

ADMINISTRATIVE PANEL DECISION

Travellers Exchange Corporation Limited v. Registration Private, Domains By Proxy, LLC / Tracy Robbison, Epic Promoters
Case No. D2022-2385

1. The Parties

The Complainant is Travellers Exchange Corporation Limited, United Kingdom, represented by Deloitte LLP, United Kingdom.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / Tracy Robbison, Epic Promoters, United States.

2. The Domain Name and Registrar

The disputed domain name <travelexchangeusa.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 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:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 July 5, 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 July 8, 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 the Respondent of the Complaint, and the proceedings commenced on July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 9, 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.

On August 25, 2022, the Center received an email from the Respondent¹ claiming that she did not understand the procedure and continuing:

“We own many travel domains but don’t use this one.”

The Panel notes that a link to guidelines for filing a Response are included in the Notification of the Complaint. As there was some suggestion that the Respondent may have been involved in some way in the travel industry, however, the Panel issued Procedural Order No. 1 allowing the Respondent until September 13, 2022 to make a supplemental filing addressing:

- (1) whether there was some obstacle which prevented the Respondent from submitting the Response by the due date – August 1, 2022;
- (2) what steps, if any, the Respondent took to seek advice about the Complaint and how to deal with it; and
- (3) her Response to the allegations in the Complaint.

The Panel also provided for the Complainant to make a supplemental filing in reply in the event the Respondent made a supplemental filing.

Neither Party submitted a supplemental filing.

4. Factual Background

The Complainant’s business was founded in 1976. It provides retail foreign currency exchange services in 60 countries around the world under the brand name “Travelex”. The Complainant maintains outlets at airports, transport hubs, premium shopping malls, high street locations, supermarkets and city centers. It has also developed a network of ATMs. According to the Complaint, it has over 1,000 retail stores and some 900 ATMs.

The Complainant has numerous domain names but its main website is located at “www.travelex.com”.

In 2019, before the COVID pandemic, the Complainant provided services to some 39 million customers. Its global revenue for that year was GBP 659 million. Even during the pandemic, revenues for 2020 and 2021 were, respectively, GBP 159 million and GBP 161 million.

¹ As the first-named Respondent is a privacy service, the Panel will refer to the second-named Respondent as the Respondent unless the context requires the contrary.

The Complaint includes evidence that the Complainant has numerous trademarks registered for TRAVELEX. These include:

- (a) United Kingdom Trade Mark No. UK00001343462 which was registered on September 20, 1991 with effect from May 4, 1988 in respect of insurance and financial services in International Class 36;
- (b) European Union Trade Mark No. 009145285 which was registered on November 12, 2010 with effect from June 1, 2010 in respect of relevant goods and services in International Classes 9, 35 and 36;
- (c) United States Registration No. 1,694,803 which was registered on June 16, 1992 in respect of a range of relevant services in International Class 36.

The Complaint includes evidence that the Complainant also has other registrations for TRAVELEX in these jurisdictions as well as many other jurisdictions.

The disputed domain name was registered on March 29, 2022.

When the Complaint was filed, the disputed domain name resolved to a parking page provided by the Registrar with a link "Get This Domain". There were also three pay-per-click ("PPC") advertisements for (1) Cheap Holiday Packages, (2) Holiday Packages, and (3) Phone Call Center Software.

Searches by the Panel disclosed that a person appearing to be the Respondent is associated with a company registered in Florida, Epic Promotions Corporations. The nature of that company's business, if it is active, has not been disclosed. The Registrar's verification response indicated that the Respondent used an email address "[...]@epicfortunes.com". At the time this decision is being prepared, there does not appear to be an active website associated with that domain name.

5. Discussion and Findings

The Complaint and Written Notice have been sent to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. A very short response was received by email well after the date for submission of the Response. Despite being afforded an opportunity to provide a supplemental filing, no further response has been forthcoming.

In these circumstances, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for TRAVELLEX. The Panel also accepts that the Complainant has established a very substantial goodwill and reputation in the trademark.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See, e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name can be seen as the terms “travel”, “exchange”, and “usa”. It can also be seen, as the Complainant contends, as consisting of the Complainant’s registered trademark and the terms “change” and “usa”. As this requirement under the Policy is essentially a standing requirement, the central fact is that the disputed domain name does in fact contain the exact alpha-numeric string comprising the Complainant’s trademark. The inclusion of other of terms in addition to that alphanumeric string does not preclude a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., WIPO Overview 3.0, section 2.1.

The Respondent registered the disputed domain name long after the Complainant began using its trademark and also long after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

It is not immediately clear that the Respondent has in fact offered the disputed domain name for sale as the "Get this Domain" link on the website takes one to a page where the GoDaddy Domain Broker Service offers to contact the holder to make an offer. Nonetheless, as the Respondent is responsible for the way the disputed domain name is used in the absence of evidence of attempts to preclude such use, it does appear likely that offers to "buy" the disputed domain name are being solicited.

As noted above, the disputed domain name could be seen as a combination of the terms "travel", "exchange", and "usa" which could arguably be seen as descriptive of foreign exchange services. Even in such a case, however, Panels have required that the domain name in question be used in connection with the descriptive purpose or, at the least, that there are demonstrable preparations to use the domain name for that descriptive purpose. See for example, WIPO Overview 3.0, sections 2.9 and 2.10.

In the present case, there is no evidence that the disputed domain name is being used solely in a descriptive sense. The absence of such evidence is usually sufficient to preclude a finding of rights or legitimate interests, at least at the *prima facie* level.

Moreover, any such use must be in good faith.

In the present case, the PPC advertisements are linked to the travel industry. However, they are not advertising travel exchange services. It is well established under the Policy that the Respondent is responsible for the use of PPC links on the Respondent's website in the absence of demonstrated efforts to preclude such use. See, e.g., WIPO Overview 3.0, section 2.9.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. In fact, the Respondent has specifically indicated that the disputed domain name is not being used, which supports the finding that the Respondent is not making a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see, e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. D2010-0470.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As the Respondent claims to own many travel-related domain names and the Complainant's trademark has been used extensively for many years in the travel industry, it seems likely that the Respondent was aware, or at least should have been aware, of the Complainant's widely-known trademark.

Having regard to the way the disputed domain name has been used and in the absence of any attempted explanation by the Respondent, therefore, the Panel infers the Respondent registered the disputed domain name in an attempt to take advantage of its resemblance to the Complainant's trademark. The Complainant has specifically alleged this and the Respondent not sought to deny it – other than claiming to own “many travel domains” and stating that she does not use this one. That conduct qualifies as registration in bad faith under the Policy. It also constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <travelexchangeusa.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: September 20, 2022