

ADMINISTRATIVE PANEL DECISION

The Edrington Group Limited v. maxi milano
Case No. D2022-4964

1. The Parties

The Complainant is The Edrington Group Limited, United Kingdom, represented by Demys Limited (a Com Laude Group company), United Kingdom.

The Respondent is maxi milano, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <edrington.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 December 23, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 24, 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 24, 2023.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on January 31, 2023. 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 an international spirits company based in Glasgow, Scotland. It produces single malts, The Macallan, Highland Park, The Glenrothes, Naked Malt, and The Famous Grouse blended Scotch whisky. The Complainant's spirits portfolio also includes Brugal rum, Noble Oak bourbon, and Snow Leopard vodka.

The Complainant's ultimate predecessor was founded in Glasgow in 1850, with the Complainant changing its name to The Edrington Group in 1961.

In its most recent financial results published in the Annual Report for 2022, the Complainant had core revenues of GBP 821.2 million, brand investment spend of GBP 170.7 million, and profits of GBP 91.8 million.

The Complainant operates its official website under the domain name <edrington.com>, which is also used as the Complainant's email address.

The Complainant holds registered trademark rights for the EDRINGTON trademark. And namely, the Complainant is the owner of European Union trademark registration No. 000622050 for EDRINGTON in class 33, filed on September 8, 1997, registered on March 22, 1999, and regularly renewed since then.

The disputed domain name was created on December 12, 2022, and does not resolve to an active website. Evidence submitted by the Complainant shows that the Respondent was using the disputed domain name in connection with an email scam in the name of the Complainant, through an email address connected to the disputed domain name requesting payment of a fraudulent invoice.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its EDRINGTON trademark, notably because the disputed domain name differs only by the replacement of the letter "g" with the visually similar letter "q". The Complainant avers that the disputed domain name exemplifies the manner of typosquatting.

Rights or Legitimate Interests

The Complainant claims that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

In this respect, the Complainant notably argues that the disputed domain name was registered many years after the EDRINGTON trademark had been registered and used.

The Complainant also contends that the disputed domain name does not resolve to an active website and that the disputed domain name has been used to impersonate the Complainant in connection with fraudulent activity.

In these circumstances, the Complainant contends that there is no credible evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

In addition, the Complainant puts forward that there is no credible evidence that the Respondent may be commonly known by the disputed domain name, and that he may be making any legitimate noncommercial use of said disputed domain name.

Registered and Used in Bad Faith

The Complainant claims that the disputed domain name was registered primarily for the purpose of using it to target a third party by way of using the disputed domain name for sending fraudulent emails impersonating a member of the Complainant's staff to elicit the third party into transferring funds.

The Complainant contends that the nature of the disputed domain name and its use in this manner clearly indicate the registration and use of the disputed domain name in bad faith.

The Complainant also asserts that the Respondent's passive holding of the disputed domain name constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under the first element, the Complainant must establish 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 and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of [WIPO Overview 3.0](#). The Complainant submitted evidence that the EDRINGTON trademark enjoys protection under the regional trademark registration. Thus, the Panel finds that the Complainant's rights in the EDRINGTON trademark have been established pursuant to the first element of the Policy.

It is well established that domain names, which consist of common, obvious or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9 (“Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters ... (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers”). See *e.g. Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) (“This is clearly a ‘typosquatting’ case where the disputed domain name is a slight misspelling of a registered trademark to divert Internet traffic. In fact, the [...] domain name comprises the Complainant’s trademark [...] with a single misspelling of an element of the mark: a double consonant ‘S’ at the end”).

The disputed domain name in this Complaint is a misspelling of the Complainant’s EDRINGTON trademark, merely substituting the letter “g” used in the Complainant’s EDRINGTON trademark with the visually similar letter “q”. Accordingly, the Panel finds that the Complainant’s EDRINGTON trademark remains recognizable within the disputed domain name and the disputed domain name clearly constitutes an attempt at typosquatting, by the Respondent.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Finally, for the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain (“gTLD”), see section 1.11.1 of the [WIPO Overview 3.0](#).

It is the view of the Panel that it is readily apparent that the Complainant’s trademark remains recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the EDRINGTON trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, *e.g., Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a 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.

Based on the Complainant’s contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its EDRINGTON trademark.

The Complainant further contends that the Respondent is not commonly known by the disputed domain name and has not made any *bona fide* use – neither commercial nor noncommercial, of the same.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, *e.g., World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

According to the records of the case, the disputed domain name has been used in an attempted fraudulent email scheme designed to be deceptive and confusing, and an impersonation by the Respondent of the Complainant.

In the absence of evidence to the contrary from the Respondent, the Panel accepts the evidence provided by the Complainant as true. As documented by the Complainant, the Respondent was using the disputed domain name to send fraudulent emails, impersonating a member of the Complainant's staff to elicit the third party into transferring funds. The Panel views that this is neither a *bona fide* offering nor a legitimate noncommercial or fair use within the meaning of the Policy. See section 2.13.1 of the [WIPO Overview 3.0](#).

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name. Under such circumstances, the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b), and the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

The Complainant's registration and use of the EDRINGTON trademark clearly predate the date at which the Respondent registered the disputed domain name.

The disputed domain name has been used in an attempted fraudulent email scheme designed to be deceptive and confusing, and an impersonation by the Respondent of the Complainant. And namely, there is credible, uncontested evidence adduced by the Complainant to show that the disputed domain name was used in relation to an email address in an attempt to carry out a phishing scam, by requesting payment of a fraudulent invoice. The fraudulent emails also included what appeared to be the Complainant's postal address and standard email footer.

The Panel finds that the disputed domain name comprises a misspelling to the Complainant's trademark EDRINGTON and can conceive of no explanation for the Respondent's registration of the disputed domain name other than to impersonate the Complainant.

Thus, the circumstances in this case leave no doubt about the fact that the Respondent was fully aware of the Complainant's rights in the EDRINGTON trademark when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name for scam activities by sending a fraudulent email to an unsuspecting user is an obvious case of registration and use in bad faith.

The use of a domain name for *per se* illegitimate activity such as sending impersonating emails is manifestly considered bad faith.

In this sense, section 3.4 of the [WIPO Overview 3.0](#) confirms that "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. [...] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers" (in this respect see, for example, *Sony Corporation v. WhoisGuard Protected, WhoisGuard, Inc. / David Grant*, WIPO Case No. [D2020-3162](#); *Haas Food Equipment GmbH v. Usman ABD, Usmandel*, WIPO Case No. [D2015-0285](#); or *BJ's Wholesale Club v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 64382986619850 Whois Privacy Services Pty*, WIPO Case No. [D2015-1601](#)).

For the reasons above, the Panel views that the Respondent's conduct amounts to bad faith registration and use of the disputed domain name in accordance with paragraph 4(a)(iii) 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, <edrington.com>, be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: February 14, 2023