

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. Privacy Administrator, Anonymize, Inc.
Case No. D2022-2370

1. The Parties

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

The Respondent is Privacy Administrator, Anonymize, Inc., United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 the Respondent of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 27, 2022.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on August 1, 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 was founded in 2010 and runs an online platform that allows its customers to create and share copyright-free images, videos and music. In 2019, the Complainant was acquired by Canva Pty Ltd, a global online graphic design platform. The Complainant's main site is available in 26 languages and currently permits the sharing of over 2.6 million images.

The Complainant owns several registered trademarks, including PIXABAY Australia Registration No. 2004679 and Registration date April 22,2019 in classes 9, 42, 45; PIXABAY India Registration No.4212079 and Registration date June 20,2019 in classes 9, 42, 45; PIXABAY Mexico Registration No. 2033884 and Registration date August 28,2019 in class 9; and PIXABAY European Union Registration No.018041811 and Registration date September 20, 2019 in classes 9, 42, and 45.

The disputed domain name was registered on November 29, 2019, it used to resolve to random redirections and pay-per-click site ("PPC"), when the Complaint was filed. Now it resolves to a PPC site with links to unrelated web locations and services.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its PIXABAY trademark. It points out that the disputed domain name's second level only differs from the Complainant's PIXABAY mark through the substitution of its final letter with a 'u'. The Complainant points out that 'y' and 'u' are adjacent on a QWERTY keyboard and cites the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9 in this regard: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." The Complainant says that this principle has been consistently applied in typo-squatting domain name cases.

To the best of the Complainant's knowledge, the Respondent has not registered any trademarks for "pixabay", "pixabau", or anything similar. The Complainant also says it cannot locate any evidence to suggest that the Respondent holds unregistered rights in any such term. The Complainant has not licensed the Respondent to use the disputed domain name incorporating the Complainant's mark.

The Complainant further submits that the Respondent has not used, nor prepared to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Respondent has used the disputed domain name to redirect Internet users to various unrelated sites. The Complainant points out that UDRP panels have held such conduct not to amount to a *bona fide* offering of goods or services and have also decided that a respondent's use of a domain name to redirect users to random sites is not a *bona fide* offering.

The Complainant reiterates that the Respondent's use of the disputed domain name is an example of a typosquatting variation of the Complainant's distinctive PIXABAY mark, to advertise PPC links. The Complainant says that previous panels have found a respondent's use of a confusingly similar disputed domain name to redirect Internet users to unrelated sites, via PPC links, is not a *bona fide* offering of goods or services.

The Complainant submits that the Respondent is not known, nor has ever been known, by the distinctive PIXABAY mark, nor by "pixabau" or anything similar. The Respondent is not connected or affiliated with the Complainant and has not received a license or consent to use the PIXABAY mark in any way.

The Complainant maintains that it is clear that the Respondent is capitalizing on the renown of the PIXABAY mark by directing Internet users who have mistyped the Complainant's mark to unrelated and potentially dangerous content. The Respondent evidently derives commercial gain when users are directed to unrelated sites via the advertised PPC links, or so the Complainant says.

The Complainant has been operating since 2010 and its earliest PIXABAY trademark's priority date precedes the registration of the disputed domain name by more than seven months. The Complainant states that it also holds other trademarks for PIXABAY, covering a number of jurisdictions, which were similarly registered prior to the disputed domain name. The Complainant contends that its PIXABAY mark or name has become synonymous with the provision of stock photography online.

The Complainant notes that anyone with access to the Internet can find the PIXABAY mark clearly on public trademark databases and that all top Google search results for the PIXABAY mark (both prior to November 29, 2019 and currently) pertain to the Complainant's offerings. The simplest searches reveal the Complainant. The Complainant contends that in view of these factors, the Respondent should have been aware of the Complainant's PIXABAY mark at the time of the disputed domain name's registration.

The Complainant also submits that it sent a cease-and-desist letter to the Respondent on December 14, 2021. The Respondent did not reply which the Complainant says may constitute further evidence that it knowingly acted in bad faith.

The Respondent is using a confusingly similar variation of the Complainant's PIXABAY mark to attract and divert Internet users inadvertently mistyping the mark in the hope of reaching the Complainant's services, to unconnected sites which the Respondent can commercially benefit from.

The Complainant points out that previous panels have found that a respondent's use of a confusingly similar domain name to misleadingly divert Internet users to unconnected third-party sites constitutes evidence of bad faith. Finally, the Complainant submits that the Respondent's use of the disputed domain name to automatically download, presumably malicious, files on an unsuspecting user's device is clear evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name is not identical to the PIXABAY trademark of the Complainant. However, the only difference is an almost unnoticeable substitution of the final 'y' with a 'u'. This difference is immaterial and the distinctive PIXABAY trademark of the Complainant remains immediately recognizable in the disputed domain name. This constitutes an example of typosquatting where the whole intention is to register an almost imperceptibly different domain name and rely on an Internet user's mistake or inattention to attract traffic to a connected website. See section 1.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel holds that the disputed domain name is confusingly similar to the PIXABAY trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent has not answered any of the contentions of the Complainant. There is nothing before the Panel to indicate that the Respondent is known by the name PIXABAY or anything similar or by the disputed domain name or has ever conducted legitimate business with reference to this term. The Respondent has

not been licensed or authorized to use the Complainant's trademark in any way. It is difficult to envisage any legitimate use the Respondent could put the disputed domain name to, that would not infringe the Complainant's rights, in the absence of express authorization to that effect. The disputed domain name resolves to a website with PPC links, which does not represent a bona fide offering as the links capitalize on the reputation and goodwill of the Complainant's mark and mislead Internet users.

Therefore, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant started using the PIXABAY mark in trade in 2010. The trademark is highly distinctive and has also acquired considerable goodwill around the world through extensive use. The Complainant has a very substantial user base for its services offered under the PIXABAY mark. The disputed domain name itself is a perfect example of typosquatting, where an acquirer deliberately makes a small change to a known trademark, which implies their knowledge of the mark and the reputation that it has. This particular mark is for an Internet-based business which makes it even more improbable that the Respondent would be unaware of it when registering the disputed domain name.

The Respondent also did not reply to the Complainant's communication or seek to make a case for good faith use in the present forum. Acquiring a domain name which incorporates something very close to a registered mark and then parking it on a website for the sake of generating PPC license payments is a bad faith activity. This is because it relies on tricking or misleading Internet users into visiting a connected website thinking they are engaging with the Complainant's genuine web presence.

Therefore, the Panel holds that the disputed domain name was registered and 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 <pixabau.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: August 15, 2022