

ADMINISTRATIVE PANEL DECISION

Software Brokers of America, Inc. d/b/a Intcomex v. preeg greep
Case No. D2022-3698

1. The Parties

The Complainant is Software Brokers of America, Inc. d/b/a Intcomex, United States of America (“United States”), represented by Ferraiuoli LLC, United States.

The Respondent is preeg greep, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <intcomax.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 the Complainant on October 7, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On October 7, 2022, the Center received an informal email communication from the Respondent. The Complainant filed an amendment to the Complaint on October 18, 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 October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on November 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

The Complainant, Software Brokers of America, Inc. d/b/a Intcomex, renders distributorship services in the field of computer products under the INTCOMEX mark and owns the United States Trademark Registration No. 2216461 INCOMEX registered on January 5, 1999, covering distributorship services in the field of computer products in class 35.

The Respondent registered the disputed domain name <intcomax.com> on September 21, 2022, which does not resolve to an active webpage. However, according to the evidence provided by the Complainant, the Respondent used the disputed domain name in connection with an email address to provide bank account details unrelated to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the service mark INTCOMEX in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The INTCOMEX mark has been in use since at least 1993 and was registered before the United States Patent and Trademark Office ("USPTO") on January 5, 1999.

The Respondent is using the disputed domain name to direct the Complainant's clients, under false pretenses, to send payment to a bank account that is unrelated to the Complainant, as shown in Annexes V and VI to the Complaint.

Moreover, the Respondent was aware of the Complainant's service mark INTCOMEX when registering the disputed domain name as it appears as the name of the bank account that the Respondent is advising the Complainant's clients to direct payments to, as shown in Annex VI to the Complaint.

The Respondent is using the disputed domain name to engage in fraud and/or criminal activity.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Respondent sent an email communication in response to the Center's Notice of Registrant Information stating "I DO NOT WANT TO AMEND".

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's INTCOMEX service mark.

The only difference between the disputed domain name <intcomax.com> and the Complainant's service mark INTCOMEX is the substitution of the letter "e" in "intcomex" for the letter "a" in "intcomax", which certainly does not prevent a finding of confusing similarity.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the service mark INTCOMEX in which the Complainant have rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's 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; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests

in the disputed domain name.

Likewise, and as further discussed under Section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the disputed domain name relates to the Complainant.

The Panel finds that the nature of the disputed domain name, incorporating the Complainant's mark almost in its entirety with a sole common misspelling (substituting of the letter "e" for the letter "a"), points to an intention to confuse Internet users seeking for or expecting the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. Other than stating that it does not want to amend, the Respondent has not responded to the Complainant's allegations and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's service mark INTCOMEX mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on September 21, 2022.

The Panel considers that the disputed domain name in itself constitutes a clear case of typosquatting.

The Respondent's fraudulent attempt to have the Complainant's clients transfer payments to a bank account unrelated to the Complainant by sending them emails from the address of the disputed domain name is sufficient evidence to prove bad faith.

The Panel finds that the disputed domain name was registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <intcomax.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: November 24, 2022