

ADMINISTRATIVE PANEL DECISION

Magna International Inc. v. anilx cols
Case No. D2023-3745

1. The Parties

The Complainant is Magna International Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is anilx cols, Finland.

2. The Domain Name and Registrar

The disputed domain name <magnatob.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2023. On September 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 amended Complaint on September 12, 2023.

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 September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 10, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on October 17, 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 Rules, paragraph 7.

4. Factual Background

The Complainant is a global automotive supplier, incorporated in Ontario, Canada in 1957 and trading worldwide. It provides automotive content for virtually every major brand of automobile in the world. The Complainant has over 170,000 employees at 345 manufacturing operations and 90 product development, engineering and sales centres, across 28 countries and five continents. Its business is substantial; it had global sales in 2022 alone of over USD 37.8 billion, and is listed and traded on the Toronto Stock Exchange in Canada and the New York Stock Exchange in the United States of America ("United States").

The Complainant carries out its business under the trademark MAGNA, which it has registered in territories around the world. Annexed to the Complaint were details of the following:

- Canadian trademark registration no. TMA303870 for MAGNA, filed on March 21, 1984 and registered on June 21, 1985;
- United States trademark registration no. 1837713 for MAGNA, filed on October 13, 1987 and registered on May 31, 1994;
- European Union Trade mark registration no. 011330529 for MAGNA, filed on November 8, 2012 and registered on April 12, 2013;
- Indian trademark registration no. 2175961 for MAGNA, registered on July 15, 2011;
- Indian trademark registration no. 2274130 for MAGNA Logo, registered on January 30, 2012.

The Complainant also registered the domain name "www.magna.com" in 1991, and has operated a website from that domain name since at least as early as 2001, promoting its business under the MAGNA mark.

The Complainant also actively promotes its business under the MAGNA mark on social media, including YouTube, Facebook, Twitter, LinkedIn, and Instagram.

The disputed domain name was registered on August 19, 2023. Annexed to the Complaint was evidence that it has been used to host a website impersonating that of the Complainant, offering a fake "Magna" app for download. The Complaint also included evidence that the disputed domain name has been used via the WhatsApp messaging platform to impersonate employees of the Complainant in order to commit fraud. Specifically, the Complainant was contacted by an individual located in India who had received communications on the WhatsApp messaging service from someone posing as an employee of the Complainant who was operating a phishing/hacking scam under the "Magna" name. The fraudster posed as an employee of the Complainant, including providing images of a fake "Magna" employee badge. The fraudster asked targeted individuals to disclose confidential personal information and directs them to "register your own work account" using a link provided to a website hosted at the disputed domain name. Those individuals are then invited to deposit funds via the website hosted at the disputed domain name as part of a purported "investment" in the Complainant's company. The purported "investment" is, however, a scam and is unconnected with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to its registered MAGNA trademark. The addition of the apparently random letters "tob" to the disputed domain name does not, in the Complainant's submission, obviate a finding of confusing similarity. The Complainant further submits that this is a case where it is appropriate for the panel to take note of the content of the website hosted at the

disputed domain name to confirm a finding of confusing similarity, since it is clear from this that the Complainant was targeted.

The Complainant also submits that the Respondent has no rights or legitimate interests in the disputed domain name. Use which intentionally trades on the goodwill and reputation of another cannot constitute a *bona fide* offering of goods or services, and to conclude otherwise would mean that a respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation which is obviously contrary to the Policy. There has never been any relationship between the Complainant and the Respondent, and the Respondent is not licensed, or otherwise authorized, directly or indirectly, to register or use the Complainant's MAGNA mark, including in or as part of the disputed domain name. There is also no evidence that the Respondent has ever been commonly known by a name corresponding to the disputed domain name. Moreover, the Respondent has been making, or permitting or enabling others to make, fraudulent use of a website connected with the disputed domain name as part of a phishing scam, which *prima facie* does not confer rights or a legitimate interest.

The Complainant argues that the disputed domain name was registered and has been used in bad faith. By registering and using a domain name which is confusingly similar to the Complainant's MAGNA trademark, the Respondent has attempted to take advantage of the Complainant's goodwill in an attempt to exploit, for commercial gain, Internet users who are likely to believe there is some connection between the Respondent's fraudulent solicitations and its fake "Magna" website and the Complainant's business. The Complainant also submits that the use of the disputed domain name is disruptive to the Complainant, as third parties are likely to be confused into believing that the Respondent's activities are affiliated with, or sponsored by, the Complainant, when that is not the case. Given that the Respondent is engaged in fraud, this is likely to be harmful to the Complainant's goodwill. The Complainant submits that it is clear that the disputed domain name has been registered for the express purpose of carrying out fraud, and as part of an intentional attempt to unlawfully attract commercial gain for the Respondent's benefit.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant has proved that it has registered trademark rights in MAGNA which pre-date the registration of the disputed domain name.

The disputed domain name includes MAGNA in its entirety, followed only by the letter string “tob” and the Top-Level Domain suffix “.com”. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“the WIPO Overview”), at section 1.11.1, the Top-Level Domain suffix is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test.

Under section 1.7 of the WIPO Overview, “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

In this case, the disputed domain name incorporates the entirety of the Complainant’s registered MAGNA trademark, which is clearly recognizable within the disputed domain name. The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The burden of proving absence of rights or legitimate interests in a domain name falls on complainants, but panels have long recognized that the information needed to prove such rights or legitimate interests is normally in the possession of respondents.

Because of the inherent difficulty in requiring complainants to prove a negative, which may be impossible, UDRP panels have typically accepted that once a complainant has established a *prima facie* case that a respondent lacks rights or legitimate interests, the burden of production shifts to the respondent, that it does indeed have such rights or interests (see, *inter alia*, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)). In the present case, the Complainant has put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use the disputed domain name, nor is there any evidence that the Respondent has ever been commonly known by it. The Respondent has made no effort to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has provided evidence that the disputed domain name has been used in connection with a phishing scam involving the impersonation of an employee of the Complainant and the fraudulent solicitation of payments from targeted individuals.

[WIPO Overview 3.0](#), section 2.13.1 states, “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has shown evidence that the Respondent used the disputed domain name in connection with a phishing scam involving the impersonation of the Complainant, and the Respondent has made no effort to respond to this evidence or to the Complainant’s assertions generally.

[WIPO Overview 3.0](#), section 3.1.4, states that “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith”. In addition, [WIPO Overview 3.0](#), section 3.4, states that “use of a domain name for purposes other than to host a website may constitute bad faith,” such as “sending email [or] phishing,” especially where “the respondent’s use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers”. In this case, the Respondent appears to have sent or procured the sending of deceptive solicitations for payment and disclosure of confidential personal information also via the WhatsApp messaging platform.

The Panel finds that the disputed domain name was registered and has been used in bad faith.

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, <magnatob.com>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: November 13, 2023