

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. Rahul kumar
Case No. D2022-2361

1. The Parties

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

Respondent is Rahul kumar, India.

2. The Domain Name and Registrar

The disputed domain name <pixabayimages.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 29, 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 July 1, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 4, 2022.

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 Respondent of the Complaint, and the proceedings commenced on July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 9, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on August 17, 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

Complainant, Pixabay GmbH, operates an online platform under the name and mark PIXABAY through which users can share copyright-free images, videos and music. Complainant exclusively provides its services through its website at <pixabay.com>. Complainant owns a number of trademark registrations for the PIXABAY mark in connection with its platform and services including, by way of example, in the European Union (Registration No. 018041811, which issued to registration on September 20, 2019), Australia (Registration No. 2004679, which issued to registration on April 22, 2019), and India (Registration No. 4212079, which issued to registration on August 28, 2019).

Respondent is an individual based in India. Respondent registered the disputed domain name on May 31, 2021. Shortly after registering the disputed domain name, Respondent used the disputed domain name for a website that included the title "PixaBay HD Images" and a logo with the words "PixaBay Images Website." Respondent thereafter used the disputed domain name for a website that included blog posts, articles and stock images.

On December 7, 2021, Complainant, through its representative, sent a demand letter to Respondent concerning the disputed domain name and associated website. No response was received, but the website at the disputed domain started to provide access to stock images and soon thereafter again featured various articles and blog posts, such as a post for "Free HD Photos & Wallpaper Download – Top Popular Ten." At some point, the website also advertised the sale of various third party goods. Currently the website at the disputed domain names features a "Sample Page" obtained through WordPress.

5. Parties' Contentions

A. Complainant

Complainant maintains that it has been in operation since 2010 and that its main website at "www.pixabay.com" is available in 26 languages and receives an average of 34 million visits per month. Complainant asserts that PIXABAY is "renowned within its sector," is known to be "one of the top providers of free stock photography," and is a source of many images used on a number of popular websites.

Complainant contends that the disputed domain name is identical or confusingly similar to the PIXABAY mark as it fully incorporates the PIXABAY mark with the descriptive word "images," which relates specifically to Complainant and its services.

Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name as Respondent (i) owns no trademarks for "pixabay" or "pixabayimages," and has never been known by the PIXABAY mark, (ii) has not been licensed by Complainant to use a domain name that features the PIXABAY mark, and (iii) has sought to capitalize on the goodwill associated with the PIXABAY mark by using the disputed domain name for a website that has featured random blogs, articles and stock images, and advertised the sale of unconnected third party goods all for Respondent's commercial gain.

Lastly, Complainant asserts that Respondent has registered and used the disputed domain name in bad faith to take advantage of the substantial goodwill that Complainant has developed in the PIXABAY mark since 2010. Complainant further asserts that Respondent has clearly targeted Complainant and the PIXABAY mark given Respondent's use of the disputed domain to attract web users to a website that has featured various articles, blogs, stock images and products for sale for Respondent's commercial benefit.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns trademark registrations for the PIXABAY mark in numerous jurisdictions and that such issued to registration well before Respondent registered the dispute domain name.

With Complainant's rights in the PIXABAY mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level-Domain ("TLD") such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this standing requirement.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's PIXABAY mark as it fully incorporates the PIXABAY mark. The addition of the term "images" does not prevent a finding of confusing similarity as PIXABAY is clearly recognizable in the disputed domain name. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's PIXABAY mark and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Respondent has used the disputed domain name with a website that has featured (i) articles and blog posts on various topics, including free downloads of HD images, (ii) access to stock images, and (iii) promotions for the sale of third party products. Reviewing the various screenshots provided by Complainant of what has been included on the website at the disputed domain name, it appears fairly obvious that Respondent registered the disputed domain name that uses the PIXABAY mark with a term that conjures up the very service that PIXABAY is known for, namely, images, as a way of profiting from the disputed domain name by driving web traffic to Respondent's website for Respondent's profit. Such use of the disputed domain name

does not amount to a *bone fide* use or provide Respondent with a legitimate interest in the disputed domain name. See [WIPO Overview 3.0](#) at section 2.5.3.

Given that Complainant has established with sufficient evidence that it owns rights in the PIXABAY mark, and given Respondent's above noted actions, the Panel concludes that Respondent does not have a right or legitimate interests in the disputed domain name and that none of the circumstances of Paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

In this matter, Respondent has registered and used the disputed domain name that plays upon Complainant's PIXABAY mark, a mark that enjoys a certain reputation as a source of free stock photography, and used such with a website promoting various related and unrelated postings, images and third party products. To be sure, the disputed domain name and associated website are likely to be seen by consumers as connected to or authorized by Complainant in view of the use of PIXABAY with the word "images" which relates to what Complainant is known for.

Given Respondent's actions and failure to respond to Complainant's demand letter or to appear in this proceeding to explain or justify his actions, it appears from the evidence before the Panel that Respondent was likely aware of Complainant and its PIXABAY name and services and registered and used the disputed domain name for Respondent's benefit. That some of the articles and postings are unrelated to Complainant does not alter this conclusion, as Respondent has opportunistically registered and used the disputed domain name, which is likely to be seen as connected to Complainant, to intentionally and misleadingly bring Internet users to Respondent's website for Respondent's own profit. See [WIPO Overview 3.0](#) at Section 3.1.4 (and cases cited therein).

Accordingly, the Panel finds that Complainant succeeds under this element 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 <pixabayimages.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: August 31, 2022