

ADMINISTRATIVE PANEL DECISION

Daxel Holding SRL v. VINAY MV, BRIGHTCHOICE SOLUTIONS
Case No. D2022-2872

1. The Parties

The Complainant is Daxel Holding SRL, Italy, represented by Inpat & Law, Italy.

The Respondent is VINAY MV, BRIGHTCHOICE SOLUTIONS, India.¹

2. The Domain Name and Registrar

The disputed domain name <daxellogistic.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 August 4, 2022. On August 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 August 9, 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 amendment to the Complaint on August 9, 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 the Respondent of the Complaint, and the proceedings commenced on August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. The Center received an email communication on September 5, 2022, from an email address [...]@daxellogistic.com, sent on behalf of “Daxel Logistic India Pvt Ltd.”

¹ This case had been filed against a privacy provided (“Registration Private, Domains By Proxy, LLC”). The Registrar disclosed an underlying registrant and therefore the Panel considers the underlying registrant to be the appropriate Respondent.

The Center appointed Steven A. Maier as the sole panelist in this matter on September 15, 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 a limited liability company registered in Italy. It is a provider of logistic and transport services worldwide.

The Complainant is the owner of trademark registrations for or including the name DAXEL, including for example:

- European Union Trade Mark registration number 018157457 for a figurative mark comprising a logo and the name DAXEL, registered on March 13, 2020, with a filing date of November 26, 2019, for services in International Class 39 including “delivery services” and “shipping agency services for arranging the transportation of goods”; and
- International trademark registration number 1656893 for a similar figurative mark, registered on March 1, 2022, with the same application date, for similar services in International Class 39 and designating countries including the United States of America and India under the Madrid protocol.

The disputed domain name was registered on May 27, 2020.

The disputed domain name has resolved to a website headed with a logo (which is different from that of the Complainant) and the name of a company, “Daxel Logistic India Pvt. Ltd.” The website offers road, ocean and air freight and warehousing services and states as follows:

“DAXEL Logistic India Pvt Ltd. is under the Group Company of SHUBH AARAMBH GROUP. Under the Group we have the Freight Forwarding, Transportation and Clearance Service all over the India, Group have the business of Retail industry in India Since 2000, which in serve by our Parent Partner.”

The website includes a street address in Bangalore, India, email addresses and telephone numbers and a form to make a “Make Custom Request”.

5. Identity of Respondent

The Complaint originally named a privacy provider as the Respondent in this case. While the Registrar disclosed “Vinay MV, Brightchoice Solutions” as the underlying registrant of the disputed domain name, no communication has been received from that party, although an email concerning this proceeding was sent to the Center by Daxel Logistic India Pvt Ltd. Since that entity appears to be the operator of the website to which the disputed domain name resolves, the Panel is satisfied that that entity should be considered a beneficial owner of the disputed domain name for the purpose of this proceeding.² Further references in this Decision to the Respondent shall therefore include Daxel Logistic India Pvt Ltd.

² As stated in section 4.4.5 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)): “In all cases involving In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.”

6. Parties' Contentions

A. Complainant

The Complainant states that it has three offices in Italy and one in the Netherlands and offers logistic and transport services worldwide. It states that it has used the name DAXEL in Italy since September 2013 using the domain name <daxelitaly.it>, although this now resolves to its website at "www.daxel-log.com", which it has operated since January 2019. The Complainant states that it is a member of the most important freight forwarding and logistics networks, including IATA and PPL (Pacific Power Logistics Asia Limited).

The Complainant states that it has carried on business in India since at least 2017 and provides examples of invoices and shipping documents dated 2017 and 2019.

The Complainant submits that it became aware of the Respondent and its website in April 2022 via the PPL website, that the Respondent had registered as a member of PPL and that it was offering competing logistic services via the website at the disputed domain name. The Complainant exhibits a "cease and desist" letter sent to the Respondent dated May 12, 2022, stating that it owned the trademark DAXEL, had been operating in the logistics sector since 2013 and that the Respondent was causing confusion by using an identical company name and brand. The letter demanded that the Respondent cease to use the sign DAXEL as a company brand, name or domain name. The Complainant exhibits further correspondence between the parties, including the Respondent's reply dated May 24, 2022 to the effect that it did not claim to be associated with "Daxel Italy", that it is authorized under Indian law to use the name DAXEL, and that unless the Complainant has a worldwide "patent" for that name, it should allow the Respondent to get on with its business.

