

ADMINISTRATIVE PANEL DECISION

Cresset Administrative Services Corporation, Cresset Partners LLC v. Muttakin Islam, CBG Limited
Case No. D2023-1658

1. The Parties

The Complainants are Cresset Administrative Services Corporation, United States of America (“United States”), and Cresset Partners LLC, United States, represented by Fuksa Khorshid, LLC, United States.

The Respondent is Muttakin Islam, CBG Limited, Bangladesh.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 17, 2023, 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 (Withheld for Privacy EHF) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2023, 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 April 21, 2023.

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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent sent informal email communications to the Center on May 15, and 17, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 22, 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 Complainants are respectively a corporation and a limited liability company, both registered in Delaware, United States. They provide financial advisory and wealth management services.

The Complainants are the owners of various trademark registrations which comprise or incorporate the mark CRESSET. Those registrations include, for example, United States trademark registration number 5531975 for a standard character mark CRESSET, registered on July 31, 2018, for financial planning and related services in International Class 36.

The disputed domain name was registered on December 17, 2022.

According to evidence submitted by the Complainants, on March 20, 2023, the disputed domain name resolved to a website headed “FreeKik” together with a symbol and the wording “FreeKik - Resalable Marketplace in Bangladesh”. The website appears to offer resources for photo, design and mock-up applications and suggests that free downloads are available upon an account being created. The website includes a number of images which are said to be inspirational in nature. It also includes a section headed “Welcome to the New Cresets calendar – all celebrations and events”. It ends with the statement “Copyright © 2023 Creset. All rights reserved”.

5. Parties’ Contentions

A. Complainants

The Complainants rely on their trademark portfolio, including at least 12 United States trademarks which comprise or include the mark CRESSET. They exhibit no evidence of any trademarks in any other territory.

The Complainants state that they have prominently and extensively used, promoted and advertised under their CRESSET trademarks for several years. They submit that, by virtue of these activities, their trademarks have become well recognized by consumers as identifying the Complainants in connection with financial services.

The Panel notes, however, that the Complainants provide no further details, nor exhibit any evidence, in support of their contentions made above, whether relating to, *e.g.*, their corporate history and profile, customer or employee numbers, geographical areas of operation, sales turnover, funds under management, promotional spend, industry and media recognition, or social media presence.

The Complainants submit that the disputed domain name is confusingly similar to their CRESSET trademark, as it merely transposes one of the letters “s” to the end of the word. They also assert that the disputed domain name is a common misspelling of their CRESSET trademark.

The Complainants submit that the Respondent has no rights or legitimate interests in respect of the disputed domain name. They state that they have no relationship with the Respondent and have never authorized it to use their CRESSET trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainants submit that the Respondent’s website appears to link to another company, named “FreeKik” or “FreeWeek” and that each of the supposed links on that website directs either nowhere or back to the home page.

The Complainants submit that the disputed domain name has been registered and is being used in bad faith. They contend that the Respondent knowingly registered the disputed domain name to capitalize on consumer recognition of their CRESSET trademark. They submit that the disputed domain name, being a reproduction of their trademark with one letter transposed, is “a condemnable, classic case of ‘typosquatting’”.

The Complainants contend that the disputed domain name may have been registered or acquired primarily for the purpose of selling, renting or otherwise transferring it to the Complainant for valuable consideration in excess of the Respondent’s out-of-pocket costs directly related to the disputed domain name.

The Complainants further submit that the Respondent is intentionally misleading customers by utilizing a domain name which is confusingly similar to the Complainants’ trademark in order to drive traffic to its own website.

The Complainants suggests in conclusion that “there is no plausible circumstance under which [the] Respondent could legitimately register or use the [disputed] domain name”.

The Complainants exhibit a “cease and desist” letter dated February 10, 2023 to the WhoIs-disclosed registrant of the disputed domain name.

The Complainants request the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in this proceeding. In its informal email to the Center dated May 15, 2023, the Respondent confirms that it is the owner of the disputed domain name and exhibits a receipt from the Registrar for the registration fee for the disputed domain name for one year.

6. 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 Complainants have 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 and is being used in bad faith.

A. Identical or Confusingly Similar

As discussed in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the test for confusing similarity “typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name”. On this basis, and accepting that the disputed domain name is identical to the Complainants’ CRESSET trademark but for the transposition of one letter “s”, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

B. Rights or Legitimate Interests

In the light of the Panel’s findings on the issue of bad faith below, the Panel does not find it necessary to determine the issue of whether the Respondent has rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

In order to succeed on the third element under the Policy, the Complainants must establish both that the Respondent registered the disputed domain name in bad faith and that it has used the disputed domain name in bad faith.

