

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Tanas Pam
Case No. D2022-0685

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom, represented by Demys Limited (a Com Laude Group company), United Kingdom.

The Respondent is Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf, Iceland / Tanas Pam, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <hmrc-paymentgateway.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 28, 2022. On February 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2022 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 March 3, 2022.

The Center verified that the Complaint 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 March 8, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was March 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 29, 2022.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on April 5, 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 formally known as "Her Majesty's Revenue and Customs" which is frequently shortened to "HM Revenue and Customs" or by the initials "HMRC". It is a non-ministerial department of the United Kingdom ("UK") Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes.

The Complainant explains that various tax-raising authorities have existed in what is now the UK since before the Norman conquest in 1066. It can trace its predecessors through the Board of Trade founded in 1665 under King Charles II and the Board of Inland Revenue created by the Inland Revenue Board Act in 1849. Under its current name it was created by the merger of the Inland Revenue and HM Customs and Excise in April 2005 and was established by The Commissioners for Revenue and Customs Act, 2005.

The Complainant is responsible for the administration of direct taxes within the UK such as Income Tax as well as indirect taxes such as Value Added Tax and excise duties. Other aspects of its responsibilities include the collection of National Insurance Contributions and the distribution of state support such as Child Benefit. As the UK Government's tax authority, almost every UK individual and business is a direct customer of the Complainant and user of its services.

The Complainant operates a website where general information about it can be found; accessed at "www.gov.uk/government/organisations/hm-revenue-customs/about".

The Complainant also operates a website within the UK Government's official portal also accessed at "www.gov.uk/government/organisations/hm-revenue-customs". An indicative screenshot is exhibited at Annex 03 to the Complaint. The site can also be accessed through the domain name <hmrc.gov.uk>.

The Complainant points out that, as is the case with other tax authorities worldwide, it and its customers are frequently targeted by phishing, online scams and other criminality. There are characteristics which the Complainant lists in the Complaint which are common to domain names that have been used to target the Complainant and its customers for abusive purposes. These include;

- i. The use of domain names made up of the Complainant's marks and additional generic terms.
- ii. Additional terms are those associated closely with the Complainant and its activities and include words such as; "tax", "payment", "gov", or "verify" or suggest a call to action, such as "rebate", "refund" or "gateway".

The Complainant evidences this use by reference to press articles and government papers exhibited at Article Bundle A which set out the common characteristics of the threats to the Complainant and its customers and demonstrate the scale of the problem.

The Complainant points out that it has successfully asserted its rights in previous UDRP proceedings. A list of approximately 50 of these proceedings is exhibited as Annex 04 to the Complaint. The Panel notes that in all cases the Complainant successfully obtained a transfer of the disputed domain name. The Complainant expressly refers to *The Commissioners for HM Revenue and Customs v. Mark Carver*, WIPO Case No. [D2018-1200](#) which, *inter alia*, concerned the domain names; <hmrc-gateway-gov.online> and

<hmrc-taxgateway.online> and in which that Panel held that the domain names were confusingly similar to the Complainant's mark HMRC.

The Complainant exhibits at Annex 09 printouts from the UK Intellectual Property Office database evidencing the following registered UK trade marks upon which the Complainant relies;

No. 2471470 HMRC filed November 5, 2007 Classes 9, 16, 35, 36, 38, 41 and 45.

No. 3251234 HM REVENUE & CUSTOMS (with logo) filed August 18, 2007 Classes 9, 16, 35, 36, 38, 41 and 45.

Both marks pre-date the registration of the disputed domain name which was registered on May 17, 2021.

The Complainant also submits that it owns unregistered trade mark rights in the mark HMRC as a result of publicity material available throughout the world. It gives evidence of relevant screenshots of various websites. It also exhibits, as Article Bundle B, articles from the UK and US which refer to the Complainant, HMRC and other terms by which the Complainant is commonly known.

In the absence of a Response the Panel finds the above evidence of the facts adduced by the Complainant to be true.

5. Parties' Contentions

A. Complainant

The Complainant contends;

- i. It owns registered and unregistered rights in the mark HMRC which predate the registration of the disputed domain name. The disputed domain name is confusingly similar to the mark HMRC.
- ii. On the evidence of the Respondent's activities it has no rights or legitimate interests in respect of the disputed domain name.
- iii. On the evidence of the Respondent's activities the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds on the basis of the evidence set out in Section 4 above that the Complainant owns registered and unregistered rights in the trade mark HMRC which predate the date of registration of the disputed domain name.

