his preference but did not do so. (See, *Crocs, Inc. v. Matveeva Angela*, WIPO Case No. [DUA2020-0015](#)). The Panel, furthermore, notes that the Respondent sent informal email communication to the Center in English.

The Complainant communicates in English and would be prejudiced, should it be required to translate the Complaint and participate in this proceeding in Ukrainian. Requiring the Complainant to translate the Complaint and all documents into Ukrainian would cause delay in contravention to paragraph 10(c) of the .UA Rules, which requires that the Panel shall ensure that the administrative proceeding takes place with due expedition. (See *Michael Kors (Switzerland) International GmbH. v. Minakova Maria*, WIPO Case No. [DUA2020-0002](#) finding that the registration agreement was in Russian, but that the proceeding should be conducted in English since the Panel has to balance the language requirement against the other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay).

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs (See *Facebook Inc. v. Private Registration / Denis Khakimov*, WIPO Case No. [DUA2019-0002](#)).

Given that both Parties have had ample opportunities to present their arguments, and despite the Respondent's chance to raise concerns about conducting the proceedings in English, to which he has not responded, and the Respondent's ability to communicate in English, the Panel concludes that, in the specific circumstances of this case, it is most appropriate to proceed in English, in line with the Complainant's request. This decision aligns with the objective of paragraph 11(a) of the .UA Rules, as conducting the proceedings in Ukrainian could place the Complainant at a significant disadvantage.

In light of the considerations mentioned above, the Panel hereby determines, in accordance with paragraph 11(a) of the .UA Rules, that the language for the proceeding shall be English.

6.2 Further Procedural Considerations

Under paragraph 10 of the .UA 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's mailing address is stated to be 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 .UA Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Center has sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the first email address was not successfully delivered.

Even more, in response to the Center's Notification of Complaint, the Respondent sent informal email communications. Postal notification is reported to have arrived in the destination country on October 18, 2023 and to have reached its collection point on October 21, 2023.

Importantly, the use of the disputed domain name has changed. Accordingly, as the Respondent is capable of continuing to control the disputed domain name, and as the Respondent has received notification of the Complaint in accordance with paragraph 2 of the .UA Rules, the Panel considers that he would have been able to formulate and file a Response in the administrative proceeding had he wished to do so.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any formal Response) 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. The Panel concludes that the Parties have been given a fair opportunity to present their case,

and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

6.3. Substantive Elements of the .UA Policy

The Panel will now proceed to evaluate this matter in light of the Complaint, the absence of a Response, the .UA Policy, the .UA Rules, the WIPO Supplemental Rules, and other relevant legal authorities, as outlined in accordance with paragraph 15(a) of the .UA Rules.

Paragraph 15(a) of the .UA Rules anchors the Panel as to the principles the Panel is to use in determining the dispute: the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the .UA Policy, .UA Rules and any rules and principles of law that it deems applicable.

Given that the Respondent did not respond substantively to the Complainant's arguments, the Panel, in its assessment of whether the Complainant has fulfilled its obligations under paragraph 4(a) of the .UA Policy, relies on the information and materials provided in accordance with the .UA Policy and the .UA Rules. Under paragraph 14(b) of the .UA Rules, where a Party does not comply with any provision of the .UA Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 4(a) of the .UA Policy directs that the Complainant must prove each of the following: (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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant holds legitimate rights in the DELL mark, which are substantiated through its registered trademarks and unregistered trademark rights that have been acquired through extensive and long-term usage.

Section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")¹ makes clear that, where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

Previous UDRP panels have already established that the DELL mark is inherently distinctive and well known in connection with the Complainant's goods and services. See *Dell Inc. v. Super Privacy Service LTD c/o Dynadot / Chen Hui, Gname*, WIPO Case No. [D2021-0721](#):

"It is also established from the evidence of the Complainant's use of the mark DELL worldwide that it has acquired "substantial fame and recognition on a global basis" entitling it to unregistered rights in the mark DELL."

See also *Dell Inc. v. Raj Kumar, Itel Computer Solutions*, WIPO Case No. [D2018-2042](#): "The Panel also accepts that the trademark DELL is very well-known around the world."