In order to demonstrate that the respondent registered the disputed domain name in bad faith, the complainant must typically establish, on the balance of probabilities, that the respondent was aware of the complainant's trademark, and indeed sought to target that trademark, at the date of such registration.

It is well established in jurisprudence under the UDRP that, except in certain cases where both the complainant and respondent are present in the United States and the complainant has obtained a federal trademark registration pre-dating the relevant domain name registration, the mere registration of a trademark does not establish (*i.e.* by way of "constructive notice") that the respondent was, or ought to have been, aware of that trademark (see *e.g.*, Section 3.2.2 of [WIPO Overview 3.0](#)).

The Complainants offer no direct evidence that the Respondent was aware of their CRESSET trademark when it registered the disputed domain name, and therefore necessarily invite the Panel to infer from the factual matrix that this is more likely than not to have been the case.

First, the Complainants contend that the Respondent must have been aware of their CRESSET trademark owing to the notoriety of that trademark among consumers. However, the Complainants have provided no evidence concerning the level of public recognition of their trademark, certainly outside of the United States, nor any specific contentions as to why the Respondent was, or ought to have been, aware of it. In particular, they have not provided evidence persuasive to the Panel that their trademark is either so widely known, or so distinctive, that the Respondent should reasonably be assumed to have had it mind when registering the disputed domain name.

Secondly, the Complainants contend that because the disputed domain name comprises the Complainants' trademark with one letter transposed, this is "a condemnable, classic case of 'typosquatting'". While the Complainants' technical analysis is correct, the Panel views both CRESSET and "Cresets" as names that are capable of having independent meanings and applications in commerce (particularly in different geographical locations) and the Panel does not consider it obvious that the latter is parasitical upon, or necessarily calls to mind, the former.

Nor indeed (based on the Panel's own limited research) do the Complainants appear to be the owners of the domain name <cresset.com> (which is used by an architectural chemicals company), their principal websites appearing to operate from "www.cressetcapital.com" and "www.cressetpartners.com", which would appear to dispel any suggestion that the disputed domain name was intended to impersonate the Complainants' domain name.

While it is unhelpful that the Respondent has not provided a Response explaining the reason for its choice of the disputed domain name, and also notable that it uses the name "Creset" as opposed to "Cresets" in one instance on its website, the Panel is not persuaded, on balance that the Respondent registered the disputed domain name with knowledge of, and in order to target, the Complainants' trademark as opposed to coincidentally.

Concerning the use of the disputed domain name, again the Respondent has provided no explanation concerning its website and it is certainly one possible interpretation of that website that it is a sham or pretext for cybersquatting upon the Complainants' trademark. However, the Panel finds it equally plausible that the website is merely a "work in progress" or possibly a project started and then abandoned by the Respondent. There is nothing on the website which indicates an obvious route to commercial gain for the Respondent, whether by the diversion of Internet users or any kind of fraudulent activity. Nor does the website include any content related to financial or investment services or appear to link to any commercial provider of such services. In the circumstances, the Panel is not persuaded, on balance, that the Respondent created and

has used its website as a sham or pretext to cybersquat upon the Complainants' trademark or otherwise to cause confusion with that trademark.

The Complainants submit that the disputed domain name may have been registered with the intention of selling it to the Complainants for a sum in excess of the Respondent's out-of-pocket costs associated with the disputed domain name (paragraph 4(b)(i) of the Policy). This contention is however speculative on the Complainants' part and they have adduced no evidence to demonstrate, or upon which to infer, that such was the Respondent's intention. Indeed the Complainants exhibits a "cease and desist" letter to the Whols-disclosed registrant of the disputed domain name. While it appears that no reply to this letter was received, the Panel does note that the Respondent replied to the Center's communications during the proceedings. In addition, this would presumably have provided an opportunity for the Respondent to make an offer for the sale of the disputed domain name if it intended to do so.

The Complainants also expressly contend that the Respondent registered the disputed domain name with the intention of diverting Internet users to its own website by causing confusion with the Complainants' trademark (paragraph 4(b)(iv) of the Policy). Again the Panel finds there to be no evidence to demonstrate, or to support an inference, that this was the case. The Complainants' case pivots, in essence, upon their assertion that the disputed domain name is so similar to their CRESSET trademark that it can only have been registered and used to target that trademark, which the Panel does not find to have been established.

The Panel is mindful of the guidance contained in Section 3.1 of [WIPO Overview 3.0](#) as follows: "General evidentiary framework: complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence... Even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant's case."

The Panel finds this to be such a case. While the reasons for the Respondent's registration of the disputed domain name remain unclear, the Panel does not find on the available evidence that the disputed domain name was either registered, or has been used, in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: June 5, 2023