

ADMINISTRATIVE PANEL DECISION

AXA SA v. Privacy service provided by Withheld for Privacy ehf /
Sefiane Kaaber
Case No. D2022-1843

1. The Parties

Complainant is AXA SA, France, represented by Selarl Candé Blanchard Ducamp Avocats, France.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Sefiane Kaaber, Morocco.

2. The Domain Name and Registrar

The disputed domain name <axamaroc.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 May 23, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 Complainant on May 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on May 30, 2022.

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 Respondent of the Complaint, and the proceedings commenced on June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. Respondent sent informal communications to the Center on May 28, 2022, and on May 30, 2022. Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on July 4, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on July 11, 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant is the holding company for a worldwide group of related and affiliated insurance companies known as the “AXA Group” (collectively “Complainant”), which provides property and casualty insurance, life insurance and savings, and asset management services to individuals and companies under the service mark AXA (the “AXA Mark”). With roots dating back to the 18th century, Complainant completed a series of mergers involving some of the world’s largest insurance companies when the AXA Mark was introduced in 1985, and by 1996, had become the number one insurer in France. In 2018, Complainant became the world’s number one commercial property and casualty insurer, employing 153,000 people worldwide, serving 105 million customers in 54 countries and does business in diversified geographic regions and markets across notably Europe, Africa, North America and Asia-Pacific. For nine consecutive years until 2017, the AXA Mark was considered the leading global insurance brand and in 2021, was ranked 48th among the best among all global brands according to the Interbrand ranking.

Complainant holds numerous trademark registrations for the AXA Mark around the world including:

1. International Trademark No. 490030, AXA, registered December 5, 1984, for a range of services in classes 35, 36, and 39, in particular for “advertising and business. Insurance and financial services”, designating, *inter alia*, Algeria, Austria, Bosnia and Herzegovina, Croatia, Egypt, Spain, Hungary, Italy, Morocco, Monaco, Portugal, Democratic People’s Republic of Korea, Romania, Russian Federation, Sudan, Ukraine, Viet Nam, Belgium, Netherlands, Luxembourg, and Switzerland;
2. European Union Trademark Registration No. 008772766, AXA, registered on December 21, 2009, for goods and services in International Classes 35 and 36, in particular for “Insurance and finance; banking services”; and
3. France Trademark Registration No. 1270658, AXA, registered on January 10, 1984, for services in classes 35, 36, and 42, in particular for “insurance and finance”.

Complainant has also registered numerous domain names that incorporate the AXA Mark, including <axa.com> registered on October 23, 1995, used to access the official AXA website where it promotes its insurance and finance services in connection with the AXA Mark, as well as owning <axa.fr> registered on May 20, 1996, and <axa.net> registered on November 1, 1997.

The disputed domain name was registered on April 16, 2022, and resolved to a parking page hosting only sponsored pay per click (“PPC”) links to services in competition with Complainant’s services.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark, that 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

Respondent did not formally reply to Complainant's contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

A. Procedural Matter: Unsolicited Informal Communications

Consideration of Respondent's Unsolicited Informal Communications

The Panel has also reviewed the informal communications Respondent sent to the Center on May 28, 2022, and on May 30, 2022. In an email on May 28, 2022, the Center received a submission from an email address associated with Respondent as confirmed by the Registrar for the disputed domain name after the Complaint was filed. The email stated: "I was the owner of the mentioned domain name, but I transferred it to my client account (AXA Agency). I cannot share more details about my customers. Best regards" and subsequently on May 30, 2022, a second email from the same address stated "Im not the current owner. ask the registrar the update the current registrent information". These emails were received after the disputed domain name had been locked by the involved registrar and will be treated as coming from Respondent; the Panel notes however that they are not in the form of a formal response including the oath or affirmation required for the filing of a formal response". and while they have been considered, in light of the Panel's concerns over veracity and source authenticity, as well as the strong possibility they merely represent the author's self-serving interest in avoiding responsibility for the abuse complained of, will be given less weight accordingly.

B. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the AXA Mark for its insurance and finance services dating back to 1984. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting international trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the AXA Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

Further, Complainant has provided a citation to prior UDRP decisions which support the recognition of Complainant's trademark rights established in the AXA Mark as distinctive and well-known worldwide. See, e.g., *AXA SA v. Frank Van*, WIPO Case No. [D2014-0863](#); *Finaxa SA v. Spiral Matrix*, WIPO Case No.

[D2005-1044](#).

With Complainant's rights in the AXA Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's AXA Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7.

Prior UDRP panels have held the fact that a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); see also *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#).

The disputed domain name incorporates Complainant's AXA Mark in its entirety and adds the term "maroc" (possibly meant to be a shortened version of Morocco – though this matters only for the second and third elements). Respondent's addition to Complainant's Mark of this term to form the disputed domain name does not prevent a finding of confusing similarity as noted by prior UDRP panels in similar cases involving Complainant's AXA Mark. See, *AXA SA v. YAnina, Dostavka Produktov* WIPO Case No. [D2017-0237](#).