The disputed domain name combines the Complainant's DELL mark with the country-code Top-Level Domain ("ccTLD") ".kiev.ua".

The Panel notes the following from the [WIPO Overview 3.0](#), the applicable TLD in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see section 1.11. of [WIPO Overview 3.0](#)).

¹ In view of the similarities between the .UA Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel may refer to the [WIPO Overview 3.0](#) and UDRP decisions when relevant.

Given the circumstances of this case the Panel's perspective is that the Complainant's DELL mark is clearly identifiable within the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is identical to a mark in which the Complainant has rights for the purpose the .UA Policy. Consequently the initial requirement of paragraph 4(a) of the .UA Policy has been met.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the evidence provided by the Complainant shows the Respondent does offer DELL branded goods for sale on the website at the disputed domain name; however, its offerings may not be characterized as "*bona fide*" as it fails to satisfy at least criteria 2 and 3 set out in *Oki Data Americas, Inc. v. ASD, Inc.* WIPO Case No. [D2001-0903](#).

Firstly, the Respondent is not affiliated with, nor authorized by, the Complainant to use the DELL mark, including in the disputed domain name, or to sell the Complainant's products.

The Panel notes that the Respondent has used the website related to the disputed domain name to offer for sale and sell computer equipment. The usage of the Complainant's DELL mark which has a significant reputation in relation to computer goods and services is not a *bona fide* offering of goods as the website does not make it clear that there is no formal relationship with the Complainant.

Further, although the Respondent may claim that it is simply making a nominative fair use of the trademark in his domain name, this defense must fail under the circumstances of this case. The disputed domain name misleads customers as to the true nature of a website, resort to the nominative fair use defense is of no help to a respondent (See, e.g., *Rottapharm S.R.L v. Programmi Sanitari Integrati Srl*, WIPO Case No. [D2016-1969](#)).

Secondly, the Respondent uses the inherently misleading disputed domain name to offer for sale competing third-party products.

Paragraph 4(c) of the .UA Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

At the same time, the Respondent has not provided any legitimate reason why he should be able to use the Complainant's trademark in this way. As such, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the second limb of the paragraph 4(a) of the .UA Policy.

C. Registered or Used in Bad Faith

The proof submitted by the Complainant shows that the Respondent clearly knew and targeted the Complainant's prior registered DELL mark, which confirms bad faith.

The disputed domain name is used for a website which, *inter alia* by reproducing the Complainant's logo and by using the phrase "Use Dell Technologies" clearly gives Internet users the impression that the website is connected with the Complainant.

Furthermore, the Respondent notes on the front page of the website that "ДЕЛЛ ТЕХНОЛЕДЖИ ДОСТАВЛЯЕТ ПО ВСЕЙ УКРАИНЕ" ("DELL TECHNOLOGY DELIVERS ALL OVER UKRAINE" in English) and "Дел техноледжи доставит по всей Украине бесплатно при заказе от 49999 грн" ("Dell Technology

delivers orders above UAH 49999 for free all over Ukraine” in English). In addition, it also contains the following text: “Все лучшее от ♥DELL♥ Технологии: Моноблоки, Компьютеры, POS Терминалы, Ноутбуки. по лучшей цене\$✓ ОПТ, ✓ Розница, ✓ безНАЛ.” (“All the best from DELL Technology: Monoblocks, Computers, POS Terminals, Laptops. at the best priceWHOLESALE, retail, cashless.” in English).

The Panel agrees that the circumstances described above confirm beyond any doubt the Respondent’s knowledge of the Complainant’s rights in the DELL mark and clearly demonstrate the Respondent’s intention to impersonate the Complainant or at least imply affiliation or connection with the Complainant and misleadingly divert consumers of the Complainant. This is done with the aim of enticing online users to the website for the purpose of financial gain, as per paragraph 4(b)(iv) of the .UA Policy.

Thereby the Panel believes that the third element of paragraph 4(a) of the .UA Policy is therefore satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .UA Policy and 15 of the .UA Rules, the Panel orders that the disputed domain names, <dell.kiev.ua>, be transferred to the Complainant.

/Anton Polikarpov/

Anton Polikarpov

Sole Panelist

Date: November 10, 2023