The Complainant contends that the disputed domain name is confusingly similar to its mark HMRC in that it only differs by the addition of the phrase "payment gateway", the provision of which is an activity associated with the Complainant. Moreover the mark is the most prominent, dominant and distinctive element of the disputed domain name.

This Panel agrees with that contention and accordingly finds, in the absence of a Response, that the disputed domain name is confusingly similar to the mark HMRC in which the Complainant owns prior trade mark rights within Paragraph 4(a)(i) of the Policy. In reaching this view the Panel in accordance with established authority ignores the Top-Level Domain “.com”.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. In the absence of a Response it relies upon the following;

There is no evidence that the Respondent has been commonly known by the names HMRC or HMRC Payment Gateway prior to or after the registration of the disputed domain name. The Respondent is not a licensee of the Complainant and has not received any permission, consent or acquiescence from the Complainant to use its marks or name in association with the registration of the disputed domain name.

There is no evidence that the Respondent owns any trade marks similar or identical to HMRC or HMRC PAYMENT GATEWAY. Equally there is no evidence that the Respondent has ever traded or operated as HMRC or HMRC PAYMENT GATEWAY.

The disputed domain name does not resolve to an active website. It has therefore not been used in connection with a *bona fide* offering of goods or services. It is well-established by, for example, *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#), that the passive holding of a domain name is insufficient to establish legitimate interests or *bona fide* use of a domain name. The Respondent cannot therefore obtain or derive any rights or legitimate interest through a passive holding of the disputed domain name.

The Complainant relies upon the fact that the Respondent did not reply to the cease and desist letter sent by the Complainant's representative on February 11, 2022 exhibited at Annex 08. The Complainant contends that the non-response and failure to give an explanation to the points made constitutes an admission of the Complainant's contentions.

Having taken into account the Complainant's evidence and the fact that there is no Response the Panel agrees with the Complainant's submission that the Respondent has no rights or legitimate interests in the disputed domain name and finds for the Complainant under Paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant relies upon the screenshot exhibited as Annex 05 to show that at the time of that submission the disputed domain name did not resolve to an active website. It asserts that such passive holding of the disputed domain name constitutes bad faith. It refers to the factors set out in section 3.3 of the [WIPO Overview 3.0](#) which have been considered relevant in applying the so-called passive holding doctrine. These factors are;

i. The degree of distinctiveness or reputation of the Complainant's mark.

On the evidence and as shown by Article Bundles A and B it is clear that the Complainant is very well known as HMRC in the UK and elsewhere. Its marks have been used for many years prior to the registration of the disputed domain name. The Panel also notes that the Respondent's address is in the UK. Given the evidence of the Complainant's activities in the UK it would be highly unlikely that the Respondent at the date of registration of the domain name not to have been aware of the Complainant being commonly known as HMRC.

ii. The failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use.

The Complainant relies upon the lack of a response to the cease and desist letter and failure to provide evidence of use in good faith.

iii. The Respondent concealing its identity or use of false contact details.

On the evidence the Respondent has used a privacy service, or allowed the redaction, of its details from the public Whois.

iv. The implausibility of any good faith use to which the domain name may be put.

The Complainant contends, taking into account the evidence of reputation and widespread use, that it is “inconceivable” that the Respondent could have registered the disputed domain name without the Complainant’s marks in mind and with good faith intentions.

The Complainant points out the evidence that the disputed domain name is configured with MX and SPF records and is therefore capable of email communication. Given the confusing similarity, a third party receiving an email from the disputed domain name would reasonably assume that it was sent from the Complainant. The Complainant points out the combination of HMRC with “payment gateway” increases the potential for confusion. This is because of the association with the service as provided by the Complainant of providing a “payment gateway”. That is a description of a service provided by the Complainant. This view is supported by the earlier panel decision in which the Complainant was complainant in *The Commissioners for HM Revenue and Customs v. Mark Carver*, WIPO Case No. [D2018-1200](#) which concerned the similar domain names <hmrc-gateway-gov.online> and <hmrc-tax-gateway.online>.

The Complainant also submits that the use of a privacy service is a further indication of bad faith registration and use in bad faith.

Taking into account these submissions and in the absence of a Response the Panel agrees with the Complainant’s contentions and finds that the disputed domain name was registered and used in bad faith within 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 disputed domain name <hmrc-paymentgateway.com> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: April 19, 2022