The Complainant submits that the disputed domain name is confusingly similar to its DAXEL trademark. It states that the disputed domain name reproduces that mark, which is the dominant element of the disputed domain name, and that the addition of the term "logistic" does not distinguish the disputed domain name from its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that the Respondent has no trademark registrations for the name DAXEL and that the Complainant has never authorized it to use its DAXEL trademark. The Complainant submits evidence that the Respondent company was founded on June 3, 2020, and contends that, since the disputed domain name was registered on an earlier date, *i.e.*, May 27, 2020, the Respondent cannot have been commonly known by the disputed domain name upon the date it was registered.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. It states that it has used the name and mark DAXEL in connection with logistic services since 2013, had entered into the Indian market from at least 2017 and was itself a member of PPL by 2019. The Complainant contends that, in view of the Respondent having been founded in 2020 and appearing as a member of PPL in 2022: "... it is evident that Daxel Logistic India Pvt Ltd selected its company name and registered the disputed domain name in bad faith to take advantage of the Complainant's reputation and of DAXEL trademarks." The Complainant adds that the disputed domain name was plainly chosen to take advantage of the goodwill in the Complainant's DAXEL trademark, to generate web traffic and to confuse Internet users into believing that the Respondent is a subsidiary of the Complainant's group. It contends that "the disputed domain name was fraudulently registered with dishonest intention".

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a Response in this proceeding. Its email to the Center, received after the due date for the Response, stated as follows:

“This company is found in Bangalore, Karnataka, as per INDIAN Government Rule and regulation, And domain also found as per rule and regulation, In case this domain belong to someone else I would have not got it in India. This was available online in INDIA and we have brought the same.

If you have any issue, you can come down and file the case locally, since this Indian company and not belong to any other overseas Entity.

Hope I am clear with above word.”

While the Respondent’s email is irregular and was received out of time for a Response, the Panel notes that its content largely reflects the Respondent’s position as evidenced by the correspondence between the Parties referred to above, and in relevant respects on the website at the disputed domain name.

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established to the satisfaction of the Panel that it is the owner of registered trademark rights in the mark DAXEL. The disputed domain name incorporates the whole of that trademark, together with the term “logistic”, which does not prevent the Complainant’s trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, the Respondent has chosen not formally to participate in this proceeding and yet, by implication in its informal response, to suggest that its registration and use of the disputed domain name are exclusively matters for Indian law. The Respondent is wrong in that contention insofar as application of the Policy is concerned (which is not to say the Parties cannot avail themselves of local court options on their own terms), since the terms of registration of the disputed domain name incorporate the Respondent’s agreement to be bound by the Policy, which is not interpreted or applied by reference to any national law. The Respondent therefore takes a significant risk by declining to file a Response.

These observations notwithstanding, even in a case where a respondent has failed formally to answer the complainant’s submissions, it is still necessary for the Complainant to establish at least a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In this case (noting also that the Complainant has engaged with the Respondent in correspondence prior to the filing of this proceeding), it does not appear to be disputed that the Respondent company was duly incorporated in India, is a member of the PPL logistic network and offers logistics and related services on its website to which the disputed domain name resolves. The Complainant’s case appears to the Panel to be that the Respondent’s use of the DAXEL name in connection with logistics services, including its adoption of the disputed domain name, infringes its trademark rights. The Complainant does not appear to allege that

the Respondent is not genuinely operating any business, or that its website is no more than a sham and a pretext for targeting the Complainant's trademark. Its submission that the Respondent's use of the disputed domain name in the course of its business is confusing is not the same as an allegation that no such business actually exists.

This distinction is critical in the Panel's view. The purpose of the UDRP is to resolve cases of "cybersquatting" and similar activities and not to resolve claims of trademark infringement or other legal disputes which fall outside its remit. The issue of trademark infringement depends upon the laws of each national jurisdiction and implicates both legal and evidentiary matters which are beyond the scope of proceedings under the UDRP. Since, in this case, the Complainant's case is essentially one of trademark infringement, and not that the Respondent's website and business activities are a sham, the Panel finds that the Complainant has failed to establish a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Indeed, based on the Respondent's company registration, its membership of the PPL network and its website content, the *prima facie* position is to the contrary. While the Respondent's failure to file a formal Response in the proceeding does not aid the proceedings, the Panel finds nevertheless that the Complainant has failed to meet the requirement set out under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Since the Complaint must necessarily fail by reason of the Panel's finding in respect of rights and legitimate interests, it is not necessary to consider the issues of registration and use of the disputed domain name in bad faith.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 30, 2022