The addition of the Top-Level Domain ("TLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See *Research in Motion Limited v thamer Ahmed Alfarshooti*, WIPO Case No. D2012-1146; [WIPO Overview 3.0](#), section 1.11.

Based on the above, this Panel finds that the added term "maroc" does not prevent a finding of confusing similarity between the disputed domain name and Complainant's AXA Mark. Complainant's well-known AXA Mark remains fully recognizable as incorporated in its entirety into the disputed domain name. Accordingly, the Panel finds the disputed domain name confusingly similar to the AXA Mark in which Complainant has rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under the second element of the Policy, a complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, and if successful the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the disputed domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also *The American Automobile Association, Inc. v. Privacy--Protect.org et al.*, WIPO Case No. [D2011-2069](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or legitimate interests.

The first example, under paragraph 4(c)(i), is where "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".

Here, the annexes to the Complaint show that the disputed domain name resolves to a parking page hosting only sponsored links to "Assurance" and "Mutuelle" meaning in English "Insurance" and "Entreprise", meaning in English "Company", essentially insurance company services in competition with Complainant's insurance services. Complainant contends such configuration and content was created by Respondent to lead consumers to reasonably believe Respondent's copycat website originates with or is affiliated with Complainant.

Prior UDRP panels in similar circumstances have held that the use of disputed domain names to confuse and attract Internet users through misuse of a well-known trademark, which resolves to a parking website containing sponsored links related to Complainant's same business activity – cannot be considered either a *bona fide* offering of goods or services under Paragraph 4(c)(i) or a legitimate noncommercial or fair use of the disputed domain name as Respondent is unduly profiting from Complainant's goodwill by misleading Internet users to its website. See *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#).

Applying the foregoing decision to these facts this Panel finds the disputed domain name is not being used in connection with a *bona fide* offering of goods or services sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraph 4(c)(i) of the Policy.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that Respondent is not related in any way with Complainant, does not carry out any activity for, nor have any business with Respondent. Neither has Complainant granted any license or authorization to Respondent to make any use of Complainant's AXA Mark or apply for registration of the disputed domain name. Complainant has never authorized Respondent to use the AXA Mark, or any marks confusingly similar thereto for any purpose, including as a domain name. Prior UDRP panels have found a lack of rights or legitimate interests under the second element of the Policy based on such circumstances. See, e.g., *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, WIPO Case No. [D2005-0179](#); *Guerlain S.A. v. H I Investments*, WIPO Case No. [D2000-0494](#).

Complainant also shows that Respondent is not commonly known by the disputed domain name because the original Respondent listed in the Whois record submitted with the initial Complaint displayed "REDACTED FOR PRIVACY/ Privacy service provided by Withheld for Privacy ehf" of Iceland. The Registrar identified the underlying registrant in its verification process, Sefiane Kaaber of Morocco, who has been added in the amended Complaint as Respondent. Neither bears any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this subsection of the Policy is of no help to Respondent and the facts presented here support a lack of rights or legitimate interests in the disputed domain name. See *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

The Panel moreover notes that in its informal email, Respondent effectively disclaims responsibility for the disputed domain name.

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends and prior UDRP Panels have found that the AXA Mark is a distinctive and well-known trademark worldwide. See *e.g.*, *AXA SA v. Frank Van, supra*; *Finaxa SA v. Spiral Matrix, supra*.

Complainant further contends that given its AXA Mark is well-known, and the disputed domain name incorporates the AXA Mark in its entirety, shows both Respondent's actual knowledge of the AXA Mark and worldwide recognition, including Africa where Respondent is supposedly located, in Morocco, and the mark has been in use for approximately 38 years before Respondent registered the disputed domain name. Prior UDRP panels have found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name encompassing the AXA Mark for any other purpose than to trade on Complainant's trademark rights and reputation in its internationally famous trademark, establishes a fact pattern that repeatedly has been held to constitute bad faith registration and use. See *Accenture Global Services Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Joshua Kimac*, WIPO Case No. D2018-1641; see also *Philip Morris Inc. v. Tsypkin*, WIPO Case No. [D2002-0946](#).

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises a complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain. See, *e.g.*, *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#). Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Finally, as noted in 6.C. above, the disputed domain name, which Respondent has intentionally configured to enhance confusing similarity to Complainant's AXA Mark by adding a term which seemingly relates to a location where Complainant provides its insurance and financial services and using the disputed domain name to direct or redirect consumers to Respondent's parking page website providing financial services in competition with Complainant's services. Prior UDRP Panels have found these facts demonstrate a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's AXA Mark as to the source, sponsorship, affiliation or endorsement of Respondent's website, and, therefore, evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See, *e.g.*, *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois, supra*; *Microsoft Corporation v. Zerbo*, WIPO Case No. [D2005-0644](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied 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, <axamaroc.com>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: August 6, 2022